

# ORIGINAL



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

In the Matter of	)	
	)	
POM WONDERFUL LLC and ROLL	)	Docket No. 9344
INTERNATIONAL CORP., companies and	)	PUBLIC DOCUMENT
	)	
STEWART A. RESNICK, LYNDA RAE	)	
RESNICK, and MATTHEW TUPPER,	)	
individually and as officers of the	)	
companies.	)	
	)	

**RESPONDENTS' MOTION *IN LIMINE* AND MEMORANDUM IN SUPPORT  
TO EXCLUDE HISTORICAL POM ADVERTISEMENTS PUBLISHED PRIOR  
TO 2006**

**I. INTRODUCTION**

Respondents respectfully move *in limine* to exclude from evidence POM advertisements published prior to the year 2006.

The Commission seeks injunctive relief on the basis of Complainant's allegation that various POM advertisements made false or unsubstantiated claims. The Complaint, filed on September 27, 2010, identifies such allegedly deceptive advertising, copies of which were attached as Exhibits A-N. The earliest such advertisement was dated June of 2007. See Complaint, ¶ 9(A). Respondents are prepared to rebut the Complaint's allegations at trial.

Yet Complainant has sought to radically broaden the dispute. In its supplementary interrogatory responses, Complainant identified thirty-seven different

categories of express misrepresentations which it alleges that POM advertisements made. See Exh. A at pp. 2-31. Complaint Counsel further asserted that various POM advertisements made unspecified “implied” misrepresentations. Id. at pp. 31-34. Of the thirty-seven categories of express misrepresentation asserted by Complaint Counsel, six involve advertisements published “as early as 2004” and one category of advertisement published “as early as 2005” (category 7). Id.

POM’s advertisements from 2004 and 2005 (collectively, the “Historical Ads”) were published more than five years before the Complaint was filed, and six to seven years before the trial date. It is inappropriate for the FTC to seek a finding that the Historical Ads violated the law back in 2004-2005, particularly when the injunctive relief at issue here hinges upon whether the Respondents *are violating or are likely to violate* the law. Complaint Counsel has already challenged dozens of POM advertisements published within the past four years. To further litigate whether the Historical Ads also violated the law would be unfair, insufficiently probative, and likely to significantly extend the trial schedule. Trial will become unmanageable unless the Commission is reasonably focused on a specific set of advertisements.

Pursuant to Commission Rule of Practice 3.43(b), the Historical Ads should be excluded from evidence. In the alternative, Complaint Counsel should certainly be precluded from litigating whether the Historical Ads violated the FTCA, if such material is nonetheless allowed into the record

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. THE POM ADVERTISEMENTS IDENTIFIED IN THE COMPLAINT**

The Complaint contains two paragraphs, numbered eight and nine, which identify POM advertisements that Complaint Counsel alleges contained false, misleading, or insufficiently substantiated representations. These two paragraphs purport to describe POM’s marketing, listing examples dated from June 2007 to January 27, 2010.

## **B. POM ADVERTISEMENTS IDENTIFIED IN COMPLAINT COUNSEL'S INTERROGATORY RESPONSES**

POM served its First Set of Interrogatories on November 15, 2010. Interrogatory No. 1 asked Complaint Counsel to identify every **express representation** that it contends is a violation of Section 5 of the FTC Act, and Interrogatory No. 2 asked Complaint Counsel to identify every **implied representation** that it contends is a violation of Section 5 of the FTC Act. Complaint Counsel provided initial responses to POM's First Set of Interrogatories on December 15, 2010.

In its February 24, 2011 supplement, Complaint Counsel greatly expanded its response to Interrogatory No. 1, identifying thirty-seven different categories of alleged express misrepresentations. See Exh. A. Of those thirty-seven representations, six were made in advertisement categories that the FTC identified as published "as early as 2004" (categories 6, 8, 19, 20, 21, 22) and one additional advertisement category was published "as early as 2005" (category 7). Id.

In response to Interrogatory No. 2, Complaint Counsel gave a long list of Bates numbers that correspond to various advertisements, with no explanation regarding what implied representations they communicate or how. Id. at p. 33. Some of the listed Bates numbers were POM advertisements from 2005.

Collectively, the POM advertisements from 2004 and 2005 identified in the supplemental responses to Interrogatories Nos. 1 and 2 constitute the "Historical Ads."

Although the supplemental interrogatory responses list many advertisements and claims, Complaint Counsel improperly refused to commit to the specific claims and advertisements that it will challenge at trial. Instead, Complaint Counsel sought to reserve an option to challenge various different unspecified advertisements. See id. at p. 30.

## **III. ARGUMENT**

**A. The Court Should Exclude Evidence That Is Insufficiently Relevant, Material, Or Reliable, As Well As Evidence That Will Likely Confuse the Issues, Cause Unfair Prejudice, Or Be Needlessly Cumulative.**

Commission Rule of Practice 3.43(b) governs the admissibility of evidence in this proceeding, providing in relevant part that:

Relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, and unreliable evidence shall be excluded. Evidence, even if relevant, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or if the evidence would be misleading, or based on considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Accordingly, this Court may only admit evidence when it is sufficiently relevant, material, and reliable. Conversely, the Court may exclude evidence for the multiple different reasons stated in Rule 3.43(b). Moreover, as explained in the Commission’s Operating Manual, the Federal Rules of Evidence provide “extremely useful” guidance in implementing the Rule. Operating Manual, Chapter 10, Section .6 (“Admissibility of Evidence”).

**B. The Commission’s Claim For Injunctive Relief Is Premised On Proving Wrongs That Are Ongoing Or Likely To Recur – Not To Remedy Past Violations.**

In this action, Complaint Counsel seeks a permanent injunction in the form of the proposed Order attached to the Complaint. However, “[p]ast wrongs are not enough for the grant of an injunction,’ an injunction will issue only if the wrongs are ongoing or likely to recur.” FTC v. Evans Products Co., 775 F.2d 1084, 1087 (9th Cir. 1985). Actions seeking injunctive relief thus look to whether current or future conduct should be enjoined. Evidence of historical conduct can only be relevant, material, and reliable insofar as it is sufficiently probative of that legal claim. Complainant has filed to make this showing.

**C. The Historical Advertisements Are Insufficiently Relevant, Material, And Reliable.**

The Historical Ads were published between 2004 and 2005. In the year 2011, Complaint Counsel asks the Court to make a finding that these ads violated Section 5 of the FTC Act, purportedly to justify issuing injunctive relief against Respondents. Complaint Counsel seeks to affirmatively litigate whether specific statements in the Historical Ads were adequately substantiated under Section 5 of the FTC Act at the time they were published. That inquisition should not be permitted. It is unwarranted, irrelevant, and prejudicial to litigate here, for the first time, whether Historical Ads violated the FTC Act back in 2004-2005.

First, the Historical Ads have little or no *relevance*. Because the Historical Ads were discontinued many years ago, they do not demonstrate that Respondents are currently violating the law. And as evidence that the Respondents are likely to violate the law in the future, the Historical Ads have *de minimis* utility compared to advertisements run in the period identified in the Complaint – 2007 to the present. Thus the Historical Ads are too remote in time to be probative of whether an injunction should now issue. For the same reason, the Historical Ads are insufficiently material to the statutory claims at issue in this action.

Second, the Historical Ads are not sufficiently *reliable* evidence in support of the Commission's claim for injunctive relief. Nutrition science changes over time, as do consumers' perceptions of nutrition-related advertising statements. For historical advertising, relevant contemporaneous evidence (whether documents, witness testimony, or other materials) becomes harder to locate and interpret with the passing of time. As many legal doctrines and statutes recognize (such as statutes of limitation and the laches doctrine), it is significantly more difficult to litigate an advertising claim that occurred six to eight years ago. For example, in a Lanham Act action seeking injunctive relief against false advertising, the laches doctrine would operate to presumptively bar any such claim. Similarly, in an action brought under Section 19 of the FTC Act, the three-year statute of

limitations would operate to bar the claim. See 15 U.S.C. § 57b(d). For the same reasons, findings of fact and law regarding historical advertising claims are inherently less reliable than findings based upon more recent advertising.

In the instant case, Complainant seeks to put on trial nearly every advertisement that POM made from 2003 to the present. Trial of this matter will already be complex and lengthy. To interject the Historical Ads, as Complaint Counsel proposes, would appreciably lengthen the trial schedule and complicate the proceedings for no good purpose.

**C. The Historical Advertisements Should Be Excluded To The Extent They Are Needlessly Cumulative.**

According to Complaint Counsel's supplementary interrogatory responses, "thousands" of POM advertisements are at issue. See Exh. A at p. 30 (refusing to limit advertisements at issue "Given the thousands of ads in various media disseminated by Respondents, many of which were very similar or identical to the ads identified in these Responses[.]"). Complainant argues that the Historical Ads, though couched in different language, communicate the same misrepresentations. See Exh. A, at pp. 6-8, 12-14

Respondents do not agree that the Historical Ads make the same representations as POM's later advertisements. To the extent that Complainant's supplemental interrogatory responses contend that these advertisements make the same representations, however, then the Historical Ads are excessively cumulative. Indeed, Complaint Counsel is essentially forced to take the position set forth in its interrogatory responses. If Complaint Counsel concedes that the Historical Ads were markedly different than POM's later advertisements, then they would have little to no relevance (as the Historical Ads ceased long ago). Either the Historical Ads were essentially the same as newer ads – in which case they are cumulative – or they are fundamentally different, in which case they are not relevant.

This Court has the authority to exclude evidence “based on considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 3.43(b). Under this rule, which parallels Federal Rule of Evidence 403, the Historical Ads should be excluded to the extent they are cumulative.

District courts have “wide discretion” to exclude evidence based on the factors set forth in F.R.E. 403 (the same factors stated in Rule 3.43(b)). See Sprint/United Mgmt. Co. v. Mendelsohn, 552 U.S. 379, 384, 128 S. Ct. 1140, 1145 (district court must have “wide discretion” under Rule 403 to “exclude ... evidence that has already been found to be factually relevant”); United States v. Hick, 103 F.3d 837, 847 (9th Cir. 1996).

Complaint Counsel’s challenge against reams of largely undifferentiated advertisements, which they apparently contend communicate the same fundamental points, demonstrates why the claims in issue should be tailored to those specifically relevant to the relief claimed. Complaint Counsel has made no reasonable effort to focus its case, instead asserting that thousands of POM advertisements should potentially be found to have violated Section 5 of the FTC Act. That is unfair and inefficient. Trial is certain to be unduly extended unless Complaint Counsel’s claims are narrowed to a reasonably specific subset of allegations.

Moreover, it is also well-established that court may exclude evidence when the *remoteness in time* of the event in question sufficiently affects its probative value. See Tennison v. Circus Circus Enterprises, Inc., 244 F.3d 684, 690 (9th Cir. 2001); United States v. Amato, 540 F.3d 153, 165 (2d Cir. 2008). The fact that the Historical Ads are remote in time weighs further in favor of exclusion.

**D. Evidentiary Principles Embedded In The Statutes Of Limitation For FTC Act Claims And The Laches Doctrine Weigh In Favor Of Excluding The Historical Advertisements**

In a Section 19 action under the FTCA, the Commission is limited by a strict **three year** statute of limitation. See 15 U.S.C. § 57b(d). In an action for civil penalties

under the FTCA, the Commission is limited by a **five year** statute of limitation pursuant to 27 U.S.C. § 2462. See United States v. Ancorp Services, Inc., 516 F.2d 198, 200, n. 5 (2nd Cir.1975).

These statutes of limitation are not binding in this action for injunctive relief. Yet they incorporate evidentiary principles that are also embedded in Rule 3.43(b), pursuant to which this Court has authority to exclude evidence. It is prejudicial, unfair, and unseemly for the Commission to seek a finding that the Historical Ads violated the FTC Act during 2003-2005. Such an inquisition offends the fundamental principles of fairness embodied in statutes of limitation, but which are equally present throughout evidentiary law (including Rule 3.43(b)):

Given the reasons why we have statutes of limitations, there is no discernible rationale for applying § 2462 when the penalty action or proceeding is brought in a court, but not when it is brought in an administrative agency. The concern that after the passage of time “evidence has been lost, memories have faded, and witnesses have disappeared” pertains equally to factfinding by a court and factfinding by an agency.

3M Co. v. Browner, 17 F.3d 1453, 1457 (D.C. Cir. 1994). Similarly, “[s]tatutes of limitations also reflect the judgment that there comes a time when the potential defendant ‘ought to be secure in his reasonable expectation that the slate has been wiped clean of ancient obligations.’” Id. (quotations omitted). Both of these principles are violated by the retrospective litigation that Complaint Counsel intends to attempt at trial in connection with the Historical Ads.

