

PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF THE ADMINISTRATIVE LAW JUDGE

In the Matter of

HEALTH RESEARCH LABORATORIES, LLC,
a limited liability company,

WHOLE BODY SUPPLEMENTS, LLC
a limited liability company, and

KRAMER DUHON,
individually and as an officer of HEALTH
RESEARCH LABORATORIES, LLC and
WHOLE BODY SUPPLEMENTS, LLC

DOCKET NO. 9397

RESPONDENTS' AMENDED PRELIMINARY WITNESS LIST

Pursuant to the Scheduling Order in this matter, Respondents Health Research Laboratories, LLC (“HRL”), Whole Body Supplements, LLC (“WBS”) and Kramer Duhon (collectively, “Respondents”) provide their preliminary witness list. Respondents reserve the right:

- A. to present testimony, by deposition or orally by live witness, from any other person who may be identified by Complaint Counsel as a potential witness in this matter and any person from whom discovery is sought;
- B. to identify rebuttal witnesses after we have an opportunity to depose Complaint Counsel’s witnesses and experts;
- C. to further supplement or revise this preliminary witness list as discovery progresses and circumstances may warrant;
- D. witnesses and review Complaint Counsel’s expert reports; and

PUBLIC

E. not to call any of the persons listed below to testify at the hearing in this matter, as circumstances may warrant.

Subject to these reservations, our preliminary list of witnesses is as follows:

1. Elizabeth Averill

Elizabeth Averill is FTC counsel that negotiated the 2018 settlement and has knowledge of marketing materials submitted to the FTC for approval and objection. We expect Ms. Averill may testify about:

- Communications with Respondents regarding the products and advertisements at issue prior to the filing of the Administrative Complaint.
- Statements and representations made by the FTC in Case 2:17-cv-00467-JDL, *Federal Trade Commission and State of Maine v. Health Research Laboratories, LLC and Kramer Duhon*.
- FTC contends that Andrew Lustigman is a relevant witness based on his communications with the FTC, particularly with Ms. Averill.
- Issues related to the Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief (“Consent Judgment”), including documents and information provided to the FTC.

2. Frank M. Sacks, MD

- Opinions provided in Expert Report of Frank M. Sacks, M.D. submitted by the FTC in Case 2:17-cv-00467-JDL, *Federal Trade Commission and State of Maine v. Health Research Laboratories, LLC and Kramer Duhon*.
- Communications with FTC arising from or related to Expert Report of Frank M. Sacks, M.D.

3. Charles F. Burant, M.D., Ph.D

- Opinions provided in Expert Report of Charles F. Burant, M.D. submitted by the FTC in Case 2:17-cv-00467-JDL, *Federal Trade Commission and State of Maine v. Health Research Laboratories, LLC and Kramer Duhon*.
- Communications with FTC arising from or related to Expert Report of Charles F. Burant, M.D., Ph.D.

PUBLIC

4. **Kramer Duhon**

Kramer Duhon may testify about:

- Operation of HRL and WBS
- Authenticity of corporate documents and filings of HRL and WBS
- Authenticity of documents submitted to the FTC by Mr. Duhon, HRL, or WBS and authenticity of documents, including emails, sent by the FTC.
- Factual bases for the defenses asserted in Respondents' Answer
- Roles of various agents, and consultants working with HRL and WBS
- Advertising and marketing related to Neupathic, The Ultimate Heart Formula ("UHF"), Black Garlic Botanicals, and BG18
- Development, design, review, revision, and/or approval of advertising and marketing for Neupathic, UHF, Black Garlic Botanicals, and BG18
- Scientific evidence or substantiation that Respondents possessed and/or relied upon to support claims in advertising for Neupathic, UHF, Black Garlic Botanicals, and BG18
- Information related to the dissemination of advertising and marketing for Neupathic, UHF, Black Garlic Botanicals, and BG18
- Formulation of Neupathic, UHF, Black Garlic Botanicals, and BG18

5. **Kyle Duhon**

Kyle Duhon worked with the Respondents and may testify about:

