

FILED

2019 FEB -4 AM 9:08

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

FEDERAL TRADE COMMISSION,

Petitioner,

v.

FULLY ACCOUNTABLE, LLC, and

SARAH SCAVA,

Respondents.

JUDGE NUGENT

Misc. No.

5:19 MC 21

FEDERAL TRADE COMMISSION'S PETITION TO ENFORCE
CIVIL INVESTIGATIVE DEMANDS

The Federal Trade Commission respectfully petitions this Court pursuant to Section 20 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 57b-1, to issue an order to show cause and thereby commence a proceeding to enforce civil investigative demands (CIDs) for testimony issued to Respondent Fully Accountable, LLC, and Respondent Sarah Scava.¹ Fully Accountable provides

¹ This is a summary proceeding that is properly instituted by a petition and order to show cause (rather than a complaint and summons). *See, e.g., United States v. Markwood*, 48 F.3d 969, 980-983 (6th Cir. 1995) (approving use of order to show cause and citing, *inter alia*, *United States v. Will*, 671 F.2d 963, 968 (6th Cir. 1982)).

services such as business consulting, accounting, and assistance in credit card payment processing. The FTC is investigating whether Fully Accountable, its clients, or related entities or individuals have made deceptive or unsubstantiated representations in connection with the marketing of health-related products, or have unlawfully charged or participated in the charging of consumers for products without the consumers' authorization. The Commission issued these CIDs seeking testimony from Fully Accountable as an entity and from Ms. Scava, a former employee of Fully Accountable, in her individual capacity.

As set forth in greater detail in the accompanying memorandum, both recipients have refused to comply. Fully Accountable filed with the FTC an administrative petition to quash the CID received, and a non-party called Elevated Health, LLC, filed a similar petition to quash the CID issued to Ms. Scava. The Commission denied both petitions, finding they were without merit and—as to Elevated Health's petition—not properly before the Commission. Accordingly, the Commission ordered both Fully Accountable and Ms. Scava to appear for testimony. Both have continued to refuse. Because this noncompliance is unjustified and impedes the Commission's investigation, the Court should enforce the CIDs and direct that Fully Accountable and Ms. Scava appear for investigative hearings within 10 days.

In operation, these FTC proceedings resemble proceedings to enforce IRS summons. *See, e.g., United States v. Maunz*, No. 3:11-mc-00013-JZ (N.D. Ohio 2011). The Commission has previously used such procedures in CID enforcement proceedings in this Court. *See, e.g., FTC v. Infante*, No 4:17-mc-00008-CAB (N.D. Ohio, filed Feb. 7, 2017).

The Commission herewith submits the Declaration of Harris Senturia, designated as Petitioner's Exhibit (Pet. Ex.) 1, to verify the allegations herein. The Commission also submits the following additional exhibits:

- Pet. Ex. 2 Civil Investigative Demand to Fully Accountable, LLC (Sept. 10, 2018);
- Pet. Ex. 3 Civil Investigative Demand to Sarah Scava (Sept. 10, 2018);
- Pet. Ex. 4 Fully Accountable, LLC's Petition to Limit or Quash Civil Investigative Demand (Oct. 5, 2018);
- Pet. Ex. 5 Non-Party Elevated Health, LLC's Petition to Limit or Quash Civil Investigative Demand (Oct. 5, 2018);
- Pet. Ex. 6 Order Denying Petitions to Limit or Quash Civil Investigative Demands (Nov. 19, 2018)²;
- Pet. Ex. 7 Email chain between Rachel Scava and Harris Senturia re: Investigational hearings this week (Nov. 26-28, 2018).

Jurisdiction and Venue

1. This Court has jurisdiction to enforce the Commission's duly issued CIDs under Sections 20(e) and (h) of the FTC Act, 15 U.S.C. §§ 57b-1(e), (h). This Court also has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345.

2. Venue is proper in this judicial district under Section 20(e) of the FTC Act, 15 U.S.C. § 57b-1(e), because both Respondents are found, reside, and transact business here. Pet. Ex. 1, ¶¶ 3-4; *see also* ¶¶ 9-11, *infra*. Venue is also proper under 28 U.S.C. § 1391.

² This document is attached without its exhibits, two of which are the CIDs attached hereto as Pet. Exs. 2 and 3. The remaining exhibit to the Commission's order is its original 2017 CID. That document is Pet. Ex. 2 in *FTC v. Fully Accountable, LLC*, 5:18-mc-00054-SL (N.D. Ohio), Doc. 1-2.

The Parties

3. Petitioner, the Federal Trade Commission, is an administrative agency of the United States, organized and existing under the FTC Act, 15 U.S.C. §§ 41 *et seq.*

4. The Commission has broad statutory authority to address unfair or deceptive acts or practices. For instance, Section 5(a) of the FTC Act prohibits, and directs the Commission to combat, unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. § 45(a)(1). Section 12 of the FTC Act further prohibits false advertising for the purpose of inducing, directly or indirectly, the purchase of food, drugs, devices, services, or cosmetics. 15 U.S.C. § 52.

5. The FTC Act empowers the agency to investigate potential violations of these laws. Sections 3 and 6(a) of the FTC Act, 15 U.S.C. §§ 43, 46(a), authorize the Commission to conduct investigations nationwide and to gather information on any “person, partnership, or corporation[.]” and Section 20(c) of the FTC Act, 15 U.S.C. § 57b-1(c), authorizes the Commission to issue CIDs requiring the recipients to produce documents, prepare answers to interrogatories, and provide oral testimony under oath.

6. The Commission has promulgated three resolutions pertinent to this case authorizing its staff to investigate various potential violations of the FTC Act and to use compulsory process to secure information related to the potential violations. The first resolution, File No. 0023191, authorizes the use of process to

investigate whether entities are “directly or indirectly” “misrepresenting the safety or efficacy” of “dietary supplements, foods, drugs, devices, or any other product or service intended to provide a health benefit” on the grounds that such conduct could amount to “unfair or deceptive acts or practices or . . . false advertising . . . in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52.” Pet. Ex. 2 at 9; Pet. Ex. 3 at 10.

7. The second resolution, File No. 9923259, authorizes the use of compulsory process to investigate whether entities are engaging in, among other actions, “deceptive or unfair practices involving Internet-related goods or services.” If such conduct is taking place, it could violate Sections 5 or 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52. Pet. Ex. 2 at 10; Pet. Ex. 3 at 11.

8. The third resolution, File No. 082-3247, authorizes the use of process to determine if entities “have engaged in or are engaging in deceptive or unfair practices . . . *in connection with* making unauthorized charges or debits to consumers’ accounts.” Pet. Ex. 2 at 11; Pet. Ex. 3 at 12 (emphasis added). If such conduct is occurring, it could violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and/or the Electronic Fund Transfer Act, 15 U.S.C. § 1693, et seq. *Id.*

9. Respondent Fully Accountable, LLC, is based in Fairlawn, Ohio. Fully Accountable markets itself as a “Back Office Solution” specializing in providing services to internet marketers. These services include compiling and reporting financial statistics, accounting and bookkeeping, business consulting, and assisting

its clients to obtain and manage credit card payment processing accounts. Pet. Ex. 1, ¶ 3.

10. Fully Accountable is the subject of a prior CID enforcement proceeding, *FTC v. Fully Accountable, LLC*, 5:18-mc-00054-SL (N.D. Ohio filed June 8, 2018) [hereinafter "*Fully Accountable P*"]. That proceeding led to an order enforcing the CID, issued by Judge Sara Lioi on August 13, 2018. *See id.*, Doc. 14.

11. Sarah Scava is an individual whose last known address is in Wadsworth, Ohio. Ms. Scava was formerly employed by Fully Accountable. During her time at Fully Accountable, Ms. Scava established and was involved with a company called Elevated Health, LLC. Pet. Ex. 1, ¶ 4.

The Commission's Investigation and Civil Investigative Demand

12. This investigation seeks to determine whether Fully Accountable violates the FTC Act through its associations with, and the services it provided to, two groups of entities (referred to as "Group A" and "Group B"). These two Groups were both involved in marketing several types of consumer products on line, including various health or dietary supplements and skin creams. The Commission had received complaints regarding unauthorized charges to consumer accounts in connection with these sales. Pet. Ex. 1, ¶¶ 5-6.

13. Acting pursuant to the investigational resolutions described in paragraphs 6-8 above, on September 21, 2017, the Commission issued a CID to Fully Accountable directing it to produce certain documents and respond to interrogatories. That CID also included a statement of the "Subject of Investigation"

that specifically notified Fully Accountable how the FTC was using its investigative authority in this instance. It stated that the FTC was investigating

[w]hether Fully Accountable, the Group A Entities, or the Group B Entities . . . and related entities or individuals, have made or participated in making, in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers’ authorization, in violation of Section 5 of the FTC Act, and whether Commission action to obtain monetary relief would be in the public interest.

Fully Accountable I, Doc. 1-2 at 7.

14. Fully Accountable failed to comply with this CID, however, and on June 8, 2018, the Commission commenced an enforcement proceeding in this Court. *See Fully Accountable I*; Pet. Ex. 1, ¶ 11.³ That proceeding resulted in an order of the Court on August 13, 2018, enforcing the Commission’s CID and directing Fully Accountable “to comply in full . . . and produce . . . all responsive documents and information required by the civil investigative demand” within 10 days of the date of the Order, or by August 23, 2018. *Fully Accountable I*, Doc. 14 at 2.

15. Fully Accountable provided some information on August 18, 2018, and provided a certificate attesting to its compliance with the CID on August 23, 2018. Pet. Ex. 1, ¶ 13. The investigating FTC staff reviewed this information, however, and identified several deficiencies and inconsistencies. Pet. Ex. 1, ¶ 14. For example, Fully Accountable failed to provide complete information about its former

³ For a complete description of Fully Accountable’s failure to comply with the original CID, see the Declaration of Harris Senturia dated June 5, 2018. *Fully Accountable I*, Doc. 1-1.

employees. In other instances, the company changed its position in its supplemental response and produced information and documents that it previously claimed it lacked. Finally, the company provided corrected or expanded supplemental responses to several specifications, confirming that its initial response was not complete despite what it had certified. *Id.*

16. To explore these deficiencies and inconsistencies, to assess Fully Accountable's compliance with this Court's August 13, 2018, order, and to move the investigation forward, the Commission issued two new CIDs on September 10, 2018. One of these CIDs was to Fully Accountable for testimony from the entity pursuant to Commission Rule 2.7(h), 16 C.F.R. § 2.7(h); the other was to Sarah Scava for testimony in her individual capacity. Pet. Ex. 1, ¶¶ 15, 19.

17. As with the Commission's original September 2017 CID, these new CIDs issued under the three resolutions described in paragraphs 6-8 above. Pet. Ex. 2 at 9-11; Pet. Ex. 3 at 10-12. In addition, each of the new CIDs contained the same "Subject of Investigation" notification quoted in paragraph 13 above. Pet. Ex. 2 at 5-6; Pet. Ex. 3 at 5-6.

18. In issuing the CIDs, the Commission followed all the procedures and requirements of the FTC Act and its Rules of Practice and Procedure. *See, e.g.*, 15 U.S.C. §§ 57b-1(c)(2), (c)(6), (c)(7); 16 C.F.R. § 2.7. The CIDs were properly signed by a Commissioner as required by Section 20 of the FTC Act, here, Rohit Chopra. *See* Pet. Ex. 2 at 3; Pet. Ex. 3 at 3; *see also* 15 U.S.C. § 57b-1(i); 16 C.F.R. § 2.7(a). The CIDs were also properly served on Fully Accountable, via counsel, and on Sarah

Scava. See Pet. Ex. 1, ¶ 22; see also 15 U.S.C. §§ 57b-1(c)(8), (c)(9); 16 C.F.R. § 4.4(a)(3).

19. On October 5, 2018, Fully Accountable filed with the Commission a petition to limit or quash the CID it received. Pet. Ex. 4; Pet. Ex. 1, ¶ 26. That same day, Elevated Health, LLC, a non-party, filed with the Commission a petition to limit or quash the CID issued to Sarah Scava. Pet. Ex. 5; Pet. Ex. 1, ¶ 27. On November 19, 2018, the Commission issued an order that jointly denied both petitions and directed Sarah Scava to appear for testimony on November 29, 2018, and Fully Accountable to appear for testimony on November 30, 2018. Pet. Ex. 6; Pet. Ex. 1, ¶ 28.

20. On November 28, 2018, counsel for Fully Accountable and Sarah Scava informed the FTC that both had filed a “Petition to Enforce Petition to Quash or Limit” in *Fully Accountable I* seeking to quash the CIDs and that neither would appear “until the determination was made by the Court.” Pet. Ex. 7 at 1. The Commission is filing a response to that petition concurrently with the filing of this enforcement action.

21. The refusal by Fully Accountable and Sarah Scava to comply with the September 10, 2018, CIDs has materially impeded the Commission’s ongoing investigation. Pet. Ex. 1, ¶ 31.

Prayer For Relief

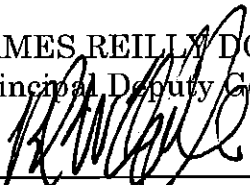
WHEREFORE, the Commission invokes the aid of this Court and prays for:

- a. Immediate issuance of an order, substantially in the form attached, directing Respondents Fully Accountable, LLC, and Sarah Scava to show cause why they should not comply in full with the Commission's CID, and setting forth a briefing schedule; and
- b. A prompt determination of this matter and entry of an order:
 - (i) Compelling Respondents to appear for testimony on the topics specified in the September 10, 2018, CIDs within 10 days of such order;
 - (ii) Granting such other and further relief as this Court deems just and proper.

Respectfully submitted,

ALDEN F. ABBOTT
General Counsel

JAMES REILLY DOLAN
Principal Deputy General Counsel


BURKE W. KAPPLER
Attorney

FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., N.W.
Washington, DC 20580
Tel.: (202) 326-2043
Fax: (202) 326-2477
Email: bkappler@ftc.gov

Dated: February 1, 2019.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

FEDERAL TRADE COMMISSION,

Petitioner,

v.

FULLY ACCOUNTABLE, LLC, and

SARAH SCAVA,

Respondents.

Misc. No.

5:19 MC 21

**FEDERAL TRADE COMMISSION'S MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF PETITION TO ENFORCE CIVIL
INVESTIGATIVE DEMANDS**

The Federal Trade Commission brought this proceeding to enforce civil investigative demands (CIDs) seeking testimony from Fully Accountable, LLC, and Sarah Scava, a former employee, as part of its ongoing investigation into whether Fully Accountable and related persons and entities may be engaged in acts or practices that violate the FTC Act.