That conclusion is bolstered by the fact that the laches doctrine, to the extent it applied, would presumptively bar claims regarding the Historical Ads. It remains unsettled whether the laches doctrine can apply to defeat claims asserted by the Federal government acting in its sovereign capacity. See, e.g., U.S. v. Administrative Enterprises, Inc., 46 F.3d 670, 672-73 (7th Cir. 1995) (citing JANA, Inc. v. U.S., 936 F.2d 1265, 1269 (Fed. Cir. 1991)). General pronouncements that the Federal government is never subject to laches tend to be controverted by more specific cases finding that the



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Wonderful LLC, Roll International  
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Rae Resnick, and Matthew Tupper.*

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

In the Matter of	)	
	)	
POM WONDERFUL LLC and	)	
ROLL INTERNATIONAL CORP.,	)	
companies, and	)	Docket No. 9344
	)	PUBLIC
	)	
STEWART A. RESNICK,	)	
LYNDA RAE RESNICK, and	)	
MATTHEW TUPPER, individually and	)	
as officers of the companies	)	

**[DRAFT PROPOSED ORDER] GRANTING MOTION *IN LIMINE***

On April 20, 2011, Respondents moved this Court for *in limine* treatment of Historical Advertisements. Having reviewed the Respondents' motion and considered the reasons for this motion, the motion is GRANTED.

ORDERED

Honorable D. Michael Chappell  
Administrative Law Judge

Dated:

**STATEMENT OF PARTIES REGARDING MEET AND CONFER**

On Tuesday, April 19, 2011, Respondents' Counsel conferred with Complaint Counsel regarding this motion. Complaint Counsel indicated that they would oppose the motion.

Respectfully submitted.

/s

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Skye L. Perryman

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**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that this is a true and correct copy of Respondents' **MOTION IN LIMINE** , and that on this 20th day of April, 2011, I caused the foregoing to be served by hand delivery and e-mail on the following:

The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
H-113  
Washington, DC 20580

Donald S. Clark  
The Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
H-135  
Washington, DC 20580

I hereby certify that this is a true and correct copy of Respondents' **MOTION IN LIMINE** , and that on this 20th day of April, 2011, I caused the foregoing to be served by hand delivery and e-mail on the following:

Mary Engle  
Associate Director for Advertising Practices  
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Federal Trade Commission  
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*Counsel for Respondents Stewart  
Resnick and Lynda Rae Resnick*

Dated: April 20, 2011

# **EXHIBIT A**



privilege.

2. Complaint Counsel objects to the Interrogatories to the extent they seek information that is not relevant to the subject matter of the litigation and/or not reasonably calculated to lead to the discovery of relevant information.

3. Complaint Counsel objects to the Interrogatories to the extent they are vague and ambiguous.

4. By providing information in response to the Interrogatories, Complaint Counsel does not concede that such information is relevant, material, or admissible in evidence.

5. Complaint Counsel's objections and responses to these Interrogatories are based on information now known to Counsel. Complaint Counsel has not yet completed its discovery of the facts in this lawsuit or prepared for trial and therefore reserves its rights under the Commission's Rules of Practice to amend, modify, or supplement its objections and responses if it learns of new information.

Subject to and without waiving these objections, Complaint Counsel provides the following responses.

### **OBJECTIONS AND SUPPLEMENTAL RESPONSES TO INTERROGATORIES**

**Interrogatory 1:** Identify every representation that you contend the Respondents expressly made in their advertisements, publications, marketing materials, promotional materials, and/or media appearances that you contend is a violation of Section 5 of the FTC Act for any reason and state the basis for your contention. Your response should include reference to the specific materials that you contend contained such representations and should describe the claims

that you contend were made by such materials.

**Response to Interrogatory 1:**

Complaint Counsel objects to Interrogatory 1 to the extent that the interrogatory implies that there is a distinction between express and implied representations in terms of legal liability. The case law is clear that “[b]oth express claims and implied claims can be deceptive. Advertisers can be liable for misleading consumers by innuendo as well as by outright false statements.” *Kraft, Inc.*, 114 F.T.C. 40, 121 (1991) (citations omitted). Moreover, “[m]erely removing false express claims will not protect an advertisement where the same claims are implied.” *Telebrands Corp.*, 140 F.T.C. 278, 2005 WL 2395791 (Sept. 19, 2005).

Subject to and without waiving its General and foregoing objections, Complaint Counsel sets forth below a list of representations that Respondents expressly made in their advertisements, publications, marketing materials, promotional materials, and/or media appearances:

1. **“Cardiovascular**

A 2005 study published in the American Journal of Cardiology showed improved blood flow to the heart in patients drinking 8oz [sic] daily of POM Wonderful 100% Pomegranate Juice for 3 months.

Researchers studied a total of 45 patients with coronary heart disease who had reduced blood flow to the heart.

Patients drinking POM Wonderful 100% Pomegranate Juice experienced a 17% improvement in blood flow, compared to an 18% worsening in patients drinking a placebo.”

See exhibits referenced in Complaint, ¶ 9.H. Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by improving blood flow to the heart

and (2) that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by improving blood flow to the heart.

2. [Quote from Mr. Tupper] “In addition, there have been a number of studies published on cardiovascular disease in which sick patients again consuming eight ounces of pomegranate juice every day saw dramatic improvements in things like atherosclerosis, which is plaque in the arteries, the amount of blood flow delivered to the heart.”

See exhibit referenced in Complaint, ¶ 9.J. Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart and (2) that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart.

3. **“Heart health.**

In two groundbreaking preliminary studies, patients who drank POM Wonderful 100% Pomegranate Juice experienced impressive cardiovascular results. A pilot study at the Rambam Medical Center in Israel included 19 patients with atherosclerosis (clogged arteries). After a year, arterial plaque decreased 30% for those patients who consumed 8 oz of POM Wonderful 100% Pomegranate Juice daily. [footnote omitted]

An additional study at the University of California, San Francisco included 45 patients with impaired blood flow to the heart. Patients who consumed 8 oz of POM Wonderful 100% Pomegranate Juice daily for three months experienced a 17% improvement in blood flow. Initial studies on POMx share similar promise for heart health, and our research continues.”

See exhibit referenced in Complaint, ¶ 10.A. Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by

decreasing arterial plaque and improving blood flow to the heart.

4. **“Promising results from studies on POM Wonderful Juice.**

One pilot study on 19 patients with atherosclerosis (clogged arteries) at the Technion Institute in Israel demonstrated a reduction in arterial plaque growth. After one year, arterial plaque decreased 30% for those patients who consumed 8oz [sic] of POM Wonderful 100% Pomegranate Juice daily, compared to a 9% worsening for patients who drank a placebo.

A recently published study at the University of California, San Francisco (UCSF) included 45 patients with impaired blood flow to the heart. Patients who consumed 8oz [sic] of POM Wonderful 100% Pomegranate Juice daily for 3 months experienced 17% improved blood flow; those who drank a placebo experienced an 18% decline.

**POMx and heart health.**

Initial research on POMx also shows promise for promoting heart health. In his 2006 POMx study, Dr. Michael Aviram, one of the world’s preeminent cardiovascular researchers, remarked that *‘POMx is as potent an antioxidant as pomegranate juice and just like pomegranate juice, POMx may promote cardiovascular health.’*”

See exhibits referenced in Complaint, ¶ 10.D. Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart.

5. **“NEW RESEARCH OFFERS FURTHER PROOF OF THE HEART-HEALTHY BENEFITS OF POM WONDERFUL JUICE**

**30% DECREASE IN ARTERIAL PLAQUE**

After one year of a pilot study conducted at the Technion Institute in Israel involving 19 patients with atherosclerosis (clogged arteries) . . . those patients who consumed 8 oz of POM Wonderful 100% Pomegranate Juice daily saw a 30% decrease in arterial plaque.

**17% IMPROVED BLOOD FLOW**

A recent study at the University of California, San Francisco (UCSF) included 45 patients with impaired blood flow to the heart. Patients who consumed 8 oz of POM Wonderful 100% Pomegranate Juice daily for three months experienced 17% improved blood flow. Those who drank a placebo experienced an 18% decline.”

See exhibit referenced in Complaint, ¶ 10.H. Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart.

6. **“Floss your arteries. Daily.**

[Image of POM Juice bottle]

Clogged arteries lead to heart trouble. It’s that simple. That’s where we come in. Delicious POM Wonderful Pomegranate Juice has more naturally occurring antioxidants than any other drink. These antioxidants fight free radicals – molecules that are the cause of sticky, artery clogging plaque. Just eight ounces a day can reduce plaque by up to 30%! [footnote - Aviram, M., Clinical Nutrition, 2004. Based on clinical pilot study.] So every day: wash your face, brush your teeth, and drink your POM Wonderful.”

From POM Juice print ad disseminated as early as 2004 (VMS-0000212; RESP023587).

Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and (2) that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque.

7. **“Amaze your cardiologist.**

[Image of POM Juice bottle]

Ace your EKG: just drink 8 ounces of delicious POM Wonderful Pomegranate Juice a

day. It has more naturally occurring antioxidants than any other drink. Antioxidants fight free radicals . . . nasty little molecules that can cause sticky, artery clogging plaque. A glass a day can reduce plaque by up to 30%! [footnote - Aviram, M., Clinical Nutrition, 2004. Based on clinical pilot study.] Trust us, your cardiologist will be amazed.”

From POM Juice print ad disseminated as early as 2005 (VMS-0000219; RESP059840).

Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and (2) that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque.

#### 8. **“Our Research: Heartening.**

We’ve been working with a number of top scientists, including a Nobel Laureate, for 6 years now and our seven published, peer-reviewed papers reveal heartening results. Here’s the story: Free radicals are the culprits that turn LOL – or “bad” cholesterol – into that sticky stuff that becomes the plaque that clogs your arteries. Our scientific research shows that pomegranate is 8 times better than green tea at preventing formation of oxidized (sticky) LDL. [footnote - Aviram, M., Drugs Under Experimental and Clinical Research, 2002. Indexed values, based on relative amount of oxidized LDL created.] And a clinical pilot study shows that an 8 oz. glass of POM Wonderful 100% Pomegranate Juice, consumed daily, reduced plaque in the arteries up to 30%. [footnote - Aviram, M., Clinical Nutrition, 2004.]

#### **The Heart Stopping Truth.**

Remember: heart disease is America’s number one killer. For women as well as men. 98% of heart attacks are due to atherosclerosis, or too much plaque in the arteries. That same plaque increases your chance of stroke. One final scary statistic: half of patients who have a severe heart attack have normal cholesterol levels. In other words, we’re all at risk.

#### **Just a Glass a Day.**

To keep your heart healthy: exercise regularly. Eat a healthy diet. And drink 8 ounces of POM Wonderful Pomegranate Juice. Make every day a good day to be alive.”

From a POM Juice ad disseminated as early as 2004 (VMS-0000205-VMS-0000206,

RESP023604). Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and (2) that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque.

9. **“Drink to prostate health.**

[image of POM Juice bottle]

Sometimes, good medicine can taste great. Case in point: POM Wonderful. A recently published preliminary medical study followed 46 men previously treated for prostate cancer, either with surgery or radiation. After drinking 8 ounces of POM Wonderful 100% Pomegranate Juice daily for at least two years, these men experienced significantly longer PSA doubling times. Want to learn more about the results of this study? Visit [pomwonderful.com/prostate](http://pomwonderful.com/prostate). **Trust in POM.**”

See exhibit referenced in Complaint, ¶ 9.B. Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice daily treats prostate cancer, including by prolonging prostate-specific antigen doubling time (“PSADT”) and (2) that drinking 8 ounces of POM Juice daily treats prostate cancer, including by prolonging PSADT.

10. [Quote from Ms. Resnick]: “You have to be on pomegranate juice. You have a 50 percent chance of getting it. Listen to me. It is the one thing that will keep your PSA normal. You have to drink pomegranate juice. There is nothing else we know of that will keep your PSA in check. Ask any urologist—your father should be on it. Your father should be on it. I’m sorry to do this to you, but I have to tell you. We just did a study at UCLA, on 43 men ... It arrested their PSA.”

See exhibit referenced in Complaint, ¶ 9.G. Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice daily prevents or reduces the risk of prostate cancer; (2) that clinical studies, research, and/or

trials prove that drinking 8 ounces of POM Juice daily treats prostate cancer, including by prolonging PSADT; (3) that drinking 8 ounces of POM Juice daily prevents or reduces the risk of prostate cancer; and (4) that drinking 8 ounces of POM Juice daily treats prostate cancer, including by prolonging PSADT.

11. **“Prostate**

A preliminary UCLA medical study, published by The American Association for Cancer Research, found hopeful results for prostate health.

The study tested 45 men with recurrent prostate cancer who drank 8 oz of POM Wonderful 100% Pomegranate Juice daily for two years. **Post-prostate surgery PSA average doubling time increased from 15 to 54 months.** PSA is a protein marker for prostate cancer, and a slower PSA doubling time indicates slower disease progression.”