- Employees, agents, consultants, and organizational structure of HRL and WBS
- Operation of HRL and WBS
- His roles and responsibilities related to HRL and WBS
- Kramer Duhon's roles and responsibilities related to HRL and WBS
- Advertising and marketing related to Neupathic, UHF, Black Garlic Botanicals, and BG18
- Development, design, review, revision, and/or approval of advertising and marketing for Neupathic, UHF, Black Garlic Botanicals, and BG18
- Scientific evidence that Respondents possessed and/or relied upon to support claims in advertising for Neupathic, UHF, Black Garlic Botanicals, and BG18
- Information related to the dissemination of advertising and marketing for Neupathic, UHF, Black Garlic Botanicals, and BG18
- Sales information and revenues for Neupathic, UHF, Black Garlic Botanicals, and BG18 after January 16, 2018

PUBLIC

- Customer demographics and/or target market for Neupathic, UHF, Black Garlic Botanicals, and BG18
- Formulation of Neupathic, UHF, Black Garlic Botanicals, and BG18
- FDA warning letter issued to HRL and Kramer Duhon dated October 9, 2014
- Authenticity of documents submitted to the FTC by Mr. Duhon, HRL, or WBS
- Factual bases for the defenses asserted in Respondents' Answer

6. Richard Cohen

Richard Cohen worked with the Respondents. Mr. Cohen may testify about:

- Services or products that Mr. Cohen provided to Respondents
- Mr. Cohen's qualifications, areas of expertise, and/or professional background
- Communications with Respondents
- Mr. Cohen's endorsements and statements in advertising for Neupathic, UHF, Black Garlic Botanicals, and BG18
- Advertising and marketing related to Neupathic, UHF, Black Garlic Botanicals and BG18
- Development, review, revision, and/or approval of advertising and marketing for Neupathic, UHF, Black Garlic Botanicals, and BG18
- Scientific evidence or substantiation related to claims in advertising and marketing for Neupathic, UHF, Black Garlic Botanicals, and BG18

7. Inna Yegorova

Ms. Yegorova worked with the Respondents. She may testify about:

- Communications with Kramer Duhon and Kyle Duhon
- Services or products that Ms. Yegorova and/or Inna Consulting provided to Respondents
- Ms. Yegorova's qualifications, areas of expertise, and/or professional background
- Contracts or agreements with Respondents
- Advertising and marketing related to Neupathic, UHF, Black Garlic Botanicals, and BG18
- Development, review, revision, and/or approval of advertising and marketing for Neupathic, UHF, Black Garlic Botanicals, and BG18

PUBLIC

- Scientific evidence or substantiation related to claims in advertising and marketing for Neupathic, UHF, Black Garlic Botanicals, and BG18.

8. Curtis Walcker

Mr. Walcker is an owner of Dietary Supplement Experts, LLC and worked as a consultant. He may testify about:

- Communications with Kramer Duhon and Kyle Duhon
- Services and products that Mr. Walcker and/or Dietary Supplement Experts, LLC provided to Respondents
- Mr. Walcker's qualifications, areas of expertise, and/or professional background
- Contracts or agreements with Respondents
- Advertising and marketing related to Neupathic, UHF, Black Garlic Botanicals, and BG18
- Scientific evidence or substantiation related to claims in advertising and marketing for Neupathic, UHF, Black Garlic Botanicals, and BG18.

9. Joel Myerson or corporate designee under Rule 3.33(c)(1) for Pure Source, LLC

Mr. Myerson is the President of Pure Source, LLC ("Pure Source"). Pure Source manufactured Neupathic, UHF, Black Garlic Botanicals, and BG18. Mr. Myerson or another corporate designee may testify about:

- Services or products that Pure Source provided to Respondents
- Formulation of Neupathic, UHF, Black Garlic Botanicals, and BG18, including, but not limited to, type and dose of individual ingredients in each product.

PUBLIC

Dated: January 29, 2021

Respectfully submitted,

REESE MARKETOS LLP

By: /s/ Joel W. Reese

Joel W. Reese

Texas Bar No. 00788258

joel.reese@rm-firm.com

Joshua M. Russ

Texas Bar No. 24074990

josh.russ@rm-firm.com

750 N. Saint Paul St., Suite 600

Dallas, TX 75201-3201

Telephone: (214) 382-9810

Facsimile: (214) 501-0731

ATTORNEYS FOR RESPONDENTS

PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2021, I filed the foregoing document electronically using the FTC's E-Filing system, which will send notification to:

April J. Tabor
Acting Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

Elizabeth Averill
eaverill@ftc.gov
Jonathan Cohen
jcohen2@ftc.gov

COMPLAINT COUNSEL

/s/ Joel W. Reese
Joel W. Reese