This is not the first time the Commission has had to sue Fully Accountable to compel it to comply with process. Earlier this year, the Commission filed a similar

enforcement proceeding against the company after it failed to comply with a CID seeking documents and interrogatory responses. See *FTC v. Fully Accountable, LLC*, No. 5:18-mc-00054-SL (N.D. Ohio filed June 8, 2018) [hereinafter “*Fully Accountable I*”]. The Commission prevailed when, after proceedings before Magistrate Judge George Limbert, the Court issued an order enforcing the FTC’s CID and requiring Fully Accountable to produce all responsive information.

Fully Accountable’s production to the FTC in connection with the *Fully Accountable I* enforcement order contained numerous deficiencies and inconsistencies. After prompting the FTC, the company provided corrected or expanded supplemental responses to several specifications. To determine whether Fully Accountable had fully complied as directed, and to move the investigation forward, the Commission issued the two CIDs for testimony that are at issue in this proceeding.

Neither recipient has complied. Instead, both CIDs have been the subject of failed challenges. For Fully Accountable’s CID, the company itself petitioned the Commission to limit or quash (“petition to quash”) the CID. For Sarah Scava, a non-party called Elevated Health LLC filed a similar petition to quash. After detailed review, the Commission denied both petitions in a reasoned, 7-page opinion and ordered both Fully Accountable and Ms. Scava to comply.

They refused. Instead, Fully Accountable filed a “Petition to Enforce Petition to Quash or Limit” in *Fully Accountable I*. This filing raises a preenforcement challenge to the Commission’s CIDs, effectively asking the Court to overturn the FTC Memorandum of Points and Authorities in Support of Petition to Enforce Civil Investigative Demands

Commission and quash the CIDs. As the Commission explains in its opposition papers filed in that case, that challenge is procedurally improper and thus invalid on its face. Instead, the Court can decide these issues only as part of enforcement proceedings brought by the Commission, which this instant proceeding is.

Pending resolution of Fully Accountable's preenforcement challenge, Respondents state they will not comply with the CIDs. Because Respondents' refusal impedes the FTC investigation, the Commission therefore respectfully asks this Court to grant the Commission's enforcement petition and to direct Fully Accountable and Sarah Scava to appear and provide testimony on the specified topics within 10 days from the date of the Court's order.

I. Factual Background

A. The FTC's Investigation

This case arises from an ongoing FTC investigation and a related CID enforcement proceeding. *See Fully Accountable I.*¹ In 2017, the Commission commenced an investigation of Fully Accountable and related individuals and entities, examining "back office" services it provided to two groups of companies. Pet. Ex. 1, ¶¶ 3, 5-6. The first group, called the "Group A Entities," consisted of a collection of firms that marketed various health-related supplements online. *Id.*, ¶ 5. The second, called the "Group B Entities," consisted of a series of businesses that also engaged in online marketing of consumer products and that appeared to be related to each other and to Fully Accountable. *Id.*, ¶ 6. The Commission's

¹ The Commission is filing a notice of related case identifying this matter.

investigation focused on Fully Accountable's role as a provider of services to these groups in connection with their activities in marketing products and charging consumers. *Id.*, ¶¶ 5-6.

As part of this investigation, the Commission issued a CID to Fully Accountable on September 21, 2017. *Id.*, ¶ 7. That CID was authorized by no fewer than three separate Commission resolutions, including (1) a resolution addressing false or misleading advertising of health-related products; (2) a resolution addressing online marketing and sales; and (3) a resolution addressing charging consumers without authorization. *Id.*, ¶¶ 8-10; *Fully Accountable I*, Doc. 1-2 at 21-23.² In addition, the CID itself included a "Subject of Investigation" notice that summarized the authority afforded by these resolutions and applied it to Fully Accountable. This "Subject of Investigation" stated that the Commission was investigating

[w]hether Fully Accountable, the Group A Entities, or the Group B Entities . . . and related entities or individuals, have made or participated in making, in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization, in violation of Section 5 of the FTC Act, and whether Commission action to obtain monetary relief would be in the public interest.

Fully Accountable I, Doc. 1-2 at 7.

² Citations to docket entries are to page numbers in ECF-added headers.

B. The 2018 Enforcement Proceeding (*Fully Accountable I*)

Fully Accountable did not comply with the September 2017 CID, despite multiple conversations and exchanges of correspondence with staff, including a modification of the CID's deadlines at Fully Accountable's request. Although the company produced some limited interrogatory responses, it produced no documents whatsoever, refused to answer other interrogatories, and withheld information based on spurious claims of confidentiality. Pet. Ex. 1, ¶ 11; *Fully Accountable I*, Doc. 1-1, Att. 1.

Accordingly, on June 8, 2018, the Commission instituted in this Court a proceeding to enforce the CID. Pet. Ex. 1, ¶ 11; *Fully Accountable I*, Doc. 1 *et seq.* That proceeding resulted in an Order by Judge Lioi enforcing the CID and directing Fully Accountable to comply in full by August 23, 2018. *Fully Accountable I*, Doc. 14. Fully Accountable did not file any legal objection or opposition to the Commission's petition or to the Court's order at any point in that proceeding. Pet. Ex. 1, ¶ 12.

Fully Accountable produced additional information to the Commission as a result of the proceeding, and on August 23, 2018, provided a certificate claiming it had complied in full with the CID. Pet. Ex. 1, ¶ 13.

C. The 2018 CIDs For Testimony

FTC staff has identified several deficiencies and inconsistencies in this production. Pet. Ex. 1, ¶ 14.³ These include, but are not limited to, the following:

[REDACTED]

³ See the Declaration of Harris Senturia dated February 1, 2019, Pet. Ex. 1, for a more detailed discussion of the deficiencies and inconsistencies identified.

[REDACTED]

Faced with these and other deficiencies and inconsistencies, the FTC therefore needed to assess if Fully Accountable had indeed complied with the Court's Order. The FTC also sought to move the investigation forward by gathering additional evidence. To accomplish these aims, on September 10, 2018, the

FTC Memorandum of Points and Authorities in Support of Petition to Enforce Civil Investigative Demands

Commission issued two additional CIDs seeking only testimony – one to Fully Accountable for testimony from the entity and one to Sarah Scava, a person the FTC identified as a former employee of Fully Accountable, for testimony based on her personal knowledge. Pet. Ex. 1, ¶¶ 15, 19.

D. The Petitions To Limit Or Quash

Neither Fully Accountable nor Ms. Scava complied with these CIDs. Instead, on October 5, 2018, Fully Accountable filed with the Commission a petition to quash the CID it received. Pet. Ex. 4; Pet. Ex. 1, ¶ 26. That same day, Elevated Health, a non-party, filed with the Commission a similar petition to quash the CID directed to Ms. Scava. Pet. Ex. 5; Pet. Ex. 1, ¶ 27.

In its petition to quash, Fully Accountable first objected to CID specifications 6 and 7 asking for testimony about the company's relationship with Elevated Health and with Ms. Scava. Fully Accountable claimed that neither of these were included among Fully Accountable, the Group A Entities or Group B Entities, or persons related thereto, and thus the specifications called for irrelevant information outside of the scope of the investigation. Pet. Ex. 4 at 5-6. Fully Accountable then challenged specifications 3, 4, and 5 that called for, respectively, testimony regarding Fully Accountable's efforts to comply with the original 2017 CID, its efforts to prevent the disposal of information potentially responsive to that CID, and its records management systems, particularly for electronically-stored information. Fully Accountable claimed that it has already provided this information and that this was outside of the scope of the investigation and irrelevant. *Id.* at 7. Finally,

Fully Accountable claimed that specifications 1 and 2, which called for testimony about the interrogatories and documents it produced in response to the original CID, were burdensome because they were duplicative to its production. *Id.* at 8-9.

The CID to Sarah Scava included 13 specifications that sought testimony on subjects including, but not limited to, Ms. Scava's work with Fully Accountable; the formation and business of Elevated Health; the relationship between Fully Accountable and Elevated Health; the relationships between Elevated Health and several other relevant entities; the relationships among Ms. Scava, Elevated Health, and the principals and managers of Fully Accountable; and any work Ms. Scava performed for the Group A Entities and Group B Entities. Pet. Ex. 3 at 6-7.

Elevated Health's petition to quash this CID raised multiple objections to each specification. These claims can be grouped into three basic challenges: (1) the CID was unreasonable because Ms. Scava was no longer involved with Elevated Health; (2) the CID called for information about entities and individuals that were outside of the scope of the investigation and thus irrelevant; and (3) the CID's request for in-person testimony was burdensome and Ms. Scava should be permitted to respond through written answers to the Commission's questions. Pet. Ex. 5 at 10-17.

E. The Commission's Order

By order dated November 19, 2018, the Commission denied both petitions. Pet. Ex. 6; Pet. Ex. 1, ¶ 28. First, under the broad and relaxed standard for relevance in administrative investigations, the Commission rejected Fully

FTC Memorandum of Points and Authorities in Support of Petition to Enforce Civil Investigative Demands

Accountable's claim that the requests for testimony from the company about Sarah Scava and Elevated Health were irrelevant to the investigation. Pet. Ex. 6 at 4. As the Commission held, "Specifications 6 and 7 plainly and obviously relate to the FTC's investigation into Fully Accountable and its relationships with its clients, affiliates, and related companies and individuals." *Id.* The Commission also found no merit in Fully Accountable's objections to specifications 3, 4, and 5 exploring the company's response to the original CID and its document management processes. The Commission found these relevant to the investigation, "particular[ly] . . . where Fully Accountable's responses to the earlier CID made its own document management a key issue and required the Commission to seek judicial intervention." *Id.* at 4-5. The Commission continued, "Indeed, the procedures that a company has adopted – or failed to adopt – in documenting its business practices as well as its efforts to respond to process are relevant in *any* investigation." *Id.* at 5 (emphasis in original). Finally, the Commission rejected the claim that specifications 1 and 2 created an undue burden to Fully Accountable. It found that the company provided no such support for any claim of undue burden, and even so, the practical advantages to the Commission of obtaining such testimony outweighed any burden. *Id.* at 5-6.

Turning to Elevated Health's petition, the Commission determined that this petition—filed by an admitted non-party—was not properly before the Commission. Applying the relevant provision of the FTC Act, the Commission found no right by a non-recipient of process to file such a petition. *Id.* at 6. The Commission also held

FTC Memorandum of Points and Authorities in Support of Petition to Enforce Civil Investigative Demands

that Elevated Health's petition failed to comply with two of the Commission's rules of practice, either of which provided sufficient grounds to deny review. *Id.* Even so, the Commission reviewed the substance of Elevated Health's claims but found them to lack any merit. The Commission ruled that the topics in the CID to Ms. Scava were relevant to the investigation, that it was entirely proper to seek testimony from an entity's former employee, and finally, that the Commission was "well within its rights" to pursue testimony in lieu of written responses. *Id.* at 7.

Accordingly, the Commission denied both petitions. It directed Ms. Scava to appear for testimony on November 29, 2018, and Fully Accountable to appear the following day, November 30, 2018.⁴ *Id.* By email dated November 28, counsel for Ms. Scava and Fully Accountable informed FTC staff of its filing in *Fully Accountable I*, see Doc. 21, and further confirmed that neither would appear as ordered: "At this time we will not be scheduling a hearing for Sarah Scava or Fully Accountable until the determination is made by the Court." Pet. Ex. 7 at 1.

II. Argument

For the reasons shown below, the Commission is entitled to judicial enforcement of its CIDs. The Commission's CIDs unequivocally meet the test for enforcement of process established by the Supreme Court in cases such as *United States v. Morton Salt Co.*, 338 U.S. 632 (1950) and by the Sixth Circuit in cases such

⁴ The Commission's Order granted its staff the flexibility to modify the date, time, and location of testimony. Pet. Ex. 6 at 7. By email dated November 26, counsel for Fully Accountable and Sarah Scava requested modifications to the dates. Commission staff immediately agreed to work on negotiating new dates, to no avail. Pet. Ex. 1, ¶ 29; Pet. Ex. 7 at 1-2.

as *Doe v. United States*, 253 F.3d 256 (6th Cir. 2001). None of the claims raised by Fully Accountable or non-party Elevated Health call into question the Commission's order or provide any basis to deny enforcement. Accordingly, this Court should grant the Commission's petition to enforce the CIDs and enter an order requiring Fully Accountable and Ms. Scava to appear and provide testimony on the specified topics within 10 days. See 15 U.S.C. § 57b-1(h)

A. The Standards For Enforcement Of Agency Process Require Enforcement Of The FTC's 2018 CIDs.

"[A] district court's role in the enforcement of an administrative subpoena is a limited one." *United States v. Markwood*, 48 F.3d 969, 976-77 (6th Cir. 1995) (discussing, *inter alia*, *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 209 (1946) and *United States v. Morton Salt Co.*, 338 U.S. 632, 652-53 (1950)). "[W]hile the court's function is 'neither minor nor ministerial,' the scope of the issues which may be litigated in an enforcement proceeding must be narrow, because of the important governmental interest in the expeditious investigation of possible unlawful activity." *Markwood*, 48 F.3d at 979 (quoting *FTC v. Texaco, Inc.*, 555 F.2d 862, 872-73 (D.C. Cir. 1977) (*en banc*)) (citations omitted); accord *Doe v. United States*, 253 F.3d 256, 262-63 (6th Cir. 2001); *FTC v. Winters Nat'l Bank & Trust Co.*, 601 F.2d 395, 403 (6th Cir. 1979) (noting "the strong policy upholding the validity of the exercise of" the FTC's subpoena powers).

Thus, a district court must enforce agency investigative process so long as the inquiry "is within the authority of the agency, the demand is not too indefinite and

the information sought is reasonably relevant.’ In other words, the agency request must be reasonable.” See *Doe*, 253 F.3d at 263 (quoting *Morton Salt*, 338 U.S. at 652-53) (internal quotation marks omitted); accord *Winters Nat’l Bank*, 601 F.2d at 398.

The CIDs at issue satisfy all the standards governing enforcement of FTC compulsory process. They are well within the Commission’s authority, were properly issued, seek information relevant to the Commission’s investigation, and are neither indefinite nor unreasonable.

1. The CIDs Are Within The Commission’s Authority.

The Commission lawfully and properly issued the CIDs at issue as part of an investigation into whether Fully Accountable and associated entities and individuals have violated the FTC Act. The Commission issued the CIDs under Section 20 of the FTC Act, 15 U.S.C. § 57b-1, which authorizes the Commission to issue CIDs “[w]henver the Commission has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to unfair or deceptive acts or practices.” 15 U.S.C. § 57b-1(c)(1). The Commission acted under valid agency resolutions authorizing the issuance of compulsory process to investigate the very types of conduct at issue here. Pet. Ex. 1, ¶¶ 8-10, 21. Finally, the Commission issued and served the CIDs consistent with all governing requirements. *Id.* at 22; see also 15 U.S.C. §§ 57b-1(c)(2), (c)(6), (c)(7), (c)(8), (c)(9); 16 C.F.R. §§ 2.7, 4.4(a)(3).