See exhibits referenced in Complaint, ¶ 9.H. Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice daily treats prostate cancer, including by prolonging PSADT and (2) that drinking 8 ounces of POM Juice daily treats prostate cancer, including by prolonging PSADT.

12. [Quote from Ms. Resnick]: “And if you know a man that you care about or you are a man, make him drink eight ounces of pomegranate juice a day because what it does for prostate cancer is amazing.”

See exhibit referenced in Complaint, ¶ 9.I. Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice daily treats prostate cancer and (2) that drinking 8 ounces of POM Juice daily treats prostate cancer.

13. [Quote from Mr. Tupper]: “There’s actually been a study published recently on prostate cancer. Men suffering from advanced stages of prostate cancer drinking eight ounces a day saw the progression of the prostate cancer actually slow dramatically.”

See exhibit referenced in Complaint, ¶ 9.J. Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice

daily treats prostate cancer and (2) that drinking 8 ounces of POM Juice daily treats prostate cancer.

14. **“Time pill.**

Stable levels of prostate-specific antigens (or PSA levels) are critical for men with prostate cancer. Patients with quick PSA doubling times are more likely to die from their cancer. [footnote omitted] According to a UCLA study of 46 men age 65 to 70 with advanced prostate cancer, drinking an 8oz [sic] glass of POM Wonderful 100% Pomegranate Juice every day slowed their PSA doubling time by nearly 350%. [footnote omitted]

83% of those who participated in the study showed a significant decrease in their cancer regrowth rate. [footnote omitted]”

See exhibit referenced in Complaint, ¶ 10.A. Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily treats prostate cancer.

15. **“Prostate Health**

A preliminary UCLA medical study on POM Wonderful 100% Pomegranate Juice showed hopeful results for men with prostate cancer who drank an 8oz [sic] glass of pomegranate juice daily. And every POMx capsule provides the antioxidant power of an 8oz glass [sic] of POM Wonderful 100% Pomegranate Juice.”

See exhibits referenced in Complaint, ¶ 10.C. Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily treats prostate cancer.

16. **“Promising News**

A preliminary UCLA medical study involving POM Wonderful 100% Pomegranate Juice revealed promising news. Men who had been treated surgically or with radiation for prostate cancer were given 8oz [sic] of POM Wonderful 100% Pomegranate Juice. A majority of the 46 men participating in the study experienced a significantly extended

PSA doubling time.

PSA (prostate-specific antigen) is a marker that is thought to be associated with the progression of prostate cancer; a slower PSA doubling time may reflect slower progression of the disease.

Before the study of pomegranate juice, the average PSA doubling time for the participants was 15 months. After drinking 8oz [sic] of juice daily, the average PSA doubling time increased to 54 months. That's a 350% increase. [Learn more](#).

According to Dr. David Heber, Director of UCLA's Center for Human Nutrition, *'The most abundant and most active ingredients in Pomegranate Juice are also found in POMx. Basic studies in our laboratory so far indicate that POMx and Pomegranate Juice have the same effect on prostate health.'*

See exhibits referenced in Complaint, ¶ 10.E. Complaint Counsel contends that this is an express claim that (1) clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily treats prostate cancer.

17. **“NEW POMEGRANATE RESEARCH OFFERS HOPE TO PROSTATE CANCER PATIENTS**

A preliminary UCLA medical study involving POM Wonderful 100% Pomegranate Juice revealed promising news. 46 men who had been treated for prostate cancer with surgery or radiation were given 8oz [sic] of POM Wonderful 100% Pomegranate Juice to drink daily.

Patients with prostate cancer showed a prolongation of PSA doubling time, coupled with corresponding lab effects on reduced prostate cancer as well as reduced oxidated stress.
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A majority of the patients experienced a significantly extended PSA doubling time. Doubling time is an indicator of prostate cancer progression – extended doubling time may indicate slower disease progression.

Before the study, the mean doubling time was 15 months. After drinking 8oz [sic] of pomegranate juice daily for two years, the mean PSA doubling time increased to 54 months. Testing on patient blood serum showed a 12% decrease in cancer cell proliferation and a 17% increase in cancer cell death (apoptosis).”

See exhibit referenced in Complaint, ¶ 10.I. Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily treats prostate cancer.

18. **“Erectile Function**

A pilot study released in the International Journal of Impotence Research in 2007 examined 61 male subjects with mild to moderate erectile dysfunction. Compared to participants taking a placebo, **those men drinking 8oz [sic] of POM Wonderful 100% Pomegranate Juice daily for four weeks were 50% more likely to experience improved erections.”**

See exhibits referenced in Complaint, ¶ 9.H. Complaint Counsel contends that this is an express claim that (1) clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice daily treats erectile dysfunction and (2) that drinking 8 ounces of POM Juice daily treats erectile dysfunction.

19. **Drink and Be Healthy.** Medical studies have shown that drinking 8 oz. of POM Wonderful pomegranate juice daily minimizes factors that lead to atherosclerosis (plaque buildup in the arteries), a major cause of heart disease.

From a POM Juice ad disseminated as early as 2004 (VMS-000198; RESP059826). Complaint Counsel contends that this is an express claim that (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and (2) that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque.

20. **Studies show that 10 out of 10 people don't want to die. . . .** Our scientific research shows that pomegranate juice is 8 times better than green tea at preventing formation of oxidized (sticky) LDL. And a clinical pilot study shows that an 8 oz. glass of POM Wonderful 100% Pomegranate Juice, consumed daily, reduces plaque in the arteries up to 30%.

From a POM Juice ad disseminated as early as 2004 (VMS-0000205-206; RESP023604).

Complaint Counsel contends that this is an express claim that (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and (2) that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque.

21. **Floss your arteries. Daily.** Clogged arteries lead to heart trouble. It's that simple. That's where we come in. Delicious POM Wonderful Pomegranate Juice has more naturally occurring antioxidants than any other drink. These antioxidants fight free radicals -- molecules that are the cause of sticky, artery clogging plaque. Just eight ounces a day can reduce plaque by up to 30%! [footnote - Aviram, M. Clinical Nutrition, 2004. Based on a clinical pilot study.]

From a POM Juice ad disseminated as early as 2004 (VMS-0000212; RESP023587). Complaint Counsel contends that this is an express claim that (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and (2) that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque.

22. **Amaze your cardiologist.** Ace your EKG: just drink 8 ounces of delicious POM Wonderful Pomegranate Juice a day. It has more naturally occurring antioxidants than any other drink. Antioxidants fight free radicals ... nasty little molecules that can cause sticky, artery clogging plaque A glass a day can reduce your plaque by up to 30%! [footnote - Aviram, M. Clinical Nutrition, 2004. Based on a clinical pilot study.] Trust us, your cardiologist will be amazed.

From a POM Juice ad disseminated as early as 2004 (VMS-000219; RESP023597; RESP059840). Complaint Counsel contends that this is an express claim that (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and (2) that drinking 8 ounces of

POM Juice daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque.

23. **The power of POM, in one little pill.**

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Backed by science. POMx is made from the only pomegranates supported by \$23 million in medical research. Emerging science suggests that free radicals aggressively destroy healthy cells in your body -- contributing to premature aging and even disease. The good news is POM Wonderful pomegranate antioxidants neutralize free radicals. An initial UCLA MEDICAL STUDY on POM Wonderful 100% Pomegranate Juice found hopeful results for prostate health. "Pomegranate juice delays PSA doubling time in humans," according to AJ Pantuck, et al in Clinical Cancer Research, 2006. Two additional preliminary studies on our juice showed promising results for heart health. "Pomegranate juice improves myocardial perfusion in coronary heart patients," per D. Ornish, et al, in the American Journal of Cardiology, 2005. "Pomegranate juice pilot research suggests anti-atherosclerosis benefits," according to M. Aviram, et al, in Clinical Nutrition, 2004.

From a POMx ad disseminated as early as 2008 (VMS-0000067; VMS-0000255; RESP060158).

Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart. Complaint Counsel also contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents or reduces the risk of prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents or reduces the risk of prostate cancer.

24. **The antioxidant superpill.**

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POMx is made from the only pomegranates supported by \$23 million in medical research, the same pomegranates we use to make our POM Wonderful 100% Pomegranate Juice. An initial UCLA MEDICAL STUDY on POM Wonderful 100% Pomegranate Juice found hopeful results for prostate health. The study reports “statistically significant prolongation of PSA doubling times,” according to Dr. Allen J. Pantuck in *Clinical Cancer Research*, 2006. [footnote 3 - 45 men with rising PSA after surgery or radiotherapy drank 8oz 100% pomegranate juice daily for two years.] Two additional preliminary studies on our juice showed promising results for heart health. “Stress-induced ischemia decreased in the pomegranate group,” Dr. Dean Ornish reported in the *American Journal of Cardiology*, 2005. [footnote 4 - 45 patients with coronary heart disease and myocardial ischemia (insufficient blood flow to the heart) drank 8oz 100% pomegranate juice daily for three months] “Pomegranate juice consumption resulted in a significant IMT reduction [footnote 5 - study measured intima-media thickness (IMT), which indicates plaque buildup in the carotid artery] by up to 30% after one year,” said Dr. Michael Aviram, referring to reduced arterial plaque in *Clinical Nutrition*, 2004. [footnote 6 - 19 patients aged 65-75 years with severe atherosclerosis drank 8oz 100% pomegranate juice daily for one year]

From POMx ads disseminated as early as 2008 (VMS-0000070, VMS-0000073; VMS-0000261; VMS-0000269; RESP060117; RESP060123; RESP060147; RESP060165; RESP060170).

Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart. Complaint Counsel also contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats prostate cancer. Complaint Counsel contends that the following ads make the same express claims: VMS-0000140, VMS-0000142; VMS-0000270; VMS-0000282; RESP060057;

RESP060068; RESP060088; RESP060069; RESP060070; RESP060022; RESP060157.

25. **Drink to prostate health.**

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A recently published preliminary medical study followed 46 men previously treated for prostate cancer, either with surgery or radiation. After drinking 8 ounces of POM Wonderful 100% Pomegranate Juice daily for at least two years, these men experienced significantly longer PSA doubling times.

From POM Juice ads disseminated as early as 2008 (VMS-0000091; VMS-0000276; RESP060318; RESP060426; RESP060428). Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats prostate cancer and (2) that drinking 8 ounces of POM Juice daily prevents, reduces the risk of, or treats prostate cancer.

26. **Science, not fiction.**

Made from the only pomegranates backed by \$25 million in medical research.

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POMx is made from the only pomegranates backed by \$25 million in medical research, the same pomegranates we use to make our POM Wonderful 100% Pomegranate Juice. An initial UCLA MEDICAL STUDY on POM Wonderful 100% Pomegranate Juice found hopeful results for prostate health. The study reports “statistically significant prolongation of PSA doubling times,” according to Dr. Allen J. Pantuck in Clinical Cancer Research, 2006. [footnote 3 - 45 men with rising PSA after surgery or radiotherapy drank 8oz 100% pomegranate juice daily for two years.] Two additional preliminary studies on our juice showed promising results for heart health. “Stress-induced ischemia decreased in the pomegranate group,” Dr. Dean Ornish reported in the American Journal of Cardiology, 2005. [footnote 4 - 45 patients with coronary heart disease and myocardial ischemia drank 8oz 100% pomegranate juice daily for three months] “Pomegranate juice consumption resulted in a significant IMT [footnote 5 - study measured intima-media thickness (IMT)] reduction by up to 30% after one year,” said Dr. Michael Aviram, referring to reduced arterial plaque in Clinical

Nutrition, 2004. [footnote 6 - 19 patients aged 65-75 years with severe atherosclerosis drank 8oz 100% pomegranate juice daily for one year]

From POMx ads disseminated as early as 2009 (VMS-0000119; VMS-0000291; RESP060134; RESP060058). Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart. Complaint Counsel also contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats prostate cancer.

27. **Live long enough to watch your 401(k) recover.**

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**\$25 million in medical research. A sound investment.** POMx is made from the only pomegranates backed by \$25 million in medical research at the world's leading universities. Not only has this research documented the unique and superior antioxidant power of pomegranates, it has revealed promising results for prostate and cardiovascular health.