2. The Information Sought Is Relevant To The Commission's Investigation.

The purpose of an FTC investigation is to learn whether there is reason to believe that the law has been, or is being, violated and, if so, whether the issuance of a complaint would be in the public interest. Indeed, the FTC “can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.” *Texaco*, 555 F.2d at 872 (quoting *Morton Salt*, 338 U.S. at 642-43). A CID is not limited to seeking information necessary to prove specific charges; to the contrary, a CID is held to a more “relaxed” standard and may call for documents and information that are relevant “to the investigation”— a boundary that may be broadly and “generally” defined by the agency. *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992).

The resolutions in this case are consistent with other FTC resolutions that provide a general description of the conduct at issue against which to measure relevance. *See id.* at 1088, 1090 (finding sufficient for relevance purposes a resolution authorizing investigation of “false or misleading representations made in connection with the advertising, offering for sale and sale of services related to the promotion of inventions or ideas.”)⁵ Collectively, they enable the Commission to use

⁵ *Accord FTC v. Carter*, 636 F.2d 781, 784, 787-88 (D.C. Cir. 1980) (finding sufficient a resolution authorizing investigation of “unfair or deceptive acts or practices . . . in the advertising, promotion, offering for sale, sale, or distribution of cigarettes”); *Texaco*, 555 F.2d at 868, 874-76 & n.26 (finding sufficient a resolution authorizing investigation of reporting of natural gas reserves in southern Louisiana as well as the conduct “relating to the exploration and development, production, or

process to investigate false or misleading advertising, online marketing, and unfair charging of consumers without authorization. Pet. Ex. 1, ¶ 8-10; Pet. Ex. 2 at 9-11; Pet. Ex. 3 at 10-12. Further, each of the resolutions provides for the issuance of process to “unnamed persons, partnerships, corporations,” a phrase the Commission uses to empower staff to investigate targets whose identities may not be known at the outset of an investigation or who may be identified during the course of an investigation. Pet. Ex. 2 at 9-11; Pet. Ex. 3 at 10-12.

The Commission’s authority and the scope of the investigation as it applied to Fully Accountable was then summarized in a “Subject of Investigation” statement provided in each CID. That statement informed Fully Accountable and Ms. Scava that the Commission was investigating “[w]hether Fully Accountable, the Group A Entities, or the Group B Entities . . . *and related entities or individuals*” have engaged in conduct in violation of Sections 5 or 12 of the FTC Act. Pet. Ex. 2 at 5; Pet. Ex. 3 at 5 (emphasis added).

The information sought by the CIDs is directly relevant to the three investigational resolutions and thus to the Commission’s investigation. For example, specifications 6 and 7 in the CID to Fully Accountable seeking information about the company’s relationships with Ms. Scava or Elevated Health plainly relate to the investigation of “related entities or individuals,” in the words of the Subject of Investigation, or the “unnamed persons, partnerships, or corporations” described in

marketing of natural gas, petroleum, and petroleum products, and other fossil fuels”).

each of the resolutions. Pet. Ex. 1, ¶ 18. The remaining specifications in that CID also relate “to the investigation” because they explore whether Fully Accountable complied sufficiently with both the Commission’s original CID and this Court’s order by producing the information requested, or whether the company failed to produce or preserve potentially responsive information. Pet. Ex. 1, ¶ 17. Indeed, as the Commission held, information about a party’s compliance with document production and preservation obligations would be relevant to *any* investigation. Pet. Ex. 6 at 5.

The CID to Ms. Scava is similarly relevant to the present investigation. The various specifications in that CID explore Ms. Scava’s knowledge about Fully Accountable and Elevated Health and the relationships between and among Ms. Scava, these entities, and other companies and individuals connected to Fully Accountable. Pet. Ex. 1, ¶ 20. As such, these plainly relate to the “Subject of Investigation” and the three authorizing resolutions.

3. The CIDs Are Neither Indefinite Nor Unreasonable.

A CID is sufficiently definite when it describes the required information such “that a person can in good faith understand which documents must be produced.” *RTC v. Greif*, 906 F. Supp. 1446, 1452 (D. Kan. 1995) (citing *In re Grand Jury Proceedings*, 601 F.2d 162 (5th Cir.1979)); *cf.* 15 U.S.C. § 57b-1(c)(3)(A) (FTC CIDs for documents must identify the material to be produced “with such definiteness and certainty as to permit such material to be fairly identified.”). The CIDs here

meet this definition because all of their specifications and definitions are plainly expressed and easily understandable. *Cf.* Pet. Ex. 2 at 6; Pet. Ex. 3 at 6-7.

The CIDs are also reasonable. Typically, reasonableness in this context refers to providing a reasonable time to respond. *See* 15 U.S.C. § 57b-1(c)(3)(B). Here, the CIDs were issued on September 10, 2018 with a return dates of October 11 (for Ms. Scava) and October 12 (for Fully Accountable), thus providing more than 30 days to prepare and respond. Pet. Ex. 2 at 3; Pet. Ex. 3 at 3. FTC staff further attempted to accommodate both recipients by communicating their counsel to discuss dates and times for testimony. Pet. Ex. 1, ¶¶ 23-25. Indeed, in response to an expressed concern that Ms. Scava's appearance for testimony was inconvenient, FTC staff offered to conduct the hearing on a Saturday and at a location closer to Ms. Scava. Pet. Ex. 1, ¶ 25. Ms. Scava rejected this offer.

* * *

For these reasons alone, this Court can and should enforce the Commission's CIDs. *See United States v. Morton Salt Co.*, 338 U.S. 632, 652-53 (1950)); *Doe v. United States*, 253 F.3d 256, 262-63 (6th Cir. 2001).

B. Fully Accountable Has Improperly Withheld Responsive Information.

As the Commission already concluded, Fully Accountable's excuses for its failure to appear and provide the requested testimony are meritless. These fall into three categories: that specifications 6 and 7 call for information outside of the scope of the Commission's investigation; that specifications 3, 4, and 5 are duplicative and

also call for irrelevant information; and that specifications 1 and 2 are duplicative and therefore unduly burdensome. Fully Accountable is wrong on each count for the reasons we discuss below.

1. Specifications 6 And 7 Seek Relevant Information Within The Scope Of The Investigation.

As discussed above, the standard for assessing relevance in an administrative investigation is “general[],” “relaxed,” and more flexible than in civil litigation. A request for information need only relate “to the investigation” to be sufficiently relevant. *Invention Submission Corp.*, 965 F.2d at 1090.

Fully Accountable’s claims that specifications 6 and 7 are irrelevant and outside of the scope of the FTC’s investigation are incorrect. Pet. Ex. 4 at 5-6. These specifications, which ask Fully Accountable to testify about its relationships with Elevated Health and Ms. Scava, plainly relate “to the investigation.” Pet. Ex. 1, ¶ 18. As discussed in the “Subject of Investigation” statement included with the CID, the FTC’s investigation extends to not only the Group A Entities and Group B Entities, but also to “related entities and individuals.” Pet. Ex. 2 at 5-6. Identifying such “related entities and individuals”—and whether they include Elevated Health, Ms. Scava, or some other as-yet-unidentified person or corporation—thus falls well within the scope of the investigation. It also falls well within the supporting investigational resolutions, each of which authorizes process to determine whether “unnamed persons, partnerships, or corporations” may have engaged in various potential law violations. *See, e.g.*, Pet. Ex. 2 at 9-11.

2. Specifications 3, 4, And 5 Are Within The Scope Of The Investigation And Not Duplicative.

Specification 3 asks Fully Accountable to testify about the efforts it made to respond to the Commission's original 2017 CID. Specification 4 asks the company for information about its disposal of information potentially responsive to that CID. And specification 5 asks the company for testimony about its records management systems. Thus these specifications collectively seek to assess Fully Accountable's compliance with the Commission's original 2017 CID as well as this Court's Order enforcing that CID. Pet. Ex. 1, ¶ 17. Fully Accountable resists these specifications, claiming that they call for information outside the scope of the investigation and that the company has already produced this information in its responses to the original 2017 CID. Pet. Ex. 4 at 7. Fully Accountable also objects particularly to specification 5, which it claims impermissibly investigates its "business practices as a whole." *Id.*

These objections are without merit. These specifications relate directly "to the investigation" and thus are sufficiently relevant. The facts that a company may not have conducted a diligent search in response to receiving a CID, that it disposed of potentially responsive information, or that it lacks a records management system capable of identifying responsive information all bear on the fundamental question of whether the company has provided the information deemed necessary by the Commission for its inquiry. That is why the Commission ruled that such information would be relevant "to *any* investigation." Pet. Ex. 6 at 5.

Nor does Fully Accountable's document production render testimony from the entity on the same or similar issues duplicative. The use of testimony to explore the meaning of a document produced is well established and widely accepted. Indeed, in a similar context, one court rejected a claim like Fully Accountable's here:

Similarly, the availability of an informative document, specifically the quality control manual, is not the equivalent of corporate testimony regarding the subject matter of that document. To illustrate, a document can be given differing significance and meaning by different witnesses, but the testimony of a [designated witness] binds the corporation to the explanation given. Moreover, the document at issue here, a manual, would only provide information as to instructions, guidelines, and policies, and not, for example, information about how those instructions, guidelines, and policies have been implemented. *Additional corporate testimony on M & T's quality control process, therefore, would not be duplicative of previous discovery.*

United States ex rel. Fago v. M&T Mort. Corp., 235 F.R.D. 11, 24 (D.D.C. 2006) (citing *In re Vitamins Antitrust Litig.*, 216 F.R.D. 168, 174 (D.D.C. 2003)) (citations omitted; emphasis added).⁶ *Accord Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989) ("Because of its nature, the deposition process provides a means to obtain more complete information and is, therefore, favored."). This same reasoning applies here; indeed, the ability to seek testimony to further develop and understand a document production is precisely what the Commission meant in its opinion when it stated that staff should be permitted "latitude in

⁶ The cited case interprets Fed. R. Civ. P. 30(b)(6), which provides for deposition of an entity in civil litigation. The CID issued to Fully Accountable similarly sought testimony from the entity pursuant to the Commission's own rules of practice for investigations, here, rule 2.7(h). See 16 C.F.R. § 2.7(h).

taking steps to explore relevant topics by issuing supplemental process and taking testimony.” Pet. Ex. 6 at 4.

Finally, Fully Accountable’s claim that the Commission may not investigate its business practices as a whole because they are outside of the scope of investigation is unsupported and nonsensical. Pet. Ex. 4 at 7. To the extent an enterprise-wide practice of Fully Accountable relates “to the investigation,” it is relevant and thus subject to compulsory process. *Invention Submission*, 965 F.2d at 1090. The Commission frequently investigates enterprise-wide practices; indeed, each of the Commission’s resolutions in this case identify a potential enterprise-wide activity as a basis for an investigation.

3. Specifications 1 And 2 Are Not Unduly Burdensome.

Finally, Fully Accountable objects to specifications 1 and 2 as unduly burdensome. These specifications call for testimony about, respectively, the company’s interrogatory answers and documents produced in response to the original 2017 CID. Fully Accountable claims this it is unreasonable to require the company to reproduce the same information in a different format. Pet. Ex. 4 at 8-9.

This objection is both unsupported and legally incorrect. As the Commission recognized, “the standard for establishing that a CID imposes an *undue* burden on the recipient is a high one.” Pet. Ex. 6 at 5 (emphasis in original). A CID recipient must show that the CID “threatens to unduly disrupt or seriously hinder” its normal business operations. *FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir, 1977) (*en banc*); accord *EEOC v. Maryland Cup Corp.*, 785 F.2d 471, 479 (4th Cir. 1986).

Fully Accountable's claim of burden presents only the conclusory assertion that complying with the CID will require its principals to take time away from their "day to day work." Pet. Ex. 4 at 9. This is not enough. *See, e.g., Texaco*, 555 F.2d at 882 (acknowledging that every CID presents some degree of burden). Indeed, the burden of providing this testimony should be modest, considering that Fully Accountable has already undertaken to gather and produce the underlying documents and interrogatory responses to the FTC. Nor would testimony about Fully Accountable's production of this information be duplicative. *See, e.g., M&T Mort. Corp.*, 235 F.R.D. at 24.

C. Sarah Scava Has Improperly Withheld Responsive Information.

Unlike Fully Accountable, Ms. Scava did not file a petition to limit or quash the CID she received. She has thus failed to exhaust her administrative remedies and waived any challenge she might raise to the CID before this Court. Even if the Court were inclined to review the challenges raised by Elevated Health, they lack merit and provide no basis for denying enforcement.

1. Sarah Scava Is The Correct CID Recipient.

The Commission issued a CID to Sarah Scava—not to Elevated Health—seeking her testimony on 13 specified topics. The fact that Ms. Scava was the designated recipient of process is evident from the first page of the CID, as well as the accompanying cover letter from the Commission's Secretary. Pet. Ex. 3 at 1-2, 3. While Elevated Health attempted to file a petition to limit or quash this CID, the

Commission found that was improper because Elevated Health had no such right under the FTC Act and because Elevated Health had not met and conferred with staff as required by multiple FTC rules of practice. *See* Pet. Ex. 6 at 6 (citing 15 U.S.C. 57b-1(f)(1); 16 C.F.R. §§ 2.7(k), 2.10(a)(2)).

In a recent filing to this Court, Ms. Scava now claims that Elevated Health's petition was filed with the Commission on her behalf "because Elevated Health was Sarah Scava's company up and through December 2017 and because service was received at Elevated's last known address, not Sarah Scava's address." *See Fully Accountable I*, Doc. 21 at 19. Ms. Scava further claims that the objections raised in the Elevated Health petition were made for her benefit. *Id.* At no time, however, has any evidence supporting this proxy relationship between Ms. Scava and Elevated Health ever been presented by either of them to the Commission. *See, e.g.*, Pet. Ex. 1, ¶ 27 (Sarah Scava's counsel "had not informed us that she was representing Elevated Health in any of our conversations"). This newly-raised claim also runs counter to the statements in the petition itself which asserted—repeatedly and incorrectly—that the CID had been issued to *Elevated Health*. *See, e.g.*, Pet. Ex. 5 at 3, 4, 5.

Counsel for Ms. Scava also claims that the Commission's denial of the petition challenging the CID to Ms. Scava was improper because Ms. Scava is a third-party entitled to file such a petition and because counsel sufficiently identified herself as representing Sarah Scava. *See Fully Accountable I*, Doc. 21 at 19; Doc. 21-7 at 3. These arguments rest on a number of mistaken premises. To be clear, the

FTC Memorandum of Points and Authorities in Support of Petition to Enforce Civil Investigative Demands

Commission denied the petition to quash from *Elevated Health* because *Elevated Health* was not the designated recipient of the CID—Ms. Scava was. Pet. Ex. 6 at 6. As discussed above, Ms. Scava did not file such a petition to quash. The Commission also denied the petition because *Elevated Health* failed to meet and confer the Commission’s rules. *Id.* In its ruling, the Commission expressly noted that counsel identified herself as representing Sarah Scava. *Id.* However, at no time did any attorney representing *Elevated Health* identify themselves as such to Commission staff. *Id.*; Pet Ex. 1, ¶ 27.

These contradictory statements amount to nothing more than a self-serving shell game and only underscore the Commission’s need for the specified testimony from Ms. Scava to untangle the relationships between and among these entities. They do not support any claim that Ms. Scava is not the actual CID recipient or that *Elevated Health* has any basis to object on her behalf.

2. Ms. Scava Waived Any Challenges To The CID By Failing To Raise Them Before The FTC.

Because Ms. Scava did not file a petition objecting to the CID, she has waived any challenge. It is a longstanding principle of law that a party must exhaust its administrative remedies before seeking relief in court. *McKart v. United States*, 395 U.S. 185, 193-95 (1965); *E.E.O.C. v. Cuzzens of Georgia, Inc.*, 608 F.2d 1062, 1063 (5th Cir. 1979) (“Generally, one who has neglected the exhaustion of available administrative remedies may not seek judicial relief.”). That principle applies fully to FTC compulsory process enforcement. *See, e.g., United States v. Morton Salt Co.*,

338 U.S. 632, 653-54 (1950); *American Motors Corp. v. FTC*, 601 F.2d 1329, 1332-37 (6th Cir. 1979); *FTC v. O'Connell Assocs., Inc.*, 828 F. Supp. 165, 168-70 (E.D.N.Y. 1993); *FTC v. Tracers Information Specialists, Inc.*, No. 8:16-mc-00018-VMC-TGW, 2016 WL 3896840, at *4 (M.D. Fla. June 10, 2016). The FTC has provided CID recipients with an administrative remedy to quash or narrow the request, *see* 16 C.F.R. § 2.10, and the failure to use that remedy thus waives any challenge to the CID. The “failure to comply with the administrative procedure provided by the statute and the implementing regulations bars . . . assertion of substantive objections to the CID in court.” *Tracers*, 2016 WL 3896840, at *4; *see also O'Connell Assocs., Inc.*, 828 F. Supp. at 170.

The petition to quash presented to Commission regarding the CID issued to Ms. Scava stated that it was filed by “Non-Party Elevated Health, LLC.” Pet. Ex. 5 at 1. Indeed, counsel’s cover letter asked the Commission to “accept this filing as Non-Party Elevated Health, LLC’s Petition to Quash or Limit” and then stated a second time that it enclosed a petition “for Elevated Health, LLC.” *Id.* At no point did that petition state that it was filed by or on behalf of Ms. Scava. Because Ms. Scava failed to exhaust her remedies before the Commission, she may not now assert any such objections as a defense in this CID enforcement proceeding.

3. None Of Elevated Health's Objections To The CID Have Merit.

Even if Ms. Scava could somehow establish that Elevated Health's petition was filed on her behalf, this would still be unavailing because none of the claims present any reason to deny enforcement of the CID.

In its petition to the Commission, Elevated Health raised a number of objections to each specification that boil down to three basic claims: (1) the CID is unreasonable because Ms. Scava is no longer involved with Elevated Health or Fully Accountable, *see, e.g.*, Pet. Ex. 5 at 8; (2) the CID is unreasonable because it seeks information about entities and individuals outside of the scope of the investigation, *see id.* at 9, 10, 12-13, 15, 17, 18; and (3) the CID's requests for testimony are unduly burdensome and Sarah Scava should be permitted to respond in writing. *See id.* at 11-16, 18.

The fact that Ms. Scava claims to be no longer involved with Elevated Health and Fully Accountable provides no basis to refuse enforcement. At best, this claim suggests that Ms. Scava lacks more recent relevant information but, in light of the generous relevance standard afforded the Commission at this stage, the Commission is certainly entitled to ascertain what Ms. Scava knows and the state of her relationship to the companies. This is particularly true considering counsel's admission that "Elevated Health was Sarah Scava's company up and through December 2017[.]" *see Fully Accountable I*, Doc. 21 at 19, a period during which she

was also employed by Fully Accountable and Fully Accountable was subject to the FTC's original 2017 CID.

Nor does the CID seek information about individuals or entities outside of the scope of the investigation. As discussed above, the investigation is not limited to the Group A Entities and Group B Entities, but to individuals and entities related to them and to Fully Accountable. Pet. Ex. 3 at 5-6. Identifying which individuals and entities those may be, along with their relationships to Fully Accountable, is critical "to the investigation," and thus is relevant. *Invention Submission Corp.* 965 F.2d at 1090.

Finally, the claim that Ms. Scava should be permitted to respond to the Commission's questions in written form is easily refuted. In similar situations, courts have rejected requests to provide written responses in lieu of depositions. *See Great American Ins. Co. of New York v. Vegas Constr. Co., Inc.*, 251 F.R.D. 534, 539 (D. Nev. 2008) (quoting *Marker*, 125 F.R.D. at 126). Nor is the FTC required to limit its investigation as Ms. Scava insists; to the contrary, the Commission has the discretion to deploy its investigational tools as it determines is necessary in the course of a given inquiry. *See, e.g., FTC v. Invention Submission Corp.*, No. MISC.89-272(RCL), 1991 WL 47104, at *3 n.23 (D.D.C. Feb. 14, 1991) ("Agencies have discretion to fashion how investigations are conducted."), *aff'd*, 965 F.2d 1086 (D.C. Cir. 1992). Moreover, given the deficiencies in Fully Accountable's original interrogatory responses—deficiencies that already led the Commission to seek

judicial enforcement once before—the Commission is well within its rights to decline to proceed by written answer now.

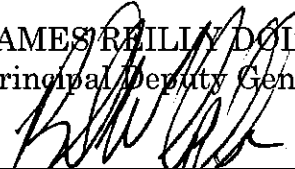
III. Conclusion

The Commission's CIDs meet the standards for enforcement of compulsory process. None of the claims asserted by Fully Accountable or Ms. Scava or any other party present any reason to deny enforcement. Thus, the Court should grant the Commission's petition to enforce the CIDs and enter an order requiring Fully Accountable, LLC, and Sarah Scava to appear and provide testimony on the specified topics within 10 days.

Respectfully submitted,

ALDEN F. ABBOTT
General Counsel

JAMES REILLY DOLAN
Principal Deputy General Counsel



BURKE W. KAPPLER
Attorney

FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., N.W.
Washington, DC 20580
Tel.: (202) 326-2043
Fax: (202) 326-2477
Email: bkappler@ftc.gov

Dated: February 1, 2019

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

FEDERAL TRADE COMMISSION,

Petitioner,

v.

FULLY ACCOUNTABLE, LLC, and

SARAH SCAVA,

Respondents.

Misc. No.

5:19 MC 21 10

[PROPOSED] ORDER TO SHOW CAUSE

Petitioner, the Federal Trade Commission (FTC or Commission), under the authority conferred by Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1 and Fed. R. Civ. P. 81(a)(5), has invoked the aid of this Court for an order requiring Respondents, Fully Accountable, LLC, and Sarah Scava, to comply with civil investigative demands (CIDs), issued to them on September 10, 2018, in aid of an FTC law enforcement investigation.

The Court has considered the Federal Trade Commission's Petition to Enforce Civil Investigative Demands and the papers filed in support thereof; and,

appearing to the Court that Petitioner has shown good cause for the entry of such order, it is hereby

ORDERED that Respondents Fully Accountable, LLC, and Sarah Scava appear at _____ a.m. / p.m. on the _____ day of _____, 2019, in Courtroom No. _____ of the United States Courthouse for the Northern District of Ohio, Eastern Division¹ located in ___ Akron / ___ Cleveland / ___ Youngstown, Ohio, and show cause, if any there be, why this Court should not grant said Petition and enter an Order enforcing the CIDs. Unless the Court determines otherwise, notwithstanding the filing or pendency of any procedural or other motions, all issues raised by the Petition and supporting papers, and any opposition to the Petition, will be considered at the hearing on the Petition, and the allegations of the Petition shall be deemed admitted unless controverted by a specific factual showing; and

IT IS FURTHER ORDERED that, if either Respondent believes it to be necessary for the Court to hear live testimony, it must file an affidavit reflecting such testimony (or if a proposed witness is not available to provide such an

¹ The Eastern Division includes three courthouses at the following addresses:

- (1) Akron: John F. Seiberling Federal Building and U.S. Courthouse, 2 South Main Street, Akron, Ohio 44308;
- (2) Cleveland: Carl B. Stokes U.S. Court House, 801 West Superior Avenue, Cleveland, Ohio 44113;
- (3) Youngstown: Thomas D. Lambros Federal Building and U.S. Courthouse, 125 Market Street, Youngstown, Ohio 44503.

Respondents must appear at the courthouse indicated above.

affidavit, a specific description of the witness's proposed testimony) and explain why Respondent believes that live testimony is required; and

IT IS FURTHER ORDERED that, if either Respondent intends to file pleadings, affidavits, exhibits, motions or other papers in opposition to said Petition or to the entry of the Order requested therein, such papers must be filed with the Court and received by Petitioner's counsel on the _____ day of _____, 2019. Such submission shall include, in the case of any affidavits or exhibits not previously submitted, or objections not previously made to the Federal Trade Commission, an explanation as to why such objections were not made or such papers or information not submitted to the Commission. Any reply by Petitioner shall be filed with the Court and received by Respondents on the _____ day of _____, 2019; and

IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 81(a)(5) and 26(a)(1)(B)(v), this is a summary proceeding and no party shall be entitled to discovery without further order of the Court upon a specific showing of need; and that the dates for a hearing and the filing of papers established by this Order shall not be altered without prior order of the Court upon good cause shown; and

IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 81(a)(5) and its 1946 Advisory Committee note, a copy of this Order and copies of said Petition and exhibits filed therewith, shall be served forthwith by Petitioner upon Respondents and/or their counsel, using as expeditious means as practicable.

SO ORDERED, this ____ day of _____, 2018.

UNITED STATES DISTRICT JUDGE

Petition Exhibit 1

Declaration of Harris A. Senturia

(Feb. 1, 2019)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

FEDERAL TRADE COMMISSION,

Petitioner,

v.

FULLY ACCOUNTABLE, LLC, and

SARAH SCAVA,

Respondents.

Misc. No.

DECLARATION OF HARRIS A. SENTURIA

Pursuant to 28 U.S.C. § 1746, I declare as follows:

1. I am an attorney employed by the U.S. Federal Trade Commission (FTC or Commission). My business address is Federal Trade Commission, East Central Region, 1111 Superior Avenue, Suite 200, Cleveland, Ohio 44114. I am assigned to the FTC's investigation into Fully Accountable, LLC (FTC File No. 1723195). This investigation seeks to determine if Fully Accountable, certain entities with which it did business, and related entities and individuals, have engaged in deceptive or unfair practices in connection with internet sales of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. §§ 45, 52. The investigation also seeks to determine whether Fully Accountable and these entities have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any

respect, for consumer products without consumers' authorization, in violation of Section 5 of the FTC Act.

2. I am authorized to execute a declaration verifying the facts that are set forth in the Federal Trade Commission's Petition to Enforce Civil Investigative Demands. I have read the petition and exhibits thereto (hereinafter referred to as Pet. Ex.), and verify that Pet. Ex. 2 through Pet. Ex. 7 are true and correct copies of the original documents. The facts set forth herein are based on my personal knowledge or information made known to me in the course of my official duties.

3. Fully Accountable is an Ohio limited liability company with its principal place of business at 2680 West Market Street, Fairlawn, Ohio 44333. Fully Accountable markets itself as a "Back Office Solution" specializing in providing services to internet marketers. These services include compiling and reporting financial statistics, accounting and bookkeeping, business consulting, and assisting its clients to obtain and manage credit card payment processing accounts.

4. Sarah Scava is an individual whose last known address is in Wadsworth, Ohio. Ms. Scava was formerly employed by Fully Accountable. During her time at Fully Accountable, Ms. Scava established and was involved with a company called Elevated Health, LLC.

5. In 2017, the FTC opened an investigation into Fully Accountable after learning that among Fully Accountable's clients are a group of entities that have marketed online several dietary supplements, including some that purportedly reduce cognitive decline and related diseases and conditions. The FTC also learned

that some consumers complained about these entities' marketing practices, and claimed that the entities made unauthorized charges to consumers' credit cards. Consistent with the terms of the CIDs, I will refer to this group as the "Group A Entities."

6. The FTC also learned that Fully Accountable itself was closely related to a second group of entities that marketed dietary supplements and skin creams online and that were the subject of numerous consumer complaints regarding their marketing practices, including unauthorized charges to consumers' credit cards. Consistent with the terms of the CIDs, I will refer to this group as the "Group B Entities."

7. The Commission issued a CID to Fully Accountable on September 21, 2017 (2017 CID), under the authority of three FTC resolutions, each of which authorizes the use of compulsory process to investigate the conduct at issue.

8. The first resolution, File No. 0023191, authorizes Commission staff to use compulsory process to investigate whether entities are "directly or indirectly" "misrepresenting the safety or efficacy" of "dietary supplements, foods, drugs devices, or any other product intended to provide a health benefit" on the grounds that such conduct could amount to "unfair or deceptive acts or practices or . . . false advertising . . . in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52."

9. The second resolution, File No. 9923259, authorizes the use of compulsory process to investigate whether entities are engaging in, among other

actions, “deceptive or unfair practices involving Internet-related goods or services.” If so, such conduct could violate Sections 5 or 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52.

10. The third resolution, File No. 082-3247, authorizes the use of compulsory process to determine if entities “have engaged in or are engaging in deceptive or unfair practices . . . in connection with making unauthorized charges or debits to consumers’ accounts.” If so, this conduct could violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and/or the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.*

11. Fully Accountable failed to comply with the 2017 CID. Although Fully Accountable submitted a notarized Certificate of Compliance, the company in fact provided no documents and only partial or evasive responses to the few answered interrogatories. As a result, on June 8, 2018, the Commission commenced an action in the Northern District of Ohio to enforce the 2017 CID. *FTC v. Fully Accountable, LLC*, 5:18-mc-00054-SL (N.D. Ohio filed June 8, 2018) [hereinafter *Fully Accountable I*].