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An initial UCLA MEDICAL STUDY on POM Wonderful 100% Pomegranate Juice found hopeful results for prostate health, reporting “statistically significant prolongation of PSA doubling times,” according to Dr. Allen J. Pantuck in Clinical Cancer Research, ‘06. [footnote - 46 men with rising PSA after surgery or radiotherapy drank 8oz 100% pomegranate juice daily for two years.] Two additional preliminary studies on our juice showed promising results for heart health. “Stress-induced ischemia (restricted blood flow to the heart) decreased in the pomegranate group,” Dr. Dean Ornish reported in the

American Journal of Cardiology, '05. [footnote - 45 patients with coronary heart disease and myocardial ischemia drank 8oz 100% pomegranate juice daily for three months] "Pomegranate juice consumption resulted in a significant reduction in IMT (thickness of arterial plaque) [footnote - study measured intima-media thickness (IMT)] by up to 30% after one year," said Dr. Michael Aviram, referring to reduced arterial plaque in Clinical Nutrition, '04 [footnote - 19 patients aged 65-75 years with severe atherosclerosis drank 8oz 100% pomegranate juice daily for one year]

From POMx ads disseminated as early as 2009 (VMS-0000121; VMS-0000293; RESP060073; RESP060092; RESP060098). Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart. Complaint Counsel also contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats prostate cancer. Complaint Counsel contends that the following ads make the same express claims: VMS-0000132; VMS-0000300; RESP060059; RESP060091; RESP060094; RESP060096; RESP060089; RESP060090; RESP060097.

28. **Healthy, ~~Wealthy~~. Wise.**

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**Backed by science.**

POMx is made from the only pomegranates backed by \$25 million in medical research at the world's leading universities. Not only has this research documented the unique and superior antioxidant power of pomegranates, it has revealed promising results for prostate and cardiovascular health.

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**Medical studies reveal promising results.**

An initial UCLA MEDICAL STUDY on POM Wonderful 100% Pomegranate Juice found hopeful results for prostate health, reporting “statistically significant prolongation of PSA doubling times,” according to Dr. Allen J. Pantuck in Clinical Cancer Research, 2006. [footnote - 45 men with rising PSA after surgery or radiotherapy drank 8oz 100% pomegranate juice daily for two years.] Two additional preliminary studies on our juice showed promising results for heart health. “Stress-induced ischemia (restricted blood flow to the heart) decreased in the pomegranate group,” Dr. Dean Ornish reported in the American Journal of Cardiology, 2005. [footnote - 45 patients with coronary heart disease and myocardial ischemia drank 8oz 100% pomegranate juice daily for three months] “Pomegranate juice consumption resulted in a significant reduction in IMT (thickness of arterial plaque) by up to 30% after one year,” said Dr. Michael Aviram, referring to reduced arterial plaque in Clinical Nutrition, 2004 [footnotes - study measured intima-media thickness (IMT); 19 patients aged 65-75 years with severe atherosclerosis drank 8oz 100% pomegranate juice daily for one year]

From POMx ads disseminated as early as 2009 (VMS-0000123; VMS-0000295; RESP060055; RESP060080). Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart. Complaint Counsel also contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats prostate cancer. Complaint Counsel contends that the following ads make the same express claims: VMS-0000126; VMS-0000299; VMS-0000127; VMS-0000298; RESP060071; RESP060095; RESP060074; RESP060087; RESP060061; RESP060085;

RESP060086.

29. **Your New Health Care Plan (No Town Hall Meeting Required).**

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**\$32 million in medical research. Zero deductible.**

POMx is made from the only pomegranates backed by \$32 million in medical research at the world's leading universities. Not only has this research documented the unique and superior antioxidant power of pomegranates, it has revealed promising results for prostate and cardiovascular health.

**A health care plan for a healthy future.**

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An initial UCLA MEDICAL STUDY on POM Wonderful 100% Pomegranate Juice found hopeful results for prostate health, reporting “statistically significant prolongation of PSA doubling times,” according to Dr. Allen J. Pantuck in Clinical Cancer Research, 2006. [footnote - 46 men with rising PSA after surgery or radiotherapy drank 8oz 100% pomegranate juice daily for two years.] Two additional preliminary studies on our juice showed promising results for heart health. “Stress-induced ischemia (restricted blood flow to the heart) decreased in the pomegranate group,” Dr. Dean Ornish reported in the American Journal of Cardiology, ‘05. [footnote - 45 patients with coronary heart disease and myocardial ischemia drank 8oz 100% pomegranate juice daily for three months] “Pomegranate juice consumption resulted in a significant reduction in IMT (thickness of arterial plaque) by up to 30% after one year,” said Dr. Michael Aviram, referring to reduced arterial plaque in Clinical Nutrition, ‘04 [footnotes - study measured intima-media thickness (IMT); 19 patients aged 65-75 years with severe atherosclerosis drank 8oz 100% pomegranate juice daily for one year]

From a POMx ad disseminated as early as 2009 (VMS-0000137; VMS-0000303; RESP060109).

Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart. Complaint Counsel also contends that this is an express claim (1) that

clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats prostate cancer.

30. **The first bottle you should open in 2010.**

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**\$32 million in medical research. Cheers.**

POMx is made from the only pomegranates backed by \$32 million in medical research at the world's leading universities. Not only has this research documented the unique and superior antioxidant power of pomegranates, it has revealed promising results for prostate and cardiovascular health.

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**Our bottle. Your health.**

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An initial UCLA MEDICAL STUDY on POM Wonderful 100% Pomegranate Juice found hopeful results for prostate health, reporting “statistically significant prolongation of PSA doubling times,” according to Dr. Allen J. Pantuck in *Clinical Cancer Research*, ‘06. [footnote - 46 men with rising PSA after surgery or radiotherapy drank 8oz 100% pomegranate juice daily for two years.] Two additional preliminary studies on our juice showed promising results for heart health. “Stress-induced ischemia (restricted blood flow to the heart) decreased in the pomegranate group,” Dr. Dean Ornish reported in the *American Journal of Cardiology*, ‘05. [footnote - 45 patients with coronary heart disease and myocardial ischemia drank 8oz 100% pomegranate juice daily for three months] “Pomegranate juice consumption resulted in a significant reduction in IMT (thickness of arterial plaque) by up to 30% after one year,” said Dr. Michael Aviram, referring to reduced arterial plaque in *Clinical Nutrition*, ‘04 [footnotes - study measured intima-media thickness (IMT); 19 patients aged 65-75 years with severe atherosclerosis drank 8oz 100% pomegranate juice daily for one year]

From POMx ads disseminated as early as 2010 (VMS-0000139; VMS-0000304; RESP060108).

Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents,

reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart. Complaint Counsel also contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats prostate cancer.

31. **Take out a life insurance supplement.**

\*\*\*

**\$32 million in medical research. No deductible.**

POMx is made from the only pomegranates backed by \$32 million in medical research at the world's leading universities. Not only has this research documented the unique and superior antioxidant power of pomegranates, it has revealed promising results for prostate and cardiovascular health.

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**Get the maximum benefits.**

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An initial UCLA MEDICAL STUDY on POM Wonderful 100% Pomegranate Juice found hopeful results for prostate health, reporting “statistically significant prolongation of PSA doubling times,” according to Dr. Allen J. Pantuck in Clinical Cancer Research, 2006. [footnote - 46 men with rising PSA after surgery or radiotherapy drank 8oz 100% pomegranate juice daily for two years.] Two additional preliminary studies on our juice showed promising results for heart health. “Stress-induced ischemia (restricted blood flow to the heart) decreased in the pomegranate group,” Dr. Dean Ornish reported in the American Journal of Cardiology, 2005. [footnote - 45 patients with coronary heart disease and myocardial ischemia drank 8oz 100% pomegranate juice daily for three months]

From POMx ads disseminated as early as 2010 (VMS-0000141; VMS-0000146; VMS-0000306;

VMS-0000311; RESP060013; RESP060016; RESP060026; RESP060027; RESP060050).

Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by improving blood flow to the heart and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by improving blood flow to the heart. Complaint Counsel also contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats prostate cancer. Complaint Counsel contends that the following ads make the same express claims: VMS-0000157; VMS-0000158; VMS-0000320; VMS-0000321; RESP060028; RESP060036; RESP060040; RESP060043; RESP060044; RESP060047.

32. **24 Scientific Studies Now in One Easy-to-Swallow Pill**

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**\$32 million in medical research. Science, not fiction.**

POMx is made from the only pomegranates backed by \$32 million in medical research at the world's leading universities. Not only has this research documented the unique and superior antioxidant power of pomegranates, it has revealed promising results for prostate and cardiovascular health.

**Complicated studies. Simplified.**

\*\*\*

An initial UCLA study on our juice found hopeful results for prostate health, reporting “statistically significant prolongation of PSA doubling times,” according to Dr. Allen J. Pantuck in *Clinical Cancer Research*, 2006. [footnote - 46 men with rising PSA after surgery or radiotherapy drank 8oz 100% pomegranate juice daily for two years.]

Additional preliminary study [sic] on our juice showed promising results for heart health. “Stress-induced ischemia (restricted blood flow to the heart) decreased in the pomegranate group,” Dr. Dean Ornish reported in the American Journal of Cardiology, 2005. [footnote - 45 patients with coronary heart disease and myocardial ischemia drank 8oz 100% pomegranate juice daily for three months]

From POMx ads disseminated as early as 2010 (VMS-0000147; VMS-0000154; VMS-0000312; RESP060012; RESP060014; RESP060015; RESP060019; RESP060021). Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx pill daily prevents, reduces the risk of, or treats heart disease by improving blood flow to the heart and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by improving blood flow to the heart. Complaint Counsel also contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx pill daily prevents, reduces the risk of, or treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx pill daily prevents, reduces the risk of, or treats prostate cancer. Complaint Counsel contends that the following ads make the same express claims: VMS-0000149; VMS-0000159; VMS-0000313; VMS-0000322; RESP060025; RESP060029; RESP060030; RESP060035; RESP060045.

33. **The only antioxidant supplement rated X.**

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**\$32 million in research. We’re not just playing doctor.**

POMx is made from the only pomegranates backed by \$32 million in medical research at the world's leading universities. Not only has this research documented the unique and superior antioxidant power of pomegranates, it has revealed promising results for prostate and cardiovascular health.

**Is that POMx in your pocket?**

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In a preliminary study on erectile function, men who consumed POM Juice reported a 50% greater likelihood of improved erections as compared to placebo. “As a powerful antioxidant, enhancing the actions of nitric oxide in vascular endothelial cells, POM has potential in the management of ED... further studies are warranted.” International Journal of Impotence Research, '07. [footnote - 53 men with mild/moderate erectile dysfunction drank 8oz 100% pomegranate juice for one month] An initial UCLA study on our juice found hopeful results for prostate health, reporting “statistically significant prolongation of PSA doubling times,” Clinical Cancer Research, '06. [footnote - 46 men with rising PSA after surgery or radiotherapy drank 8oz 100% pomegranate juice daily for two years.] A preliminary study on our juice showed promising results for heart health. “Stress-induced ischemia (restricted blood flow to the heart) decreased in the pomegranate group,” American Journal of Cardiology, '05. [footnote - 45 patients with coronary heart disease and myocardial ischemia drank 8oz 100% pomegranate juice daily for three months]

From POMx ads disseminated as early as 2010 (VMS-0000143; VMS-0000156; VMS-0000160; VMS-0000319; RESP060010). Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx pill daily prevents, reduces the risk of, or treats heart disease by improving blood flow to the heart and (2) that drinking 8 ounces of POM Juice or taking one POMx pill daily prevents, reduces the risk of, or treats heart disease by improving blood flow to the heart. Complaint Counsel further contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx pill daily prevents, reduces the risk of, or treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx pill daily prevents, reduces the risk of, or treats prostate cancer. Complaint Counsel also contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx pill daily treats erectile dysfunction and (2) that drinking 8 ounces of POM Juice or taking one POMx pill daily treats erectile dysfunction. Complaint Counsel contends that the following ads make the same

express claims: VMS-0000160; VMS-0000163; VMS-0000323; VMS-0000326; RESP060031; RESP060034; RESP060038.

34. **Drink to prostate health.**

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A recently published medical study involving POM Wonderful 100% Pomegranate Juice followed 46 men previously treated for prostate cancer either with surgery or radiation. After drinking eight ounces of POM Wonderful 100% Pomegranate Juice daily for at least two years, these men experienced significantly slower average PSA doubling times. PSA (Prostate-Specific Antigen) is a biomarker that indicates the presence of cancer. "PSA doubling time" is a measure of how long it takes PSA levels to double. A longer doubling time may indicate slower progression of the disease. At the beginning of the study, PSA levels doubled on average every 15 months. By the end of the study, doubling time had slowed to 54 months -- nearly a four-fold improvement. "This is a big increase. I was surprised when I saw such an improvement in PSA numbers," said Dr. Allan Pantuck, lead author of the UCLA Study. In addition, in-vitro testing using blood serum from the patients who drank pomegranate juice showed a 17% increase in prostate cancer cell death and a 12% decrease in cancer cell growth.

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**Backed by science.**

Only POM is backed by \$25 million in medical research conducted at the world's leading universities. Clinical studies have documented the benefits of drinking POM Wonderful 100% Pomegranate Juice, including improved cardiovascular and prostate health.

From a Time Magazine wrap disseminated in Fall 2009 (RESP024719-RESP024728).

Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx pill daily prevents, reduces the risk of, or treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx pill daily prevents, reduces the risk of, or treats prostate cancer.

35. **Lucky I have super HEALTH POWERS.**

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### **Holy Health! \$32 million in medical research.**

A recently published pilot study involving POM Wonderful 100% Pomegranate Juice followed 46 men previously treated for prostate cancer either with surgery or radiation. After drinking eight ounces of POM Wonderful 100% Pomegranate Juice daily for at least two years, these men experienced significantly slower average PSA doubling times. PSA (Prostate-Specific Antigen) is a biomarker that indicates the presence of cancer. PSA doubling time is a measure of how long it takes PSA levels to double. A longer doubling time may indicate slower progression of the disease. At the beginning of the study, PSA levels doubled on average every 15 months. By the end of the study, doubling time had slowed to 54 months -- nearly a four-fold improvement. "This is a big increase. I was surprised when I saw such an improvement in PSA numbers," said Dr. Allan Pantuck, lead author of the UCLA Study. One important note: All the patients drank the same POM Wonderful 100% Pomegranate Juice which is available in your supermarket produce section.

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### **Backed by Science.**

Only POM products are backed by \$32 million in medical research conducted at the world's leading universities, primarily in the areas of cardiovascular, prostate and erectile function.

From a Time Magazine wrap disseminated in Fall 2009 (RESP023808-RESP023812; RESP023813-RESP023816). Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx pill daily prevents, reduces the risk of, or treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx pill daily prevents, reduces the risk of, or treats prostate cancer. Complaint Counsel contends that the following ads make the same express claims: RESP023821-RESP023827; RESP023828-RESP023831.

36. **POM Emerging Science Heart Health Report.** Why are antioxidants good for your health?

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Research has shown that the naturally occurring polyphenol antioxidants in pomegranates

have extraordinary health benefits -- and that pomegranate antioxidants neutralize free radicals, helping to prevent the damage that can lead to diseases such as atherosclerosis and hypertension.

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**Clinical Studies show that polyphenol Antioxidants in Pomegranate Juice Provide Cardiovascular Benefits.**

During the past 10 years, leading academic research scientists around the globe have studied the effects of pomegranate juice on cardiovascular health. These scientists discovered that pomegranate juice may help counteract factors leading to arterial plaque buildup, as well as inhibit a number of factors associated with heart disease. Research highlights include:

**30% Decrease in Arterial Plaque.** A pilot study conducted at the Technion Institute in Israel involving 19 patients with atherosclerosis (clogged arteries) showed that those patients who consumed 8oz of POM Wonderful 100% Pomegranate Juice daily for one year saw a 30% decrease in arterial plaque.

**17% Improved Blood flow.** A recent study conducted by Dr. Dreon Ornish, Professor of Medicine at the University of California, San Francisco (UCSF), included 45 patients with impaired blood flow to the heart. Patients who consumed 8oz of POM Wonderful 100% Pomegranate Juice daily for three months experienced 17% improved blood flow. Those who drank a placebo experienced an 18% decline.

**Promotes Healthy Blood Vessels.** An in vitro study at the University of California Los Angeles (UCLA) showed that pomegranate juice uniquely protects nitric oxide, an important biochemical that helps maintain healthy blood vessels for proper blood flow.

From a POM direct mail piece disseminated in Fall 2009 (RESP060083-RESP060084; RESP060126-RESP-60127). Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart and (2) that drinking 8 ounces of POM Juice or taking one POMx Pill daily prevents, reduces the risk of, or treats heart disease by decreasing arterial plaque and improving blood flow to the heart.

37. **POM Emerging Science Prostate Health Report.**

**Why are antioxidants good for your health?**

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Research has shown that the naturally occurring polyphenol antioxidants in pomegranates have extraordinary health benefits -- and that pomegranate antioxidants neutralize free radicals, helping to prevent the damage that can lead to diseases such as atherosclerosis and hypertension.

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**Science, not fiction.**

**POM Wonderful Pomegranates backed by \$32 million in research.**

**New pomegranate research offers hope to prostate cancer patients.**

**POM Juice and Prostate Health.** A preliminary UCLA study involving POM Wonderful 100% Pomegranate Juice revealed promising news. This study included 46 men who had been treated surgically or with radiation for prostate cancer. These men drank 8oz of POM Wonderful 100% Pomegranate Juice daily for a year and a half. A majority of patients experienced a significantly increased PSA doubling time. PSA (prostate-specific antigen) is a marker thought to be associated with the progression of prostate cancer; a slower PSA doubling time may reflect slower progression of the disease. Before the study, average PSA doubling time was 15 months. After a year and a half, average doubling time increased to 54 months. In addition, testing on patient blood serum showed a 12% decrease in cancer cell proliferation and a 17% increase in cancer cell death (apoptosis). [print illegible]

From a POMx direct mail piece disseminated in Fall 2009 (RESP060081– RESP060082; RESP060124-RESP-060125). Complaint Counsel contends that this is an express claim (1) that clinical studies, research, and/or trials prove that drinking 8 ounces of POM Juice or taking one POMx pill daily prevents, reduces the risk of, or treats prostate cancer and (2) that drinking 8 ounces of POM Juice or taking one POMx pill daily prevents, reduces the risk of, or treats prostate cancer.

Complaint Counsel has endeavored to set forth above a sufficiently representative list of

express representations that it contends violated Section 5 of the FTC Act. Given the thousands of ads in various media disseminated by Respondents, many of which were very similar or identical to the ads identified in these Responses, it is unduly burdensome for Complaint Counsel list every express misrepresentation in every ad disseminated by Respondents, nor is it required. Complaint Counsel has made a good faith effort to identify the types of claims that it is challenging, and has provided more than ample notice to Respondents of the conduct that is challenged as a violation of the FTC Act. Complaint Counsel reserves the right to include on its trial exhibit list, and introduce, additional ads with the same or substantially similar text or claims, including clearer or more legible versions.

Regarding the basis that the challenged claims are a violation of Section 5 of the FTC Act, Complaint Counsel charges Respondents with making claims that are false and/or unsubstantiated. To prevail, Complaint Counsel must demonstrate that “first, there is a representation, omission or practice, that second, it is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material.” *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994) (citing *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 164-65 (1984)); *FTC v. Gill*, 265 F.3d 944, 950 (9th Cir. 2001). To prevail under a falsity theory, Complaint Counsel must show “either that the express or implied message conveyed by the ad is false,” *i.e.*, that Respondents’ clinical studies, research, and/or trials do not prove the challenged benefits claimed. *FTC v. National Urological Group, Inc.*, 645 F. Supp. 2d 1167, 1190 (N.D. Ga. 2008), *aff’d*, 356 Fed. Appx. 358 (11th Cir. 2009), *cert. denied*, 131 S. Ct. 505 (2010). To prevail on its lack of substantiation charge, Complaint Counsel must demonstrate that Respondents lacked a reasonable basis for their claims. *See, e.g., Schering Corp.*, 118 F.T.C. 1030 (1994) (consent order) (requiring that tests and studies relied upon as

reasonable basis must employ appropriate methodology and address the specific claims made in ad); *Pantron I Corp.*, 33 F.3d at 1088 (holding consumer satisfaction surveys and studies demonstrating the placebo effect are insufficient to meet “competent and reliable scientific evidence” standard).

What constitutes a reasonable basis depends on what claims are being made, how they are presented in the context of the entire ad, and how they are qualified. A number of factors determine the appropriate amount and type of substantiation, including the type of product, the type of claim, the benefits of a truthful claim and the cost/feasibility of developing substantiation for the claim, the consequences of a false claim, and the amount of substantiation that experts in the field believe is reasonable. Complaint Counsel’s contention that the claims challenged in the complaint are false and/or unsubstantiated is based on an evaluation of the documents that have been produced in this case, including the Respondents’ substantiation documents or lack thereof, and Complaint Counsel’s expert opinions, which will be set forth as required by the Commission’s Rules of Practice.

**Interrogatory 2:** Identify every representation that you contend the Respondents made by implication in their advertisements, publications, marketing materials, promotional materials, and/or media appearances that you contend is a violation of Section 5 of the FTC Act for any reason and state the basis for your contention. Your response should include reference to the specific materials that you contend contained such representations and should describe the claims that you contend were made by such materials.

**Response to Interrogatory 2:** Complaint Counsel objects to Interrogatory 2 to the extent that it requests a catalog of individual, out-of-context statements, as such a list is inconsistent with Complaint Counsel’s theory of the case. When reviewing advertising claims,

case law under the FTC Act establishes that courts and the Commission review the overall net impression that is created by the interaction of various elements in the challenged advertising, including, without limitation, statements, depictions, and omissions made in conjunction with every other statement, depiction, and omission in the advertisement. It does not necessarily derive from any single element of the advertisement. *See, e.g., FTC v. Sterling Drug, Inc.*, 317 F.2d 669, 674 (2d Cir. 1963) (“It is . . . necessary in [FTC advertising] cases to consider the advertisement in its entirety and not to engage in disputatious dissection. The entire mosaic should be viewed rather than each tile separately.”) This approach is particularly necessary when reviewing the advertising claims made in magazine ads, websites, and other media. Accordingly, it is neither Complaint Counsel’s burden nor a necessary element of Complaint Counsel’s proof in this litigation to demonstrate that any individual statement (word, phrase, clause, sentence, photograph, illustration, or other portion of the advertising at issue) contained in a challenged advertisement for Respondents’ products is false or misleading.

Regarding whether Complaint Counsel contends that any individual representation or statement contained in the challenged advertisements for Respondents’ products is implied, it is not Complaint Counsel’s contention that any individual statement contained in the challenged advertisements is an implied claim. Rather, as previously discussed, Complaint Counsel’s allegations against Respondents are based upon claims derived from the overall net impression created by the interaction of various elements in the challenged advertising.

Subject to and without waiving its General and foregoing objections, Complaint Counsel contends that the implied claims made by Respondents include, but are not limited to, all representations specified in the response to Interrogatory 1 to the extent they are not express, and all other representations set forth in Complaint Paragraphs 9 and 10 and the advertisements,

promotional and other material attached to the Complaint. Furthermore Complaint Counsel contends that Respondents made implied claims in the following additional advertisements, in addition to those identified in Interrogatory 1 and the Complaint: FTC-0005195-FTC0005196; FTC-0005727; FTC-0005753; FTC-0005754-FTC0005777; FTC-0005778; FTC-0005779-FTC-0005785; FTC-0005816-FTC-0005844; FTC-0005894-FTC0005897; FTC-0005898; FTC-0006165; FTC-0006180; VMS-0000024; VMS-0000031; VMS-0000049; VMS-0000052; VMS-0000055; VMS-0000056; VMS-0000057; VMS-0000063; VMS-0000064; VMS-0000071; VMS-0000072; VMS-0000080; VMS-0000089; VMS-0000093; VMS-0000094; VMS-0000096; VMS-000099; VMS-0000100; VMS-0000101; VMS-0000109; VMS-0000110; VMS-0000115; VMS-0000131; VMS-0000134; VMS-0000162; VMS-00000266; VMS-0000214; VMS-0000221; VMS-0000239; VMS-0000242; VMS-0000245; VMS-0000246; VMS-0000247; VMS-0000251; VMS-0000253; VMS-0000259; VMS-0000260; VMS-0000274; VMS-0000279; VMS-0000280; VMS-0000281; VMS-0000363; RESP023594; RESP060537; RESP060883; RESP060886; RESP060561; RESP060576; RESP060592; RESP060605; RESP060608; RESP060618; RESP060882; RESP060560; RESP060572; RESP060587; RESP060615; RESP060491; RESP060178; RESP060188; RESP060189; RESP060190; RESP060192; RESP060574; RESP060577; RESP060588; RESP060596; RESP060557; RESP060461; RESP059941; RESP060221; RESP059945; RESP059946; RESP059947; RESP059950; RESP060897; RESP060571; RESP060585; RESP060609. Complaint Counsel contends that the overall net impressions created by these representations convey the claims specified in Paragraphs 12, 14, 16, 19, and 20 of the Complaint.

Given the thousands of ads in various media disseminated by Respondents, many of which were very similar or identical to the ads identified in these Responses, it is unduly

burdensome for Complaint Counsel to list every misrepresentation in every ad disseminated by Respondents, nor is it required. Complaint Counsel has made a good faith effort to identify the types of claims that it is challenging, and has provided more than ample notice to Respondents of the conduct that is challenged as a violation of the FTC Act. Complaint Counsel reserves the right to include on its trial exhibit list, and introduce, additional ads with the same or substantially similar text or claims, including clearer or more legible versions.