12. Fully Accountable did not file an opposition to the FTC’s Petition to Enforce Civil Investigative Demand; instead the company only filed a Motion for Permanent Seal on June 22, 2018. *Fully Accountable I*, Doc. 8. The Court denied that motion on July 5, 2018. *Id.*, Doc. 11. While the case was pending, Fully Accountable made multiple additional and partial productions of information. On

August 13, 2018, the district court issued an order requiring Fully Accountable to comply fully within 10 days. *Id.*, Doc. 14.

13. On August 17, 2018, Fully Accountable made what it claimed was its final production in response to the 2017 CID. On August 23, 2018, Fully Accountable sent a second Certificate of Compliance, certifying that “all of the documents, information and tangible things” required by the CID had been submitted.

14. As my colleagues and I reviewed the supplemental responses, we observed several deficiencies and inconsistencies, with a few non-exhaustive examples as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. To explore these and other deficiencies and inconsistencies, to determine whether Fully Accountable had complied with the Court's Order, and to obtain more information in support of the investigation, the Commission issued a second CID to Fully Accountable on September 10, 2018 (2018 Fully Accountable CID). Pet. Ex. 2 at 3. The 2018 Fully Accountable CID seeks only testimony, through what the FTC refers to as an Investigational Hearing. Due to the length of time Fully Accountable had taken to respond to the 2017 CID with written information and documents, and the many questions left unanswered (or generated) by the written responses and documents after nearly a year and after the enforcement proceeding, we concluded that testimony would be the most direct and efficient way to move the investigation forward quickly.

16. The 2018 Fully Accountable CID seeks testimony from that entity on seven topics. These topics included the company's responses to the 2017 CID, the company's document preservation efforts, the company's records management system, and its relationships to Sarah Scava and an entity called Elevated Health, LLC. Pet. Ex. 2 at 6.

17. Testimony about the company's response to the 2017 CID, its document preservation, and its records management system are relevant to our investigation because that information provides context and helps us understand Fully Accountable's responses to date. Testimony in these areas will also go to show whether Fully Accountable has failed to produce or preserve information that is responsive to the CID.

18. Elevated Health is an Ohio limited liability company formed by Sarah Scava in December 2016. Based on our investigation, the company (like the Group A and Group B Entities) appears to be involved in marketing products to consumers over the internet. Recent public filings indicate that Sarah Scava was involved with Elevated Health while she was a Fully Accountable employee and also that Elevated Health has been a "client" of Fully Accountable. *See* Pet. Ex. 4 at 6; Pet. Ex. 5 at 4, 7, 8; *Fully Accountable I*, Doc. 21 at 19.¹ In addition, Elevated Health has displayed on its website a business address that is the address of a property owned by the wife of former Fully Accountable CEO (and current CFO) Chris Giorgio. We therefore have substantial reason to explore the connections among Fully Accountable and its associated entities and individuals with Elevated Health, and to seek more information about Elevated Health's business.

19. The Commission issued a CID to Sarah Scava on September 10, 2018 (the 2018 Sarah Scava CID). Pet. Ex. 3 at 3. The 2018 Sarah Scava CID also seeks only testimony through an Investigational Hearing. Again, given the timeline of the

¹ Citations to docket entries are to page numbers in ECF-added headers.

investigation, and the difficulty in obtaining written responses and documents related to Fully Accountable, we concluded that testimony would be the most direct and efficient way to elicit information from Sarah Scava.

20. The 2018 Sarah Scava CID calls for her personal testimony on 13 topics, including her work with Fully Accountable, her involvement with Elevated Health and its business, and the relationships among Sarah Scava, Elevated Health, and other entities and individuals at issue in the investigation. Pet. Ex. 3 at 6-7. Like the CID to Fully Accountable, the information sought by this CID is relevant to the investigation because it provides further information about the relationships between and among Fully Accountable and related entities and individuals.

21. Both of the 2018 CIDs were authorized under the three resolutions described above. Pet. Ex. 2 at 9-11; Pet. Ex. 3 at 10-12. Further, the CIDs both contained a “Subject of Investigation” statement that summarized this authority and applied it specifically to the Fully Accountable investigation. That statement provided that the Commission was investigating

[w]hether Fully Accountable, the Group A Entities, or the Group B Entities . . . and related entities or individuals, have made or participated in making, in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers’ authorization, in violation of Section 5 of the FTC Act, and whether Commission action to obtain monetary relief would be in the public interest.

Pet. Ex. 2 at 5-6; Pet. Ex. 3 at 5-6

22. In issuing the 2018 CIDs, the Commission followed all the procedures and requirements of the FTC Act and its Rules of Practice and Procedure. *See, e.g.*, 15 U.S.C. §§ 57b-1(c)(2), (c)(6), (c)(7); 16 C.F.R. § 2.7. The CIDs were properly signed by Commissioner Rohit Chopra pursuant to the resolutions as required by Section 20 of the FTC Act. *See* Pet. Ex. 2 at 3; Pet. Ex. 3 at 3; *see also* 15 U.S.C. § 57b-1(i); 16 C.F.R. § 2.7(a). The FTC served the CIDs on Fully Accountable and on Sarah Scava on September 11, 2018. *See* 15 U.S.C. §§ 57b-1(c)(8), (c)(9); 16 C.F.R. §4.4(a)(3). The 2018 Fully Accountable CID was delivered and signed for by an individual named “Scava” on September 13, 2018. The 2018 Sarah Scava CID was delivered and signed for by an individual named “Scava” on September 14, 2018.

23. Following service of the CIDs, I had a call with Fully Accountable’s counsel, Rachel Scava, on September 24, 2018, to discuss dates for Fully Accountable’s testimony. She informed me that Fully Accountable intended to amend its responses to the 2017 CID which it had previously certified as complete. Following this phone call, Rachel Scava provided a supplemental response that now identified Sarah Scava as a former Fully Accountable employee. Neither in her emails nor in our discussion did Rachel Scava mention the 2018 Sarah Scava CID.

24. On September 27, 2018, I received an email from Rachel Scava indicating that she had received the 2018 Sarah Scava CID from Sarah Scava. Rachel Scava also confirmed that she was representing Sarah Scava for purposes of the CID issued to Sarah. In a call on September 28, 2018, Rachel Scava expressed that Sarah Scava was not available to appear as she had new employment and

could not take time off work. Rachel Scava requested that the Commission modify the 2018 Sarah Scava CID to require interrogatory responses only, in lieu of testimony.

25. During follow-up calls regarding the 2018 Sarah Scava CID, we offered to negotiate a time for the testimony during non-business hours on a Saturday and at a location convenient to Sarah Scava's home or work. In response, however, Rachel Scava informed us that her client would not appear for testimony at all, regardless of our offered accommodations, because sitting for testimony would be unduly burdensome. Rachel Scava continued to request that the Commission modify the 2018 Sarah Scava CID to require interrogatory responses only, and no testimony. Given our experience in the course of the investigation, this struck us as highly inefficient and we could not accept this modification.

26. On October 5, 2018, in the midst of these discussions, Fully Accountable filed with the Commission a petition to limit or quash the 2018 Fully Accountable CID for testimony, claiming that the CID sought information irrelevant to and outside of the scope of the investigation. Fully Accountable also claimed that the CID for testimony was unduly burdensome. Pet. Ex. 4.

27. That same day, Elevated Health (not Sarah Scava), a non-party, also filed with the Commission a petition to limit or quash the 2018 Sarah Scava CID on various asserted grounds, including that the CID was unreasonable because Sarah Scava was no longer involved with Elevated Health, that the CID sought information outside of the scope of the investigation, and that Sarah Scava should

be permitted to provide written responses in lieu of testimony. Pet. Ex. 5. The filing by Elevated Health (rather than Sarah Scava) surprised us, as Rachel Scava had not informed us that she was representing Elevated Health in any of our conversations.

28. On November 19, 2018, the Commission issued a seven-page opinion denying both petitions to limit or quash. Pet. Ex. 6. Accordingly, the Commission ordered Sarah Scava to appear for testimony on November 29, 2018 and Fully Accountable to appear for testimony on November 30, 2018, or at the time, date, and location as Commission staff may determine. Pet. Ex. 6 at 7.

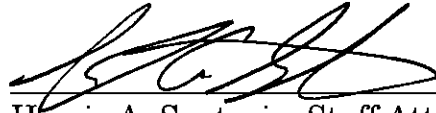
29. On November 26, 2018, I emailed Rachel Scava to confirm she had received notice that the petitions had been denied. She informed us that she was not available on the dates as set in the Commission's order, and requested that we suggest alternative dates. I replied with suggested alternate dates. Pet. Ex. 7 at 2.

30. On November 28, 2018, Fully Accountable filed a Petition to Enforce Petition to Quash and Limit. *Fully Accountable I*, Doc. 21. Shortly after the November 28, 2018 filing, Rachel Scava informed me by email that neither Fully Accountable nor Sarah Scava would schedule a hearing until a determination on that Petition was made by the Court. Pet. Ex. 7 at 1.

31. Fully Accountable's and Sarah Scava's refusal to comply with the Commission's CIDs have burdened, delayed, and hindered the Commission's investigation.

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

Executed on February 1, 2019

A handwritten signature in black ink, appearing to read "H.A. Senturia", written over a horizontal line.

Harris A. Senturia, Staff Attorney
East Central Region Office
Federal Trade Commission

Petition Exhibit 2

Civil Investigative Demand to Fully
Accountable, LLC

(Sept. 10, 2018)



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

Office of the Secretary

SEP 11 2018

Via Federal Express

Rachel Scava
Chief Operating Officer and General Counsel
Fully Accountable, LLC
2680 West Market Street
Fairlawn, OH 44333

FTC Matter No. 1723195

Dear Ms. Scava:

The Federal Trade Commission ("FTC") has issued the attached Civil Investigative Demand ("CID") asking for testimony as part of a non-public investigation. Our purpose is to determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the attached CID, and related entities and individuals, have made or participated in making, in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization, in violation of Section 5 of the FTC Act, and whether Commission action to obtain monetary relief would be in the public interest. Please read the attached documents carefully. Here are a few important points we would like to highlight:


1. **Contact FTC counsel, Harris Senturia (216-263-3420; hsenturia@ftc.gov) as soon as possible to schedule an initial meeting to be held within 14 days.** You can meet in person or by phone to discuss any questions you have, including whether there are changes to how you comply with the CID that would reduce your cost or burden while still giving the FTC the information it needs. Please read the attached documents for more information about that meeting.
2. **You must continue to suspend any routine procedures for electronic or paper document destruction, and you must preserve all paper or electronic documents** that are in any way relevant to this investigation, even if you believe the documents are protected from discovery by privilege or some other reason.
3. **The FTC will use information you provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces.** We will not disclose the information under the Freedom of Information Act, 5 U.S.C. § 552. We may disclose the information in response to a valid request from Congress, or other civil or criminal federal, state, local, or foreign law enforcement agencies for their official law enforcement purposes. The FTC or other agencies may use and disclose

your response in any federal, state, or foreign civil or criminal proceeding, or if required to do so by law. However, we will not publicly disclose your information without giving you prior notice.

4. **Please read the attached documents closely.** They contain important information about where and when the company's designee must appear to give testimony.

Please contact FTC counsel as soon as possible to set up an initial meeting. We appreciate your cooperation.

Very truly yours,


Donald S. Clark
Secretary of the Commission



CIVIL INVESTIGATIVE DEMAND
Oral Testimony

| | |
|---|---|
| 1. TO FULLY ACCOUNTABLE LLC 2680 WEST MARKET STREET FAIRLAWN, OH 44333 | 2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION |
| | 2a. MATTER NUMBER 1723195 |


This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 6.

| | |
|--|--|
| 3. LOCATION OF HEARING 1111 Superior Avenue, Suite 200, Cleveland, OH 44114 | 4. YOUR APPEARANCE WILL BE BEFORE Harris A. Senturia, or other duly designated person |
| | 5. DATE AND TIME OF HEARING October 12, 2018 at 9:30AM |

6. SUBJECT OF INVESTIGATION

See attached Subject of Investigation and Schedule and attached resolutions.

| | |
|--|---|
| 7. RECORDS CUSTODIAN/DEPUTY CUSTODIAN Samuel Baker/Jon Steiger, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114 (216) 263-3414/(216) 263-3442 | 8. COMMISSION COUNSEL Harris A. Senturia, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114 (216) 263-3420 |
|--|---|

| | |
|----------------------------|---|
| DATE ISSUED 9/10/18 | COMMISSIONER'S SIGNATURE  |
|----------------------------|---|

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 8.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

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

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

TRAVEL EXPENSES

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

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

Form of Certificate of Compliance*

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

If an interrogatory or a portion of the request has not been fully answered or portion of the report has not been completed the objection to such interrogatory or uncompleted portion and the reasons for the objection have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for answering the interrogatories or preparing the report, the certificate shall identify the interrogatories or portion of the report for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

**FEDERAL TRADE COMMISSION (“FTC”)
CIVIL INVESTIGATIVE DEMAND (“CID”) SCHEDULE
FTC File No. 1723195**

Meet and Confer: You must contact **FTC counsel, Harris Senturia (216-263-3420; hsenturia@ftc.gov)**, as soon as possible to schedule a meeting (telephonic or in person) to be held within fourteen (14) days after you receive this CID. At the meeting, you must discuss with FTC counsel any questions you have regarding this CID or any possible CID modifications that could reduce your cost, burden, or response time yet still provide the FTC with the information it needs to pursue its investigation. The meeting also will address how to assert any claims of protected status (e.g., privilege, work-product, etc.) and the production of electronically stored information.

Document Retention: You must continue to retain all documentary materials used in preparing responses to this CID. The FTC may require the submission of additional documents later during this investigation. **Accordingly, you must continue to suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents** that are in any way relevant to this investigation, even if you believe those documents are protected from discovery. *See* 15 U.S.C. § 50; *see also* 18 U.S.C. §§ 1505, 1519.

Sharing of Information: The FTC will use information you provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces. We will not disclose such information under the Freedom of Information Act, 5 U.S.C. § 552. We also will not disclose such information, except as allowed under the FTC Act (15 U.S.C. § 57b-2), the Commission’s Rules of Practice (16 C.F.R. §§ 4.10 & 4.11), or if required by a legal obligation. Under the FTC Act, we may provide your information in response to a request from Congress or a proper request from another law enforcement agency. However, we will not publicly disclose such information without giving you prior notice.

Certification of Compliance: You or any person with knowledge of the facts and circumstances relating to the responses to this CID must certify that such responses are complete by completing the “Form of Certificate of Compliance” set forth on the back of the CID form or by signing a declaration under penalty of perjury pursuant to 28 U.S.C. § 1746.

Definitions and Instructions: Please review carefully the Definitions and Instructions that appear after the Specifications and provide important information regarding compliance with this CID.

SUBJECT OF INVESTIGATION

Whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined herein, and related entities and individuals, have made or participated in making, in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without

consumers' authorization, in violation of Section 5 of the FTC Act, and whether Commission action to obtain monetary relief would be in the public interest. See also attached resolutions.

SPECIFICATIONS

Applicable Time Period: Unless otherwise directed, the applicable time period for the requests set forth below is from **July 1, 2014, until the date of full and complete compliance with this CID.**

A. **Investigational Hearing Testimony:** The Company must designate and make available one or more officers, directors, or managing agents, or others who consent, to testify on its behalf. Unless a single individual is designated, the Company must designate in advance and in writing the matters on which each designee will testify. The person(s) designated must testify about information known or reasonably available to the Company, and their testimony shall be binding upon it. 16 C.F.R. § 2.7(h). The person(s) designated must be prepared to provide testimony relating to the following topics:

1. All of the Company's responses to the Interrogatories set forth in the CID issued September 21, 2017.
2. All documents produced by the Company in response to the CID issued September 21, 2017.
3. All efforts made by the Company to locate information responsive to the CID issued September 21, 2017, including the identities of all individuals involved in those efforts.
4. All efforts made by the Company to prevent the destruction of documents that are in any way relevant to the investigation, as instructed in the CID issued September 21, 2017.
5. The Company's information or records management systems, systems for electronically stored information, and any other issues relevant to compliance with the CID issued September 21, 2017.
6. All relationships between the Company and Elevated Health, LLC.
7. All relationships between the Company and Sarah Scava.

DEFINITIONS

The following definitions apply to this CID:

D-1. "Company," "You," "Your," or "Fully Accountable" means Fully Accountable, LLC, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, members, employees, agents,

consultants, and other persons working for or on behalf of the foregoing, including, but not limited to, Christopher Giorgio and Rachel Scava.

D-2. “**Document**” means the complete original, all drafts, and any non-identical copy, whether different from the original because of notations on the copy, different metadata, or otherwise, of any item covered by 15 U.S.C. § 57b-1(a)(5), 16 C.F.R. § 2.7(a)(2), and Federal Rule of Civil Procedure 34(a)(1)(A).

D-3. “**Group A Entity(ies)**” shall mean any or all of the following: **Innovated Health LLC, Global Community Innovations LLC, Premium Health Supplies, LLC, Buddha My Bread LLC, Innovated Fulfillment LLC, Vista Media LLC, Emerging Nutrition Inc., ShipSmart LLC, Guerra Company LLC, ASH Abbas LLC, and Your Healthy Lifestyle LLC**, their wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, successors, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing, including, but not limited to, Fred Guerra, Lanty Gray, Rafat Abbas, Ashraf Abbas, Robby Salaheddine, and Rachel Scava.

D-4. “**Group B Entity(ies)**” shall mean any or all of the following: **Leading Health Supplements, LLC (also dba Health Supplements), AMLK Holdings, LLC, General Health Supplies, LLC, Natural Health Supplies, LLC, BHCO Holdings, LLC, and Consumer’s Choice Health, LLC**, their wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, successors, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

INSTRUCTIONS

I-1. **Petitions to Limit or Quash:** You must file any petition to limit or quash this CID with the Secretary of the FTC no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition must set forth all assertions of protected status or other factual and legal objections to the CID and comply with the requirements set forth in 16 C.F.R. § 2.10(a)(1) – (2). **The FTC will not consider petitions to quash or limit if you have not previously met and conferred with FTC staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process.** 16 C.F.R. § 2.7(k); *see also* § 2.11(b). **If you file a petition to limit or quash, you must still timely respond to all requests that you do not seek to modify or set aside in your petition.** 15 U.S.C. § 57b-1(f); 16 C.F.R. § 2.10(b).

I-2. **Withholding Requested Material / Privilege Claims:** If you withhold from production any material responsive to this CID based on a claim of privilege, work product protection, statutory exemption, or any similar claim, you must assert the claim no later than the return date of this CID, and you must submit a detailed log, in a searchable electronic format, of the items withheld that identifies the basis for withholding the material and meets all the requirements set forth in 16 C.F.R. § 2.11(a) – (c). The information in the log must be of sufficient detail to enable FTC staff to assess the validity of the claim for each document, including attachments, without disclosing the protected information. If only some portion of any responsive material is

privileged, you must submit all non-privileged portions of the material. Otherwise, produce all responsive information and material without redaction. 16 C.F.R. § 2.11(c). The failure to provide information sufficient to support a claim of protected status may result in denial of the claim. 16 C.F.R. § 2.11(a)(1).

I-3. Modification of Specifications: The Bureau Director, a Deputy Bureau Director, Associate Director, Regional Director, or Assistant Regional Director must agree in writing to any modifications of this CID. 16 C.F.R. § 2.7(l).

I-4. Scope of Search: This CID covers documents and information in your possession or under your actual or constructive custody or control, including documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, service providers, and other agents and consultants, whether or not such documents or information were received from or disseminated to any person or entity.

I-5. Sensitive Personally Identifiable Information (“Sensitive PII”) or Sensitive Health Information (“SHI”): If any materials responsive to this CID contain Sensitive PII or SHI, please contact FTC counsel before producing those materials to discuss whether there are steps you can take to minimize the amount of Sensitive PII or SHI you produce, and how to securely transmit such information to the FTC.

Sensitive PII includes an individual’s Social Security number; an individual’s biometric data (such as fingerprints or retina scans, but not photographs); and an individual’s name, address, or phone number in combination with one or more of the following: date of birth, Social Security number, driver’s license or state identification number (or foreign country equivalent), passport number, financial account number, credit card number, or debit card number. SHI includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

I-6. Oral Testimony Procedures: The taking of oral testimony pursuant to this CID will be conducted in conformity with Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, and with Part 2A of the FTC’s Rules, 16 C.F.R. §§ 2.7(f), 2.7(h), and 2.9.

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 Pamela Jones Harbour
 William E. Kovacic
 J. Thomas Rosch

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION OF UNNAMED PERSONS ENGAGED DIRECTLY OR INDIRECTLY IN THE ADVERTISING OR MARKETING OF DIETARY SUPPLEMENTS, FOODS, DRUGS, DEVICES, OR ANY OTHER PRODUCT OR SERVICE INTENDED TO PROVIDE A HEALTH BENEFIT OR TO AFFECT THE STRUCTURE OR FUNCTION OF THE BODY

File No. 0023191

Nature and Scope of Investigation:

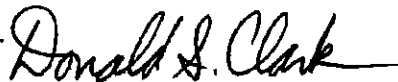
To investigate whether unnamed persons, partnerships, or corporations, or others engaged directly or indirectly in the advertising or marketing of dietary supplements, foods, drugs, devices, or any other product or service intended to provide a health benefit or to affect the structure or function of the body have misrepresented or are misrepresenting the safety or efficacy of such products or services, and therefore have engaged or are engaging in unfair or deceptive acts or practices or in the making of false advertisements, in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed ten (10) years from the date of issuance of this resolution. The expiration of this ten (10) year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the ten (10) year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after expiration of the ten year period.

Authority to conduct investigation:

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

By direction of the Commission.


Donald S. Clark
Secretary

Issued: August 13, 2009

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN NON-PUBLIC
INVESTIGATION OF UNNAMED PERSONS, PARTNERSHIPS OR CORPORATIONS
ENGAGED IN THE DECEPTIVE OR UNFAIR USE OF E-MAIL, METATAGS,
COMPUTER CODE OR PROGRAMS, OR DECEPTIVE OR UNFAIR PRACTICES
INVOLVING INTERNET-RELATED GOODS OR SERVICES

File No. 9923259

Nature and Scope of Investigation:

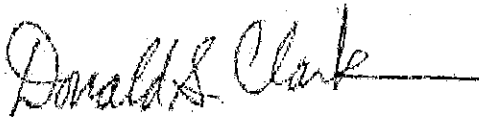
To determine whether unnamed persons, partnerships or corporations have been or are engaged in the deceptive or unfair use of e-mail, metatags, computer code or programs, or deceptive or unfair practices involving Internet-related goods or services, in violation of Sections 5 or 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52, as amended. The investigation is also to determine whether Commission action to obtain equitable monetary relief for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

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

By direction of the Commission.



Donald S. Clark
Secretary

Issued: August 1, 2016

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

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

**RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NON-PUBLIC
INVESTIGATION OF UNAUTHORIZED CHARGES TO CONSUMERS' ACCOUNTS**

File No. 082-3247

Nature and Scope of Investigation:

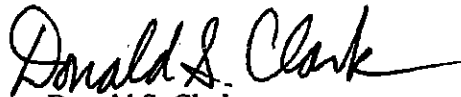
To determine whether unnamed persons, partnerships, corporations, or others have engaged in or are engaging in deceptive or unfair acts or practices in or affecting commerce, in connection with making unauthorized charges or debits to consumers' accounts, including unauthorized charges or debits to credit card accounts, bank accounts, investment accounts, or any other accounts used by consumers to pay for goods and services, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and/or the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.* The investigation is also to determine whether Commission action to obtain monetary relief, including consumer redress, disgorgement, or civil penalties, would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five (5) years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.*, and supplements thereto, Section 917(c) of the Electronic Fund Transfer Act, 15 U.S.C. § 1693o(c), and Regulation E, 12 C.F.R. § 205.1 *et seq.*, and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: September 20, 2013

Petition Exhibit 3

Civil Investigative Demand to Sarah Scava

(Sept. 10, 2018)



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

Office of the Secretary

SEP 11 2018

Via Federal Express

Sarah Scava
369 Tulip Trail
Wadsworth, OH 44281

FTC Matter No. 1723195

Dear Sarah Scava:

The Federal Trade Commission ("FTC") has issued the attached Civil Investigative Demand ("CID") asking for information as part of a non-public investigation. Our purpose is to determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the attached CID, and related entities and individuals, have made or participated in making, in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization, in violation of Section 5 of the FTC Act, and whether Commission action to obtain monetary relief would be in the public interest. Please read the attached documents carefully. Here are a few important points we would like to highlight:

1. **Contact FTC counsel, Harris Senturia (216-263-3420; hsenturia@ftc.gov) as soon as possible to schedule an initial meeting to be held within 14 days.** You can meet in person or by phone to discuss any questions you have, including whether there are changes to how you comply with the CID that would reduce your cost or burden while still giving the FTC the information it needs. Please read the attached documents for more information about that meeting.
2. **You must immediately stop any routine procedures for electronic or paper document destruction, and you must preserve all paper or electronic documents** that are in any way relevant to this investigation, even if you believe the documents are protected from discovery by privilege or some other reason.
3. **The FTC will use information you provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces.** We will not disclose the information under the Freedom of Information Act, 5 U.S.C. § 552. We may disclose the information in response to a valid request from Congress, or other civil or criminal federal, state, local, or foreign law enforcement agencies for their official law enforcement purposes. The FTC or other agencies may use and disclose

your response in any federal, state, or foreign civil or criminal proceeding, or if required to do so by law. However, we will not publicly disclose your information without giving you prior notice.

4. **Please read the attached documents closely.** They contain important information about where and when you must appear to give testimony.

Please contact FTC counsel as soon as possible to set up an initial meeting. We appreciate your cooperation.

Very truly yours,


Donald S. Clark
Secretary of the Commission



CIVIL INVESTIGATIVE DEMAND
Oral Testimony

| | |
|--|---|
| 1. TO SARAH SCAVA 369 TULIP TRAIL WADSWORTH, OH 44281 | 2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION |
| | 2a. MATTER NUMBER 1723195 |

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 6.

| | |
|--|--|
| 3. LOCATION OF HEARING 1111 Superior Avenue, Suite 200, Cleveland, OH 44114 | 4. YOUR APPEARANCE WILL BE BEFORE Harris A. Senturia, or other duly designated person |
| | 5. DATE AND TIME OF HEARING October 11, 2018 at 9:30AM |

6. SUBJECT OF INVESTIGATION

See attached Subject of Investigation and Schedule and attached resolutions.

| | |
|--|---|
| 7. RECORDS CUSTODIAN/DEPUTY CUSTODIAN Samuel Baker/Jon Steiger, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114 (216) 263-3414/(216) 263-3442 | 8. COMMISSION COUNSEL Harris A. Senturia, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114 (216) 263-3420 |
|--|---|

| | |
|----------------------------|----------------------------------|
| DATE ISSUED 9/10/18 | COMMISSIONER'S SIGNATURE |
|----------------------------|----------------------------------|

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 8.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

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

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

TRAVEL EXPENSES

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

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

Form of Certificate of Compliance*

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

If an interrogatory or a portion of the request has not been fully answered or portion of the report has not been completed the objection to such interrogatory or uncompleted portion and the reasons for the objection have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for answering the interrogatories or preparing the report, the certificate shall identify the interrogatories or portion of the report for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

**FEDERAL TRADE COMMISSION (“FTC”)
CIVIL INVESTIGATIVE DEMAND (“CID”) SCHEDULE
FTC File No. 1723195**

Meet and Confer: You must contact **FTC counsel, Harris Senturia (216-263-3420; hsenturia@ftc.gov)**, as soon as possible to schedule a meeting (telephonic or in person) to be held within fourteen (14) days after you receive this CID. At the meeting, you must discuss with FTC counsel any questions you have regarding this CID or any possible CID modifications that could reduce your cost, burden, or response time yet still provide the FTC with the information it needs to pursue its investigation. The meeting also will address how to assert any claims of protected status (e.g., privilege, work-product, etc.) and the production of electronically stored information.

Document Retention: You must retain all documentary materials used in preparing responses to this CID. The FTC may require the submission of additional documents later during this investigation. **Accordingly, you must suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents** that are in any way relevant to this investigation, even if you believe those documents are protected from discovery. *See* 15 U.S.C. § 50; *see also* 18 U.S.C. §§ 1505, 1519.

Sharing of Information: The FTC will use information you provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces. We will not disclose such information under the Freedom of Information Act, 5 U.S.C. § 552. We also will not disclose such information, except as allowed under the FTC Act (15 U.S.C. § 57b-2), the Commission’s Rules of Practice (16 C.F.R. §§ 4.10 & 4.11), or if required by a legal obligation. Under the FTC Act, we may provide your information in response to a request from Congress or a proper request from another law enforcement agency. However, we will not publicly disclose such information without giving you prior notice.