Regarding the basis that the challenged claims are a violation of Section 5 of the FTC Act, Complaint Counsel charges the Respondents with making claims that are false and/or unsubstantiated. Complaint Counsel refers to the response to Interrogatory 1 for the legal standard to prevail on a charge of falsity or lack of a reasonable basis under the FTC Act. Complaint Counsel's evaluation of the claims challenged in the complaint includes an evaluation of the documents that have been produced in this case, including the Respondents' substantiation documents or lack thereof, and Complaint Counsel's expert opinions, which will be set forth as required by the Commission's Rules of Practice.

**Interrogatory 3:** For each item of advertising, marketing or other promotional material referenced in or attached to the Complaint, identify the particular claim or claims that you contend are being made that violate the Federal Trade Commission Act and the basis for your contention, including the particular language or image on which your contention is based.

**Response to Interrogatory 3:** As stated in the responses to Interrogatories 1 and 2, above, Complaint Counsel's allegations against Respondents are based upon claims derived from the listed express representations (see response to Interrogatory 1) or from the overall net impression created by the interaction of various elements in the challenged advertising (see responses to Interrogatories 1 and 2). Specifically Complaint Counsel contends that the exhibits

make the following claims:

1. Exhibit A makes the claims referenced in Paragraphs 12, 14, 16, 19, and 20 of the Complaint;
2. Exhibit B makes the claims referenced in Paragraphs 14, 19, and 20 of the Complaint;
3. Exhibit C makes the claims referenced in Paragraphs 14, 19, and 20 of the Complaint;
4. Exhibit D makes the claims referenced in Paragraphs 12, 14, 19, and 20 of the Complaint;
5. Exhibit E makes the claims referenced in Paragraphs 12, 14, 16, 19, and 20 of the Complaint;
6. Exhibit F makes the claims referenced in Paragraphs 14, 19, and 20 of the Complaint;
7. Exhibit G makes the claims referenced in Paragraphs 14, 19, and 20 of the Complaint;
8. Exhibit H makes the claims referenced in Paragraphs 14, 19, and 20 of the Complaint;
9. Exhibit I makes the claims referenced in Paragraphs 12, 14, 19, and 20 of the Complaint;
10. Exhibit J makes the claims referenced in Paragraphs 12, 14, 19, and 20 of the Complaint;
11. Exhibit K makes the claims referenced in Paragraphs 12, 14, 19, and 20 of the Complaint;
12. Exhibit L makes the claims referenced in Paragraphs 12, 14, 19, and 20 of the Complaint;
13. Exhibit M makes the claims referenced in Paragraphs 12, 14, 19, and 20 of the Complaint; and
14. Exhibit N makes the claims referenced in Paragraphs 12, 14, 19, and 20 of the Complaint.

**Interrogatory 4:** Identify every analysis, evaluation, survey, or study conducted by you or on your behalf to assess consumer reaction to or consumer perception, comprehension,

understanding, “take-away,” or recall of statements, advertisements, or representations made by Respondents.

**Response to Interrogatory 4:**

Complaint Counsel objects to Interrogatory 4 on the grounds that it is overly broad, vague and ambiguous. Subject to and without waiver of its General and foregoing objections, Complaint Counsel evaluated Respondents’ advertisements to determine the overall net impression created by the interaction of various elements in Respondents’ advertising. In this case, Complaint Counsel contends that the perception and comprehension of consumers acting reasonably under the circumstances can be determined through an examination of the net impressions communicated by each advertisement.

**Interrogatory 5:** Identify and describe every communication between Complainant and any former employee of POM Wonderful LLC, Roll International Corporation, or the Fire Station.

**Response to Interrogatory 5:**

Subject to and without waiver of its General objections stated above, Complaint Counsel has had contacts with the following former employees:

1. *Grant Beggs:* On or about August 18, 2010, Tawana Davis spoke with Mr. Beggs regarding his responsibilities during his time as Vice President of Marketing at POM.
2. *Rina Calderon:* On November 29, 2010, Elizabeth Nach and Elise Whang left a message for Ms. Calderon, but did not speak to her in person; on or about December 6, 2010, Elise Whang spoke to Ms. Calderon about her responsibilities during her time at POM and whether she had any documents in her possession. Elise Whang and Elizabeth Nach spoke with her briefly again on December 7, 2010 with follow-up questions on Ms.

Calderon's responsibilities while at POM.

3. *Mark Dreher*: On or about July 20, 2009, Mary Johnson had email communications with Dr. Dreher regarding a preservation letter sent by the FTC. These communications were produced as part of Complaint Counsel's initial disclosures. In June 2010, Janet Evans spoke to Dr. Dreher's counsel, Ron Safer, regarding terms of a settlement of FTC claims against Dr. Dreher. There was no direct communication with Dr. Dreher at that time. Janet Evans, Elise Whang, and Mary Johnson met with Dr. Dreher and his counsel William Hannay in early September 2010 regarding terms of a settlement. Elise Whang also spoke with Dr. Dreher's counsel several times in September 2010 to discuss scheduling meetings. Janet Evans and Heather Hipsley met with Dr. Dreher in Chicago, Illinois on November 11, 2010 regarding his responsibilities while an employee of POM. His counsel, William Hannay, was also present.
4. *Staci Glovsky*: On or about September 8, 2010, Mary Johnson and Tawana Davis spoke with Ms. Glovsky to identify persons affiliated with the Corporate Respondents with relevant information. On or about October 27, 2010 and November 19, 2010, Tawana Davis spoke to Ms. Glovsky regarding the subpoena and her response. Elizabeth Nach also communicated with Ms. Glovsky and her counsel on December 7 and 10, 2010 regarding deposition scheduling.
5. *Pam Holmgren*: Elizabeth Nach and Elise Whang left a message with Ms. Holmgren on November 22, 2010 but did not speak with her directly.
6. *Diane Kuyoomjian*: Elizabeth Nach spoke with Ms. Kuyoomjian on November 23, 2010 regarding the subpoena and her representation by counsel.
7. *Keith Martin*: In September 2010 and on or about October 12, 2010, FTC staff had

telephone discussions with Mr. Martin regarding his responsibilities during the time period he worked at POM, the corporate structure of POM, the scientific studies conducted on POM products while he worked at POM, and the identities of persons involved in developing marketing and substantiation for POM products. Staff present for the September call were Mary Johnson and Elise Whang, and staff present for the October call were Mary Johnson, Elise Whang, Andrew Wone, Heather Hipsley, Elizabeth Nach, and Will Ducklow. In addition, Elizabeth Nach communicated by email and telephone with Mr. Martin on or about November 12 and 18, 2010 to discuss his response to the subpoena.

8. *Monique McLaws*: Elizabeth Nach had email and phone conversations with Ms. McLaws on November 5 and 12, 2010, regarding her responsibilities during the time period she worked at POM, to discuss the subpoena and whether Ms. McLaws had any responsive documents in her possession. In December 2010, Elizabeth Nach and Mary Johnson also had phone conversations with Ms. McLaws on the same topics. In addition, Elizabeth Nach exchanged emails with Ms. McLaws on December 10 and 13, 2010 regarding deposition scheduling.
9. *Fiona Posell*: Elizabeth Nach and Elise Whang left a message for Ms. Posell on November 22, 2010. Elizabeth Nach, Elise Whang, and Devin Domond spoke with Ms. Posell's counsel on November 29, 2010 regarding the subpoena. Elizabeth Nach also exchanged emails with Ms. Posell's counsel on December 9 and 14, 2010, concerning deposition scheduling.
10. *Charlene Rainey*: Elizabeth Nach and Elise Whang spoke to Ms. Rainey on November 15 regarding her responsibilities during the time period she worked as a consultant for

POM. Elizabeth Nach also left a telephone message for Ms. Rainey to confirm her address on November 30, 2010.

11. *John Regal*: Tawana Davis placed a telephone call to Mr. Regal on or about August 18, 2010. She spoke to his attorney, Daniel Hagood, on August 19, 2010, who informed Ms. Davis that Mr. Regal had declined to speak with her. She also had telephone and email communications with Mr. Hagood between October 29, 2010 and November 22, 2010 regarding Mr. Regal's response to the subpoena. Elizabeth Nach communicated by email and telephone with Mr. Hagood on or about November 9 - 13, 2010 regarding deposition scheduling and Mr. Regal's response to the FTC's subpoena for documents.
12. *Jeff Rushton*: Elizabeth Nach and Elise Whang spoke briefly to Mr. Rushton on November 22, 2010. They also spoke to Mr. Rushton on November 23, 2010 regarding his responsibilities during the time period he worked for POM. Elise Whang spoke to Mr. Rushton on December 7, 2010 regarding deposition scheduling. Andrew Wone spoke to Mr. Rushton on December 10, 2010 regarding deposition scheduling and his availability for further telephone discussions.
13. *Song San*: Elizabeth Nach and Elise Whang spoke to Mr. San on November 22, 2010 regarding his responsibilities during the time period he worked at POM.
14. *Jennifer Stein Simms*: Elizabeth Nach and Elise Whang left a message with Ms. Simms on November 22, 2010. On November 29, they spoke briefly with Ms. Simms but she was unavailable to talk at length during that call.

**Interrogatory 6:** Identify and describe every communication between Complainant and any scientist, researcher, investigator, or author of studies involving pomegranate or any POM Wonderful product.

**Response to Interrogatory 6:**

Complaint Counsel objects to Interrogatory 6 as overly broad, vague and ambiguous. Subject to and without waiver of its General and foregoing objections, Complaint Counsel has had contact with the following scientists, researchers, investigators, or authors of studies involving pomegranate or any POM Wonderful product:

1. *Accelovance:* Devin Domond, Janet Evans, and Elizabeth Nach spoke to counsel for Accelovance, Jonathan Grossman, on November 16, 2010 regarding its response to the subpoena. Devin Domond had further conversations with Mr. Grossman on November 17 and December 6, 7, and 8, 2010 regarding the subpoena response.
2. *Michael Aviram:* FTC staff spoke with Dr. Aviram during a June 2009 meeting with POM. On or about July 30, 2009, Mary Johnson also had email communications with Dr. Aviram regarding the preservation letter sent by FTC staff.
3. *Kazen Azadzoi:* Mary Johnson spoke to Mr. Jeffrey Burd, Mr. Azadzoi's attorney, on or about June 2010 regarding the scope of the Civil Investigative Demand sent by FTC staff.
4. *Arie Beldegrun:* Mary Johnson left a voice mail for Dr. Beldegrun on or about June 2009, but had no other contact with him.
5. *Stephen Brown:* Andrew Wone spoke with Dr. Brown on or about November 17, 2010 regarding his research on POM juice and HIV.
6. *Michael Carducci:* Mary Johnson spoke with Dr. Carducci on or about June 22, 2009

regarding his prostate cancer pomegranate research and the state of the science regarding the health benefits of pomegranate. She and Elizabeth Nach also spoke with legal counsel at Johns Hopkins University regarding the scope of the CID sent by the FTC and Dr. Carducci's response. Tawana Davis had telephone communications with Johns Hopkins legal staff on or about September 18, 2010 regarding Dr. Carducci's response to the CID. Tawana Davis also had email and telephone communications with Johns Hopkins legal staff between November 4 and December 8, 2010 regarding the scheduling of Dr. Carducci's deposition and supplementing his response to the CID.

7. *Edward Coyle*: Tawana Davis and Mary Johnson spoke with Dr. Coyle on or about May 5, 2010 regarding his research on pomegranate and sports recovery. Tawana Davis also had email communications with Dr. Coyle on or about May 12, 2010 regarding a preservation letter sent by FTC staff.
8. *Michael Davidson*: Mary Johnson and Heather Hipsley spoke with Dr. Davidson on or about June 25, 2009 regarding his research on carotid artery intimal thickness and the state of the science on the health benefits of pomegranate and had follow up email communications with him and his administrative assistant, Marylou Briglio, on or about June 30, 2009. Mary Johnson also had email communications with Dr. Davidson on or about July 13, 2009 regarding a preservation letter sent by FTC staff, and email communications with Dr. Davidson on or about July 28, 2010 regarding his response to the CID sent by the FTC. Additional communications regarding Dr. Davidson are set forth under "Radiant Research," below.
9. *Christopher Forest*: Mary Johnson spoke with Mr. Forest on or about June 8, 2010 regarding his involvement in research on pomegranate and the scope of the CID sent by

the FTC and Mr. Forest's response. Elise Whang, Mary Johnson, and Elizabeth Nach had email communications with Mr. Forest on or about June 10, 2010, June 24, 2010, July 19, 2010, July 23, 2010, and August 5, 2010 regarding the scope of the CID, timing of the response, and the format of the response. Andrew Wone had email and phone communications with Mr. Forest on or about November 4, 8, and 22, 2010 regarding deposition scheduling.