Certification of Compliance: You or any person with knowledge of the facts and circumstances relating to the responses to this CID must certify that such responses are complete by completing the “Form of Certificate of Compliance” set forth on the back of the CID form or by signing a declaration under penalty of perjury pursuant to 28 U.S.C. § 1746.

Definitions and Instructions: Please review carefully the Definitions and Instructions that appear after the Specifications and provide important information regarding compliance with this CID.

SUBJECT OF INVESTIGATION

Whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined herein, and related entities and individuals, have made or participated in making, in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without

consumers' authorization, in violation of Section 5 of the FTC Act, and whether Commission action to obtain monetary relief would be in the public interest. See also attached resolutions.

SPECIFICATIONS

Applicable Time Period: Unless otherwise directed, the applicable time period for the requests set forth below is from **July 1, 2014, until the date of full and complete compliance with this CID.**

A. Investigational Hearing Testimony: Subjects for testimony will include the following:

1. Your employment (or other relationship) with Fully Accountable, including all titles Fully Accountable gave you or that you used, and your compensation.
2. Work that you performed for Fully Accountable and its clients, including any work you performed for any of the Group A Entities or Group B Entities.
3. The formation of Elevated Health.
4. The business of Elevated Health, including, but not limited to, Elevated Health's business model and business practices, all sources of revenue and investment, and the disposition of funds.
5. Your role or roles with Elevated Health, and all income you received from Elevated Health.
6. Any other person's role or roles in connection with Elevated Health, including but not limited to Rachel Scava's role or roles in connection with Elevated Health.
7. All relationships between Elevated Health and Fully Accountable.
8. All relationships between Elevated Health and any of the Group A Entities or Group B Entities.
9. All relationships between Elevated Health and any of the following entities:
 - a. Scava Holdings, LLC
 - b. CMG Tax & Consulting, LLC
 - c. VEF International, Inc.
 - d. TCWT Holdings, LLC
10. All relationships between Elevated Health and any entity you know or understand to be connected, directly or indirectly, with you, Rachel Scava, Christopher M. Giorgio, or Vincent Fisher.

11. Work that you performed for any of the Group A Entities or Group B Entities outside of the scope of your employment (or other relationship) with Fully Accountable, and all income you received from any of those entities.
12. Work that you performed for any of the following entities, and all income you received from any of them:
 - a. Scava Holdings, LLC
 - b. CMG Tax & Consulting, LLC
 - c. VEF International, Inc.
 - d. TCWT Holdings, LLC
13. Work that you performed, directly or indirectly, for any entity you understand to be connected, directly or indirectly, with Rachel Scava, Christopher M. Giorgio, or Vincent Fisher, outside of the scope of your employment (or other relationship) with Fully Accountable, and all income you received from any such entities.

DEFINITIONS

The following definitions apply to this CID:

D-1. “**You**” or “**Your**” means Sarah Scava.

D-2. “**Fully Accountable**” means **Fully Accountable, LLC**, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing, including, but not limited to, Christopher Giorgio and Rachel Scava.

D-3. “**Elevated Health**” means **Elevated Health LLC**, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

D-4. “**Document**” means the complete original, all drafts, and any non-identical copy, whether different from the original because of notations on the copy, different metadata, or otherwise, of any item covered by 15 U.S.C. § 57b-1(a)(5), 16 C.F.R. § 2.7(a)(2), and Federal Rule of Civil Procedure 34(a)(1)(A).

D-5. “**Group A Entity(ies)**” shall mean any or all of the following: **Innovated Health LLC, Global Community Innovations LLC, Premium Health Supplies, LLC, Buddha My Bread LLC, Innovated Fulfillment LLC, Vista Media LLC, Emerging Nutrition Inc., ShipSmart LLC, Guerra Company LLC, ASH Abbas LLC, and Your Healthy Lifestyle LLC**, their wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under

assumed names, successors, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing, including, but not limited to, Fred Guerra, Lanty Gray, Rafat Abbas, Ashraf Abbas, Robby Salaheddine, and Rachel Scava.

D-6. “Group B Entity(ies)” shall mean any or all of the following: **Leading Health Supplements, LLC (also dba Health Supplements), AMLK Holdings, LLC, General Health Supplies, LLC, Natural Health Supplies, LLC, BICO Holdings, LLC, and Consumer’s Choice Health, LLC**, their wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, successors, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

INSTRUCTIONS

I-1. **Petitions to Limit or Quash:** You must file any petition to limit or quash this CID with the Secretary of the FTC no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition must set forth all assertions of protected status or other factual and legal objections to the CID and comply with the requirements set forth in 16 C.F.R. § 2.10(a)(1) – (2). **The FTC will not consider petitions to quash or limit if you have not previously met and conferred with FTC staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process.** 16 C.F.R. § 2.7(k); *see also* § 2.11(b). **If you file a petition to limit or quash, you must still timely respond to all requests that you do not seek to modify or set aside in your petition.** 15 U.S.C. § 57b-1(f); 16 C.F.R. § 2.10(b).

I-2. **Withholding Requested Material / Privilege Claims:** If you withhold from production any material responsive to this CID based on a claim of privilege, work product protection, statutory exemption, or any similar claim, you must assert the claim no later than the return date of this CID, and you must submit a detailed log, in a searchable electronic format, of the items withheld that identifies the basis for withholding the material and meets all the requirements set forth in 16 C.F.R. § 2.11(a) – (c). The information in the log must be of sufficient detail to enable FTC staff to assess the validity of the claim for each document, including attachments, without disclosing the protected information. If only some portion of any responsive material is privileged, you must submit all non-privileged portions of the material. Otherwise, produce all responsive information and material without redaction. 16 C.F.R. § 2.11(c). The failure to provide information sufficient to support a claim of protected status may result in denial of the claim. 16 C.F.R. § 2.11(a)(1).

I-3. **Modification of Specifications:** The Bureau Director, a Deputy Bureau Director, Associate Director, Regional Director, or Assistant Regional Director must agree in writing to any modifications of this CID. 16 C.F.R. § 2.7(l).

I-4. **Scope of Search:** This CID covers documents and information in your possession or under your actual or constructive custody or control, including documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees,

service providers, and other agents and consultants, whether or not such documents or information were received from or disseminated to any person or entity.

I-5. Sensitive Personally Identifiable Information (“Sensitive PII”) or Sensitive Health Information (“SHI”): If any materials responsive to this CID contain Sensitive PII or SHI, please contact FTC counsel before producing those materials to discuss whether there are steps you can take to minimize the amount of Sensitive PII or SHI you produce, and how to securely transmit such information to the FTC.

Sensitive PII includes an individual’s Social Security number; an individual’s biometric data (such as fingerprints or retina scans, but not photographs); and an individual’s name, address, or phone number in combination with one or more of the following: date of birth, Social Security number, driver’s license or state identification number (or foreign country equivalent), passport number, financial account number, credit card number, or debit card number. SHI includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

I-6. Oral Testimony Procedures: The taking of oral testimony pursuant to this CID will be conducted in conformity with Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, and with Part 2A of the FTC’s Rules, 16 C.F.R. §§ 2.7(f), 2.7(h), and 2.9.

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 Pamela Jones Harbour
 William E. Kovacic
 J. Thomas Rosch

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION OF UNNAMED PERSONS ENGAGED DIRECTLY OR INDIRECTLY IN THE ADVERTISING OR MARKETING OF DIETARY SUPPLEMENTS, FOODS, DRUGS, DEVICES, OR ANY OTHER PRODUCT OR SERVICE INTENDED TO PROVIDE A HEALTH BENEFIT OR TO AFFECT THE STRUCTURE OR FUNCTION OF THE BODY

File No. 0023191

Nature and Scope of Investigation:

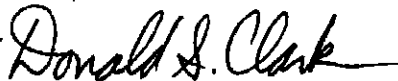
To investigate whether unnamed persons, partnerships, or corporations, or others engaged directly or indirectly in the advertising or marketing of dietary supplements, foods, drugs, devices, or any other product or service intended to provide a health benefit or to affect the structure or function of the body have misrepresented or are misrepresenting the safety or efficacy of such products or services, and therefore have engaged or are engaging in unfair or deceptive acts or practices or in the making of false advertisements, in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed ten (10) years from the date of issuance of this resolution. The expiration of this ten (10) year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the ten (10) year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after expiration of the ten year period.

Authority to conduct investigation:

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

By direction of the Commission.


Donald S. Clark
Secretary

Issued: August 13, 2009

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN NON-PUBLIC
INVESTIGATION OF UNNAMED PERSONS, PARTNERSHIPS OR CORPORATIONS
ENGAGED IN THE DECEPTIVE OR UNFAIR USE OF E-MAIL, METATAGS,
COMPUTER CODE OR PROGRAMS, OR DECEPTIVE OR UNFAIR PRACTICES
INVOLVING INTERNET-RELATED GOODS OR SERVICES

File No. 9923259

Nature and Scope of Investigation:

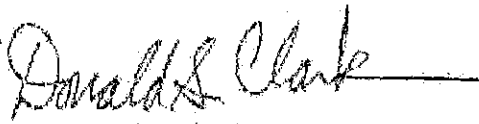
To determine whether unnamed persons, partnerships or corporations have been or are engaged in the deceptive or unfair use of e-mail, metatags, computer code or programs, or deceptive or unfair practices involving Internet-related goods or services, in violation of Sections 5 or 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52, as amended. The investigation is also to determine whether Commission action to obtain equitable monetary relief for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

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

By direction of the Commission.


Donald S. Clark
Secretary

Issued: August 1, 2016

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

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

**RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NON-PUBLIC
INVESTIGATION OF UNAUTHORIZED CHARGES TO CONSUMERS' ACCOUNTS**

File No. 082-3247

Nature and Scope of Investigation:


To determine whether unnamed persons, partnerships, corporations, or others have engaged in or are engaging in deceptive or unfair acts or practices in or affecting commerce, in connection with making unauthorized charges or debits to consumers' accounts, including unauthorized charges or debits to credit card accounts, bank accounts, investment accounts, or any other accounts used by consumers to pay for goods and services, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and/or the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.* The investigation is also to determine whether Commission action to obtain monetary relief, including consumer redress, disgorgement, or civil penalties, would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five (5) years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.*, and supplements thereto, Section 917(c) of the Electronic Fund Transfer Act, 15 U.S.C. § 1693o(c), and Regulation E, 12 C.F.R. § 205.1 *et seq.*, and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: September 20, 2013

Petition Exhibit 4

Fully Accountable, LLC's Petition to Limit or
Quash Civil Investigative Demand

(Oct. 5, 2018)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF

FULLY ACCOUNTABLE, LLC

)
)
)
)
)
)
)
)
)
)
)

FILE NO. 1723195

**FULLY ACCOUNTABLE, LLC'S PETITION TO
LIMIT OR QUASH CIVIL INVESTIGATIVE DEMAND**

RACHEL L. SCAVA
Ohio Bar No. 92694
Rachel.scava@fullyaccountable.com

*Counsel for Petitioner, Fully Accountable,
LLC*

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF

FULLY ACCOUNTABLE, LLC

FILE NO. 1723195

COMMISSIONERS
Christine S. Wilson, Chairman
Joseph J. Simons
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter

**FULLY ACCOUNTABLE, LLC'S PETITION TO
LIMIT OR QUASH CIVIL INVESTIGATIVE DEMAND**

Pursuant to 16 C.F.R. 2.7(d), Petitioner, Fully Accountable, LLC ("FA") petitions the Federal Trade Commission ("FTC") to limit or quash the Civil Investigative Demand ("CID") issued to FA on September 11, 2018 and received by FA on September 13, 2018. FA objects and seeks to quash and limit the CID as being improper and unenforceable for at least two (2) separate reasons: (1) the CID seeks information outside the scope of the FTC's original investigation; and (2) the CID is overly broad and unduly burdensome. Accordingly, FA respectfully petitions the FTC Commissioners to reasonably quash and limit the CID as requested below.

I. LEGAL STANDARD

By this Petition, FA does not challenge the FTC's statutory authority to investigate practices that it believes may constitute deceptive or unfair trade practices when used in the course of trade under 15 U.S.C 45(a). While this statute has granted the FTC this authority, its subpoena power under the statute is not limitless.¹ Limiting the powers of the FTC is especially necessary where, as here, the FTC is pursuing an unlimited inquiry where there is no limit on the scope of the investigation and it continues to issue new CID's to expand its search. The CID here is requesting testimony on broad topics from the previous CID which have been answered in full detail. In addition, to broadening the interrogatories and document specifications already responded to in full, the CID includes new Companies and persons that it is requesting information on that are not a part of any of the parties being investigated in the CID (FA, Group A and Group B entities).

Congress has provided the FTC with the authority to conduct reasonable investigations using investigatory tools such as subpoena's and CID's. This authority though, does not grant unlimited investigation authority and the federal courts are used as a safeguard against agency abuse.² The federal courts serve as an independent reviewing authority with "the power to condition enforcement upon observance to [a party's] valid interests."³ Congress has continually denied to confer upon administrative agencies their own subpoena enforcement power. The reason they have not conferred this authority to the administrative agencies and kept the enforcement power with the federal courts is to "ensure that targets of investigations are accorded due process" and because federal courts will not act as rubber stamps on FTC CID's.⁴

¹ "A subpoena from the FTC is not self-enforcing." *Wearly v. FTC* 616 F.2d 662,665 (3d Cir. 1980).

² See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

³ *Wearly*, 616 F.2d at 655

⁴ Sean Doherty, *Commodity Futures Tradition Common v Collins: Is the Rationale Sound for Establishing an Exception to Subpoena Law for Tax Returns?*, 7 DePaul Bus. L.J. 365, 376 (1995).

The United States Supreme Court established the recognized standard for whether an administrative agency's subpoena should be enforced in *U.S. v Morton Salt Co.*⁵ In *Morton Salt*, the Supreme Court recognized that "a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power."⁶ The Supreme Court instructed that an agency's subpoena, like the CID at issue here, should not be enforced if it demands information that is (1) not "within the authority of the agency"; (2) "too indefinite"; or (3) not "reasonably relevant to the inquiry."⁷

Additionally, in *Morton Salt*, the Supreme Court recognized that if the corporation had objected and presented evidence concerning the excessive scope or breadth of the investigation, like FA is here, the corporation "could have obtained any reasonable modification necessary."⁸

In the application of the *Morton Salt* standard, Courts have consistently held that an administrative subpoena and other investigative demands must be "reasonable."⁹ We see this application in *FTC v Texaco*, where the court found that the "disclosure sought must always be reasonable." When the federal court evaluates the disclosure, the court must consider whether an agency's demand is unduly burdensome.¹⁰

We further see this consideration of unduly burdensome in *SEC v. Arthur Young & Co.*, where the Court recognized that "the gist of the protection is in the requirement... that the disclosures sought shall not be unreasonable. Correspondingly, the need for moderation in the subpoena's call is a matter of reasonableness."¹¹ A CID that is "unduly burdensome or unreasonably broad" fails

⁵ 338 US 632,652 (195).