10. *Stephen Freedland*: Mary Johnson spoke with Dr. Freedland on or about June 22, 2009 regarding prostate cancer research and the state of the science on the health benefits of pomegranate. Tawana Davis left a voice mail message for Dr. Freedland regarding his response to the subpoena on or about November 8, 2010 and November 23, 2010; she had telephone communications with outside counsel for Duke University and Dr. Freedland between November 23, 2010 and December 10, 2010 regarding his response to the subpoena. Elizabeth Nach had email and telephone communications with Dr. Freedland's attorney to coordinate delivery of his subpoena response.
11. *David Heber*: FTC staff spoke with Dr. Heber during a June 2009 meeting with POM. Elise Whang had email communications with Dr. Heber on or about June 16, 2010 regarding the CID sent by the FTC. Mary Johnson had email communications with Susan Bowerman in Dr. Heber's office on or about June 22, 23, and 24, 2010 regarding the CID; Mary Johnson and Tawana Davis also spoke to Dr. Heber on or about June 23, 2010 regarding his response to the CID. On December 7, 2010, Elise Whang spoke to Noel Serrano in the UCLA Legal Department regarding scheduling Dr. Heber's deposition.
12. *James Hill*: On or about June 2010, Mary Johnson spoke with Dr. Hill about the CID

sent to him by the FTC. Janet Evans had email and telephone communications with Kristen Cassic [now Kristen Hirsch], Dr. Hill's Clinical Director, on or about June 7, 9, and 16, 2010, regarding the timing of Dr. Hill's CID response and the documents being produced in the response. Devin Domond spoke and emailed with Tim Goss, Dr. Hill's administrative assistant, on November 5, 9, and 12, 2010 and December 8 and 13, 2010 regarding scheduling Dr. Hill's deposition. Devin Domond also emailed Tim Goss, Kristen Hirsch and Dr. Hill on November 12, 2010 regarding deposition scheduling.

13. *Howard Hodis*: Mary Johnson spoke with Dr. Hodis in September 2009 regarding the state of the science on the health benefits of pomegranate and cardiovascular research.
14. *inVentiv Clinical Solutions/Essential CRO*: Andrew Wone left a message with Lisa Elson of inVentiv on November 8, 2010 regarding the subpoena. He spoke with Mitt Spears and Jared Nagley, counsel for inVentiv, on or about November 9, 12, 17 and 23, 2010 regarding the subpoena and Inventiv's response.
15. *Jim Joseph*: Mary Johnson spoke with Dr. Joseph on or about June 25, 2009 regarding the state of the science on pomegranate antioxidant research.
16. *Mohammad Madjid*: Andrew Wone spoke with Dr. Madjid on November 12, 2010 regarding his research on POMx and cold and flu.
17. *Judd Moul*: Mary Johnson spoke with Dr. Moul on or about June 22, 2009 regarding the state of the science on the health benefits of pomegranate and prostate cancer research.
18. *Dean Ornish*: Mary Johnson and Edward Glennon spoke to Dr. Ornish on or about October 15, 2009 regarding the state of the science and his research on the health benefits of pomegranate, as well as the preservation letter sent by FTC staff. Janet Evans spoke to Joel Goldman, General Counsel of Preventative Medicine Research Institute (PMRI), on

or about June 15, 2010 regarding the scope of the CID sent by the FTC and the timing of the response. Janet Evans had email communications with Dr. Ornish and Mr. Goldman on June 15 and July 4, 2010, and with Colleen Kemp of PMRI on July 6 and August 18, 2010, regarding the CID response. Elizabeth Nach had email communications with Mr. Goldman on or about July 21, 23, and 27, 2010, and with Dr. Ornish on August 3, 4, and 13, 2010, regarding follow up questions on Dr. Ornish's CID response. Janet Evans also spoke to Dr. Ornish in late October or early November 2010 about his availability for a deposition. Devin Domond spoke and emailed with Mr. Goldman on November 5 and 9, 2010 regarding deposition scheduling.

19. *Harin Padma-Nathan*: Elise Whang spoke with Dr. Padma-Nathan on July 22, 2010 regarding the CID sent by the FTC and had additional email communications on July 22 and 27 and August 3, 2010 regarding the CID. Elizabeth Nach had email communications with Dr. Padma-Nathan regarding his response to the CID on August 13, 16, and 17, 2010. Andrew Wone had email and phone communications with Dr. Padma-Nathan on or about November 4, 8, 10, and 29, 2010 regarding deposition scheduling.
20. *Allan Pantuck*: Mary Johnson spoke to Dr. Pantuck on or about June 26, 2009 regarding the state of the science on pomegranate health benefits and research on pomegranate and prostate cancer. She also spoke to him regarding the preservation letter sent by FTC staff. Mary Johnson had email and telephone communications with Dr. Pantuck on or about June 9, 21, and 22, 2010, and with Jane Boubelik, counsel for UCLA, and her assistant Noel Serrano regarding the CID sent by FTC staff and his response. Elizabeth Nach had email communications with Dr. Pantuck on August 3, 2010 regarding his CID

response. Elizabeth Nach also had email communications with Jane Boubelik on July 14, 2010, and with Robert Laferte of UCLA on July 21 and 22 and August 3, 2010 regarding the CID response. Elizabeth Nach and Tawana Davis had telephone and email communications with Ms. Boubelik and Mr. Serrano between November 3, 2010 and December 8, 2010 regarding supplementing Dr. Pantuck's response to the CID and scheduling his deposition.

21. *Premier Research (PharmData)*: Andrew Wone spoke with Steve Knepper of Premier on or about November 8, 17, and 23, 2010 regarding the subpoena and Premier's response.
22. *Radiant Research*: Janet Evans spoke with Michael Kritschgou at Radiant Research and with Desiree Burks at Radiant in June 2010 regarding the scope of the CID sent by FTC to Dr. Davidson and the timing of the response. Janet Evans had email communications with Kim Oldham at Radiant on or about June 11 and 14, 2010 regarding the CID response. Tawana Davis had telephone communications with Cecilia Belmonte at Radiant between November 8 and November 19, 2010 regarding its response to the subpoena. Tawana Davis had email communication with Cecilia Belmonte at Radiant on or about November 19, 2010 regarding its response to the subpoena.
23. *Jess Reed*: Elizabeth Nach spoke with Benjamin Griffiths, Dr. Reed's counsel, on December 2, 2010 regarding the subpoena and his response. She also communicated by email with Mr. Griffiths on December 9 and 10, 2010 about the same topic.
24. *Michael Sumner*: Mary Johnson and Elise Whang spoke to Miles Ehrlich, Dr. Sumner's attorney, on or about June 17, 2010 regarding the scope of the CID sent by the FTC and the timing of Dr. Sumner's response; they had email communications with Mr. Ehrlich

on June 16, 17, and 18, and July 2, 2010 regarding the CID. Elizabeth Nach had email communications with Mr. Ehrlich on July 8, 2010 regarding the CID response. Devin Domond spoke with Mr. Ehrlich on November 9, 10, 12 and 15, 2010, with Chris Steskal, an attorney for Dr. Sumner, on November 29, 2010, and with Dr. Sumner on November 16, 2010; all of these conversations were about scheduling Dr. Sumner's deposition.

25. *Ronald Turner*: Andrew Wone spoke with Dr. Turner on November 10, 2010 regarding his research on POMx and the common cold.
26. *Elizabeth White*: In November and December 2010, Mary Johnson left messages for Dr. White regarding research on pomegranate and post-menopausal symptoms, but she did not speak to Dr. White. During the same time period, Mary Johnson spoke to Angela Parks in Forsyth Medical Center's Risk Management Department to discuss why she wanted to speak to Dr. White. On December 15, 2010, Mary Johnson left a message for Shelley Stillerman, in-house counsel for Novant Health, regarding her request for information.

**Interrogatory 7:** Describe the basis of your allegation in paragraph 13 of the Complaint, including, but not limited to, the scientific sources or research relied on for such allegations.

**Response to Interrogatory 7:**

Complaint Counsel objects to Interrogatory 7 to the extent it seeks privileged information. Subject to and without waiver of its General and foregoing objections, Complaint Counsel contends that none of the scientific research to date, whether sponsored or funded by Respondents or otherwise, supports Respondents' claims that clinical studies, research, and/or trials prove that (a) Drinking eight ounces of POM Juice, or taking one POMx Pill or one

teaspoon of POMx Liquid, daily, prevents or reduces the risk of heart disease, including by (1) decreasing arterial plaque, (2) lowering blood pressure, and/or (3) improving blood flow to the heart; and (b) Drinking eight ounces of POM Juice, or taking one POMx Pill or one teaspoon of POMx Liquid, daily, treats heart disease, including by (1) decreasing arterial plaque, (2) lowering blood pressure, and/or (3) improving blood flow to the heart. Complaint Counsel contends that Respondents were aware of the findings of these scientific studies, which include but are not limited to:

- Aviram, M. et al., Pomegranate juice consumption reduces oxidative stress, atherogenic modifications to LDL and platelet aggregation: studies in humans and in atherosclerotic apolipoprotein e-deficient mice, 71 *Am. J. Clin. Nutr.* 1062 (2000)
- Aviram, M. and Dornfeld, L., Pomegranate juice consumption inhibits serum angiotensin converting enzyme activity and reduces systolic blood pressure, 158 *Atherosclerosis* 195 (2001)
- Aviram, M. et al., Pomegranate juice consumption for 3 years by patients with carotid artery stenosis reduces common carotid intima-media thickness, blood pressure and LDL oxidation, 23 *J. Clin. Nutr.* 423 (2004)
- Sumner, M.D. et al., Effects of pomegranate juice consumption on myocardial perfusion in patients with coronary heart disease, 96 *Am. J. Cardiol.* 810 (2005)
- Davidson, M.H. et al., Effects of Consumption of Pomegranate Juice on Carotid Intima-Media Thickness in Men and Women at Moderate Risk for Coronary Heart Disease, 104 *Am. J. Cardiology* 936 (2009)
- Ornish, D., Bev 2 Summary (circa 2005, unpublished)
- Davidson, M.H. et al., The Effects of Pomegranate Juice on Flow-Mediated Vasodilation

(2004, unpublished)

- DeGroof, R., A Placebo Controlled, Randomized, Double Blind Study to Compare Antioxidant Levels in Normal Subjects with Elevated Waist Circumference When Administered 1 or 2 Pomegranate Dietary Supplement Capsules for 4 Weeks (2007, unpublished).
- Heber, D. et al., Safety and Antioxidant Activity of a Pomegranate Ellagitannin-Enriched Polyphenol Dietary Supplement in Overweight Individuals with Increased Waist Size, 55 J. Agric. Food Chem. 10050 (2007)
- Hill, J.O., Effect of POMx, a Nutritional Supplement Derived from Pomegranates, on Human Biomarkers Associated with Cardiovascular Health in Healthy Overweight Adults - Preliminary Data Analysis, Protocol 06-0704 (Feb. 15, 2007) (published as Heber D. et al., above)

Complaint Counsel further based its allegation in paragraph 13 of the Complaint on the opinions of experts. Complaint Counsel will disclose testifying experts and their reports, including the basis and reasons for their opinions, in accordance with § 3.31A of the Commission's Rules of Practice and the Court's Scheduling Order in this case.

**Interrogatory 8:** Describe the basis of your allegation in paragraph 15 of the Complaint, including, but not limited to, the scientific sources or research relied on for such allegations.

**Response to Interrogatory 8:**

Complaint Counsel objects to Interrogatory 8 to the extent it seeks privileged information. Subject to and without waiver of its General and foregoing objections, Complaint Counsel contends that none of the scientific research to date, whether sponsored or funded by Respondents or otherwise, supports Respondents' claims that clinical studies, research, and/or

trials prove that (a) Drinking eight ounces of POM Juice, or taking one POMx Pill or one teaspoon of POMx Liquid, daily, prevents or reduces the risk of prostate cancer, including by prolonging prostate-specific antigen doubling time (“PSADT”); and (b) Drinking eight ounces of POM Juice, or taking one POMx Pill or one teaspoon of POMx Liquid, daily, treats prostate cancer, including by prolonging PSADT. Complaint Counsel contends that Respondents were aware of the findings of these scientific studies, which include but are not limited to:

- Pantuck, A.J. et al., Phase II Study of Pomegranate Juice for Men with Rising Prostate-Specific Antigen Following Surgery or Radiation for Prostate Cancer, 12 Clin. Cancer Res. 4018 (2006).

Complaint Counsel further based its allegation in paragraph 15 of the Complaint on the opinions of experts. Complaint Counsel will disclose testifying experts and their reports, including the basis and reasons for their opinions, in accordance with § 3.31A of the Commission’s Rules of Practice and the Court’s Scheduling Order in this case.

**Interrogatory 9:** Describe the basis of your allegation in paragraph 17 of the Complaint, including but not limited to, the scientific sources or research relied on for such allegations.

**Response to Interrogatory 9:**

Complaint Counsel objects to Interrogatory 9 to the extent it seeks privileged information. Subject to and without waiver of its General and foregoing objections, Complaint Counsel contends that none of the scientific research to date, whether sponsored or funded by Respondents or otherwise, supports Respondents’ claims that clinical studies, research, and/or trials prove that (a) Drinking eight ounces of POM Juice daily prevents or reduces the risk of erectile dysfunction; and (b) Drinking eight ounces of POM Juice daily treats erectile dysfunction. Complaint Counsel contends that Respondents were aware of the findings of these

scientific studies, which include but are not limited to:

- Forest, C.P. et al., Efficacy and safety of pomegranate juice on improvement of erectile dysfunction in male patients with mild to moderate erectile dysfunction: a randomized, placebo-controlled, double-blind, crossover study, *Int'l J. Impotence Res.* 1-4 (2007);
- Davidson, M.H. et al., The Effects of Pomegranate Juice on Flow-Mediated Vasodilation (2004, unpublished).

Complaint Counsel further based its allegation in paragraph 17 on the opinions of experts. Complaint Counsel will disclose testifying experts and their reports, including the basis and reasons for their opinions, in accordance with § 3.31A of the Commission's Rules of Practice and the Court's Scheduling Order in this case.

**Interrogatory 10:** Describe all investigations conducted by you or on your behalf relating to any advertising claims or representations relating to Respondents' products or any other product containing or representing that it contains pomegranate and describe every conclusion regarding such investigation, identify the time period of the investigation, and all persons with knowledge of such investigation.

**Response to Interrogatory 10:** Complaint Counsel objects to Interrogatory 10 on the grounds that it is overly broad, vague, ambiguous, and seeks privileged information. Complaint Counsel further objects to Interrogatory 10 on the grounds that it seeks information that is not relevant to the subject matter of the litigation and/or not reasonably calculated to lead to the discovery of relevant information to the extent that it requests information on investigations or products unrelated to this litigation.

Subject to and without waiver of its General and foregoing objections, other than the instant matter involving Respondents, Complaint Counsel is aware of the following other

investigations relating to products containing or representing that they contain pomegranate:

- In July 2005, the FTC's Division of Advertising Practices received a letter from the National Advertising Division of the Better Business Bureau (NAD) expressing concerns about certain advertising by POM Wonderful, LLC. An investigation was opened in September 2005. In 2006, the NAD published a report of its decision in an NAD proceeding involving a challenge brought by Welch's Foods, Inc. (Case #4468, 04/05/06), in which POM issued a statement that it intended to discontinue or modify certain claims in future advertising. Keith Fentonmiller was the attorney who received the NAD letter. He did not do anything further and closed the investigation in August 2006.
- In *FTC v. Garden of Life* (2006), the FTC charged that the defendant made false and unsubstantiated claims about a dietary supplement called "Living Multi." The supplement purported to contain over 100 separate ingredients, including 9 sea vegetables, 23 antioxidant fruits, 20 antioxidant vegetables, 11 medicinal mushrooms, 6 botanical ingredients, and numerous naturally occurring microorganisms, enzymes, acids, and minerals. One of the ingredients listed in the antioxidant fruit blend for Living Multi was pomegranate. The investigation ended in a settlement. Karen Mandel and Michael Ostheimer of the Division of Advertising Practices in the Federal Trade Commission were the responsible attorneys. More information is available at:  
<http://www.ftc.gov/os/caselist/gardenoflife/gardenoflife.shtm>.
- In August 2006, the FTC Division of Advertising Practices received a referral from the NAD relating to Freeman Beauty Labs, regarding claims that its Renewance Anti-Aging Chemical Peel with Pomegranate Antioxidant-Peptide Complex reduces wrinkles. The

referral was closed in September 2006 when the company agreed to resume talks with the NAD. Janet Evans was the responsible attorney.

- In *FTC v. Central Coast Nutraceuticals* (2010), the FTC charged that the defendant upsold certain products without notice or authorization to consumers. One of the products that the company might have upsold is a dietary supplement called “PomClear.” David O’Toole and Rozina Bhimani of the Midwest Region in the Federal Trade Commission are the responsible attorneys. This litigation is ongoing. More information is available at: <http://www.ftc.gov/opa/2010/08/acaicolon.shtm>.

**Interrogatory 11:** Do you contend that Respondents, either collectively or individually, interfered with or manipulated any study protocols, scientific results, or study designs? If yes, identify any such instances and describe the basis of your contention.

**Response to Interrogatory 11:**

Complaint Counsel objects to Interrogatory 11 on the grounds that it is overbroad. Complaint Counsel further objects to Interrogatory 11 on the grounds that the terms “interfered with or manipulated” are undefined, vague, and ambiguous.

Subject to and without waiver of its General and foregoing objections, Complaint Counsel notes that the depositions of Respondents Stewart Resnick and Lynda Resnick have not yet been completed. Complaint Counsel also will rely on its experts and their reports, including the basis and reasons for their opinions, in accordance with § 3.31A of the Commission’s Rules of Practice and the Court’s Scheduling Order in this case, and on expert discovery in this case generally, to determine if anything scientifically or methodologically improper occurred with any of Respondents’ studies. Complaint Counsel will supplement its response to Interrogatory 11 as appropriate after all fact and expert discovery is completed.

**Interrogatory 12:** Do you contend that Respondents, either collectively or individually, ignored or failed to take into account countervailing science? If yes, identify any such instances and describe the basis of your contention.

**Response to Interrogatory 12:**

Complaint Counsel objects to Interrogatory 12 on the grounds that it is overbroad. Complaint Counsel further objects to Interrogatory 12 on the grounds that the terms “ignored or failed to take into account countervailing science” are undefined, vague, and ambiguous.

Subject to and without waiver of its General and foregoing objections, as stated in the Complaint, Complaint Counsel contends that Respondents failed to have a reasonable basis for their claims and falsely claimed that scientific evidence supported their claims. None of the scientific research to date, whether sponsored or funded by Respondents or otherwise, supports Respondents’ claims that are challenged in the Complaint.

Complaint Counsel further contends that Respondents represented that clinical studies, research, and/or trials prove that (a) drinking eight ounces of POM Juice, or taking one POMx Pill or one teaspoon of POMx Liquid, daily, prevents or reduces the risk of heart disease, including by (1) decreasing arterial plaque, (2) lowering blood pressure, and/or (3) improving blood flow to the heart; and (b) drinking eight ounces of POM Juice, or taking one POMx Pill or one teaspoon of POMx Liquid, daily, treats heart disease, including by (1) decreasing arterial plaque, (2) lowering blood pressure, and/or (3) improving blood flow to the heart , when in fact among other things, Respondents were aware of a study, M. Davidson, *et al.*, *Effects of Consumption of Pomegranate Juice on Carotid Intima-Media Thickness in Men and Women at Moderate Risk for Coronary Heart Disease*, 104 Am. J. Cardiology 936 (2009) (BATES: TCCC-0002202-07) (“Davidson IMT”), which showed no significant difference between consumption

of pomegranate juice and a control beverage in carotid intima-media thickness progression rates after 18 months; two smaller studies, M. Davidson, *The Effects of Pomegranate Juice on Flow-Mediated Vasodilation*, (unpublished, 2004) (BATES: MHDAVIDSON-0000179-248) (“Davidson BART”) and Ornish, D, *Bev 2 Summary*, (unpublished, June 16, 2005) (BATES: POMJL-0001976-81) (“Ornish IMT”) that showed no significant difference between consumption of pomegranate juice and a control beverage on measures of cardiovascular function; and multiple studies, including Davidson BART, Sumner, M, Elliott-Eller M, Weidner, G, Daubenmier, J, Chew, MH, Martin R, Raisin, CJ, and Ornish D, *Effects of Pomegranate Juice Consumption on Myocardial Perfusion in Patients with Coronary Heart Disease*, 96 Am. J. Cardiology 810 (2005) (BATES: POM2 0360-64), Ornish IMT, and R. DeGroof, *A Placebo Controlled, Randomized, Double Blind Study to Compare Antioxidant levels in Normal Subjects with Elevated Waist Circumference When Administered 1 or 2 Pomegranate Dietary Supplements for 4 Weeks* (Jan. 11, 2007, unpublished) that did not show that POM products reduce blood pressure. (Complaint, ¶¶ 12-13.) Respondents continued to advertise the results of several studies, e.g., Aviram 2000, 2001, 2004 (cited *supra* in Response to Interrogatory No. 7) despite being aware of inconsistent results from subsequent studies (Davidson BART, Davidson 2009, Ornish IMT). Respondents continued to advertise the blood pressure results from the Aviram studies despite being aware of these subsequent studies that showed no effect of pomegranate on blood pressure. Respondents also continued to advertise using heart benefit claims for POMx despite being aware of the results of the Accelovance biomarker study, Heber, D, *POMx In Heart Health: Antioxidant Effects* (power point, undated) (BATES: POM\_Q14-0004342), which showed no changes in markers of oxidant stress or inflammation in groups taking POMx pills.

Complaint Counsel further contends that Respondents represented that clinical studies, research, and/or trials prove that (a) drinking eight ounces of POM Juice, or taking one POMx Pill or one teaspoon of POMx Liquid, daily, prevents or reduces the risk of prostate cancer, including by prolonging PSADT; and (b) drinking eight ounces of POM Juice daily, or taking one POMx pill or one teaspoon of POMx Liquid, daily, treats prostate cancer, including by prolonging PSADT, when in fact, among other things, at the time the claims were made, Respondents were aware of, and were relying upon, the results of a study that was unblinded and uncontrolled (Pantuck, 2006, cited *supra* in response to Interrogatory No. 8); and that the study report stated that it is “controversial whether modulation of PSA levels represents an equally valid clinical end point,” and that “further research is needed to . . . determine whether improvements in such biomarkers (including PSADT) are likely to serve as surrogates for clinical benefit.” (Complaint, ¶¶ 14-15.)

Complaint Counsel further contends that Respondents represented that clinical studies, research, and/or trials prove that (a) drinking eight ounces of POM Juice daily prevents or reduces the risk of erectile dysfunction; and (b) drinking eight ounces of POM Juice daily treats erectile dysfunction, when in fact, among other things, Respondents were aware of, and relying upon, a randomized, double-blinded placebo controlled study sponsored by Respondents (Forest, 2007, cited *supra* in response to Interrogatory No. 9) showed that drinking POM Juice had no statistically significant effect on erectile function. Respondents were also aware of the Davidson BART study, which measured certain erectile dysfunction endpoints and found no statistically significant difference between the treatment groups. (Complaint, ¶¶ 16-17.)

Complaint Counsel also notes that the depositions of Respondents Stewart Resnick and Lynda Resnick have not yet been completed. Complaint Counsel also will rely on its experts

and their reports, including the basis and reasons for their opinions, in accordance with § 3.31A of the Commission's Rules of Practice and the Court's Scheduling Order in this case. Complaint Counsel will supplement its response to Interrogatory 12 as appropriate after all fact and expert discovery has been completed.

**Interrogatory 13:** Identify and describe every wrong that you contend occurred in connection with science or research sponsored by Respondents, either individually or collectively, and for each wrong identified, describe the basis of your contention.

**Response to Interrogatory 13:**

Complaint Counsel objects to Interrogatory 13 on the grounds that it is overbroad. Complaint Counsel further objects to Interrogatory 13 on the grounds that the term "wrong" is undefined, vague, and ambiguous. Complaint Counsel acknowledges that Respondents have attempted to clarify Interrogatory 13, stating in an email dated February 18, 2011 that "the meaning of the word 'wrong' should be construed to mean anything improper, abnormal, mistaken, or incorrect, for instance, in the science or research sponsored by Respondents," however, Complaint Counsel still objects on the grounds that the terms "improper," "abnormal," "mistaken," or "incorrect," are vague and ambiguous in the context.

Subject to and without waiver of its General and foregoing objections, Complaint Counsel interprets this Interrogatory as seeking information on whether Complaint Counsel contends that anything scientifically or methodologically improper occurred in Respondents' studies. Based on that understanding, Complaint Counsel responds by referring to the response to Interrogatory No. 11.

**VERIFICATION OF SERENA VISWANATHAN**

I am an attorney of record in this matter and am authorized to make this verification for and on behalf of Complaint Counsel. I have read the foregoing Complaint Counsel's Second Supplemental Response to Respondent POM Wonderful LLC's First Set of Interrogatories, and am familiar with the contents thereof. The answers to the interrogatories are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the statements made in this Verification are true and correct.

Executed on March 11, 2011

/s/ Serena Viswanathan

Serena Viswanathan

**CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2011 I served the foregoing Complaint Counsel's Second Supplemental Response to Respondent POM Wonderful LLC's First Set of Interrogatories via electronic mail on the following counsel of record:

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Dated: March 11, 2011

/s/ Serena Viswanathan

Serena Viswanathan