⁶ *Morton*, 338 US at 652.

⁷ *Morton*, 338 US at 62.

⁸ *Morton*, 338 US at 654

⁹ See e.g., *United States v. Constr. Prods. Research, Inc.*, 73 F.3d 464, 471 (2d Cir. 1966) ("the disclosure sought must always be reasonable"); *Texaco*, 555 F.2d at 881 ("the disclosure sought shall not be unreasonable").

¹⁰ *FTC v Texaco, Inc.*, 555 F.2d 862,882 (DC Cir. 1977)

¹¹ *Arthur Young & Co.*, 584 F.2d at 1030

this test.¹² As such, the time, expense, and whether compliance threatens to unduly disrupt or seriously hinder normal business operations may be raised by a party challenging a civil investigative demand.¹³

Here, the CID's request for live testimony is unreasonable and it is unduly burdensome as FA has already answered the previous CID in full relating to the matter of the investigation. In addition to the testimony that is has already answered in interrogatories and document specifications, the Investigational Hearing Testimony is overly broad as includes new information not previously listed on the original CID and which is not relevant to the matter of the investigation. Lastly, the Investigational Hearing Testimony appears to be duplicative of requests already made and fully responded to by FA. FA has been more than cooperative with the FTC, producing 571 pages responsive to the Document Specifications, and otherwise been forthcoming with information sought by the FTC as seen from the thorough Interrogatory responses. Accordingly, FA respectfully requests that the Commission limit or quash the challenged Investigational Hearing Testimony as set forth below.

II. OBJECTIONS

A. The CID improperly seeks irrelevant information from FA that is outside the scope of the FTC's investigation and information that is overly broad with no limit.

The test for the relevancy of an administrative subpoena is "whether the information sought is 'reasonably relevant' to the agency's inquiry, as we see in *Morton*.¹⁴ The CID as issue, must "not [be] so overbroad as to reach into areas that are irrelevant or immaterial... [and] the test is relevance to the specific purpose."¹⁵ Accordingly, the CID should be limited or quashed because

¹² *Texaco*, 555 F.2d at 882

¹³ *Texaco*, 555 F.2d at 882-83

¹⁴ *FTC v. Anderson*, 631 F.2d 741, 745-46 (D.C. Cir. 1979).

¹⁵ *Arthur Young and Co.*, 584 F.2d at 1028; 1030.

it demands Oral Testimony from FA that is not reasonably relevant to the FTC's investigation. For example, the Investigative Hearing Testimony topics include the following items:

6. All relationships between the Company and Elevated Health, LLC.

7. All relationships between the Company and Sarah Scava.

The FTC failed to limit the above two (2) requests to information and documents that relate to the purpose of the FTC's investigation. The investigation as stated in the CID is "... to determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the CID, and related entities and individuals have made or participated in making in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization in violation of Section 5 of the FTC Act, ...". The above were not included as either FA, Group A or Group B Entities or Persons and are not related entities that are included in Group A and Group B Entities definitions, which are the subject of the investigation. Requiring oral testimony on companies and individuals that are not the subject of the investigation would require FA to answer questions on companies and individuals that are outside the scope of the investigation and have nothing to do with the investigation. It would be unreasonable to begin to include any client of FA as they are not the subject of the investigation. The FTC cannot require testimony that is not reasonably relevant and outside the scope of the FTC's investigation.¹⁶ Accordingly, Item 6 and Item 7 should both be quashed by the Court for not being reasonably relevant to the investigation.

¹⁶ *Morton*, 338 US at 652

Further, items 3 – 5 should be quashed as they ask FA to provide Oral Testimony on overly broad topics with no limits and which are not relevant to the investigation. Items 3 -5 are as follows:

3. All efforts made by the Company to locate information responsive to the CID issued on September 21, 2017, including the identities of all individuals involved in those efforts.

4. All efforts made by the Company to prevent the destruction of documents that are in any way relevant to the investigation, as instructed in the CID issued on September 21, 2017.

5. The Company's record management systems, systems for electronically stored information, and any other issues relevant compliance with the CID issued September 21, 2017.

The FTC failed to limit these requests to the matter of the investigation as stated above as they are overly broad with no limit on the inquiry. In addition, regarding Item 3. FA has already stated the identities of all the individuals involved in the preparation of the interrogatories and document specifications (Interrogatory S-10 in the CID issued September 21, 2017). With regard to Item 4. FA has stated its document retention policy (Interrogatory S-11 and Document Specification's S-16, S- 40) and even included in its responses on several occasions why information may/may not have been available, why, and the efforts that were made.

Lastly, with regard to item 5, to require FA to provide oral testimony on the subject stated would be overly broad and outside the scope of the investigation. FA business practices as a whole are not the subject of the inquiry and it's business practices are not reasonably relevant to the investigation.

Items 3 – 5 are overly broad and are not reasonably relevant to the investigation of the FTC. Therefore, the Court must quash or limit Items 3 – 5, where they request overbroad and/or any and all irrelevant information.

B. The Investigational Hearing Testimony is unduly burdensome, unreasonable, and duplicative.

While Congress has provided the FTC with the authority to conduct reasonable investigations through the use of subpoena's and CID's, as the Court found in *FTC v Texaco*, the "disclosure sought must always be reasonable."¹⁷ Further, the Court in *SEC v Arthur Young*, "the gist of the protection is the requirement...that the disclosures sought shall not be unreasonable.

¹⁸Correspondingly, the need for moderation in the subpoena's call is a matter of reasonableness."¹⁹ A CID that is "unduly burdensome or unreasonably broad fails this test."²⁰

Accordingly, the CID should be limited or quashed because it demands Oral Testimony from FA that is unduly burdensome and unreasonably broad. For example, the Investigative Hearing Testimony topics include the following items:

1. All of the Company's responses to the Interrogatories set forth in the CID issued September 21, 2017.
2. All documents produced by the Company in response to the CID issued September 21, 2017.

It is unduly burdensome and completely unreasonable to request FA to provide Oral Testimony on Interrogatories and Document Specifications that it has already answered in full. To continually require FA to respond to the same inquiries, repeatedly, in different formats such as written and then oral, is unduly burdensome for a company. FA is a small business that requires its principals to participate in the day to day activities of the business and the repeated request of

¹⁷ *Texaco*, 555 F.2d at 881

¹⁸ *Arthur Young & Co.*, 584 F.2d at 1030

¹⁹ *Arthur Young & Co.*, 584 F.2d at 1030

²⁰ *Texaco*, 555 F.2d at 882

the FTC to respond to the same inquiries, which have been responded to in full, forces FA to pull its principals off their day to day work and substantially burdens the business.

It is absolutely unreasonable to ask duplicative questions, that have been responded to in full, in various methods to somehow achieve a different response. Further, the way that the questions have been written above are overly broad and it is unreasonable to ask FA to prepare for questioning that has no limit. It is an abuse of power to have open ended questions in an investigation that has a specific purpose; especially when the inquiries have already been responded to. The authority of the FTC to continually issue CID's to FA with open ended questions on responses already provided in full is an abuse of the agency's power to investigate. Congress has repeatedly limited this power to "ensure that targets of investigations are accorded due process."²¹

Therefore, the Court must quash or limit Items 1 and 2 as they are unduly burdensome and unreasonably broad and fail the test as defined in *SEC v Arthur Young*.²²

CONCLUSION

For the foregoing reasons, FA respectfully requests that the Commission limit or quash the challenged Investigative Hearing Testimony as set forth above.

²¹ Sean Doherty, *Commodity Futures Tradition Common v Collins: Is the Rationale Sound for Establishing an Exception to Subpoena Law for Tax Returns?*, 7 DePaul Bus. L.J. 365, 376 (1995).

²² *Arthur Young & Co.*, 584 F.2d at 1030

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to 16 C.F.R 2.7(d)(2), counsel for Petitioner conferred with Counsel, Harris Senturia, Esq on September 24, 2018 at 2 pm EST in a good faith effort to resolve. Counsel on file, Harris Senturia, Esq, states that oral testimony was the only option, and thus there has not been an agreement by the deadline to file this petition between the Counsel for the Petitioner and counsel on this file.

Respectfully Submitted,



Rachel L Scava (0092694)
Fully Accountable, LLC
2680 West Market St
Akron, Ohio 44333
Telephone: (216) 810 – 4705
Facsimile: (234) 542 – 1029
Email: rachel.scava@fullyaccountable.com
Attorney for Respondent Fully Accountable, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following via overnight Federal Express and electronic mail on this 3rd day of October, 2018.

Harris A Senturia
1111 Superior Ave, Suite 200
Cleveland, Ohio 44114
hsenturia@ftc.gov

Donald Clark, Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-113
Washington, DC 20580



RACHEL L. SCAVA

Petition Exhibit 5

**Non-Party Elevated Health, LLC's Petition to
Limit or Quash Civil Investigative Demand**

(Oct. 5, 2018)



FULLY ACCOUNTABLE

Your Back Office Solution

October 4, 2018



Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave, NW
Room H-113
Washington, DC 20580

RE: *Petition to Quash or Limit by Non-Party Elevated Health, LLC in the Fully Accountable, FTC Matter No. 1723195*

Dear Mr. Clark:

Please accept this filing as Non-Party Elevated Health, LLC's Petition to Quash or Limit the Civil Investigative Demand that was issued to Elevated Health, LLC on September 11, 2018 and received by Elevated Health, LLC on Friday, September 14, 2018.

Enclosed please find the original Petition to Limit or Quash for Elevated Health, LLC and twelve (12) copies of the same.

Should you have any questions regarding these, please advise.

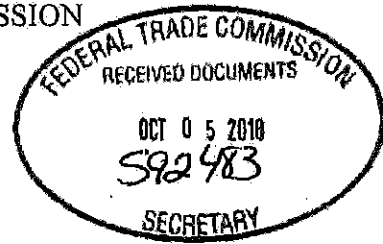
Very Truly Yours,

A handwritten signature in black ink, appearing to read 'R. Scava'.

Rachel Lynn Scava, Esq
Attorney & Counselor at Law
P: 216.810.4705 ext 2203
E: Rachel.scava@fullyaccountable.com

PUBLIC DOCUMENT

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



IN THE MATTER OF

FULLY ACCOUNTABLE, LLC

)
)
)
)
)
)
)
)
)
)
)

FILE NO. 1723195

**NON-PARTY ELEVATED HEALTH, LLC'S PETITION TO
LIMIT OR QUASH CIVIL INVESTITGATIVE DEMAND**

RACHEL L. SCAVA
Ohio Bar No. 92694
Rachel.scava@fullyaccountable.com

*Counsel for Petitioner, Elevated Health,
LLC*

PUBLIC DOCUMENT

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF

FULLY ACCOUNTABLE, LLC

FILE NO. 1723195

COMMISSIONERS

- Joseph J. Simons, Chairman**
- Noah Joshua Phillips**
- Rohit Chopra**
- Rebecca Kelly Slaughter**
- Christine S. Wilson**

**NON-PARTY ELEVATED HEALTH, LLC'S PETITION TO
LIMIT OR QUASH CIVIL INVESTITGATIVE DEMAND**

Pursuant to 16 C.F.R. 2.7(d), Petitioner, Elevated Health, LLC ("Elevated"), a non-party to this matter, petitions the Federal Trade Commission ("FTC") to limit or quash the Civil Investigative Demand ("CID") issued to Elevated on September 11, 2018 and received by Elevated on September 14, 2018. Elevated objects and seeks to quash and limit the CID as being improper and unenforceable for at least two (2) separate reasons: (1) the CID is unreasonable and unduly burdensome because it requires an individual who is not involved in Elevated, or, any of the entities defined in the matter as the subject of the investigation, to participate in Investigative Hearing Testimony; and (2) the CID is not reasonably relevant and the subjects are outside the scope of the investigation as it requests oral testimony by a Company that is a non-party to the investigation, by an individual who is not involved with any of the party's who are the subject of the

PUBLIC DOCUMENT

investigation, and, the hearing subjects are outside the scope of the investigative purpose of CID (as defined by the CID). Accordingly, Elevated respectfully petitions the FTC Commissioners to quash the CID in its entirety or dramatically limit its scope and breadth.

I. INTRODUCTION

On September 21, 2017, the FTC issued a Civil Investigative Demand to Fully Accountable, LLC, to investigate if Fully Accountable, LLC, and specific entities and persons that the CID specifically defines as either Group A Entities or Group B Entities. The investigation as stated in the CID is "... to determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the CID, and related entities and individuals have made or participated in making in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization in violation of Section 5 of the FTC Act, ...".

On September 11, 2018, the FTC issued Elevated a CID designating Sarah Scava ("Scava") as the representative by whom the FTC was requiring to provide oral testimony on the Investigational Hearing Topics listed in the CID. The subject of the investigation stated in the Elevated CID is the same investigation that was stated in the Fully Accountable, LLC (see above).

Elevated is not a Fully Accountable, a Group A Entity or a Group B Entity, as defined by the CID issued to Fully Accountable, LLC or Elevated. Further, Sarah Scava, the individual identified in the CID as the party who is to provide testimony on behalf of Elevated (a non-party to the matter), has not been involved with Elevated in any capacity since December 2017 and has not worked for Fully Accountable, LLC since January 2018.

PUBLIC DOCUMENT

The CID issued to Elevated requests oral testimony by Scava on inconsistent topics. The CID requests information specifically about Scava and her involvement with various entities, requests information on Elevated, and then requests information on various other Companies and Individuals. On its face, the CID appears to be requiring testimony on both Scava and Elevated although the CID has only been issued to Elevated. Further, the CID has expanded the parties and relationships that are the matter of the investigation by asking Scava and Elevated's relationship to the various parties (also not the subject of the investigation) broadening the scope of the investigation through the CID of a non-party. It is important to note, that Elevated and Scava are both non-parties to the investigation.

II. LEGAL STANDARD

By this Petition, Elevated does not challenge the FTC's statutory authority to investigate practices that it believes may constitute deceptive or unfair trade practices when used in the course of trade under 15 U.S.C 45(a). While this statute has granted the FTC this authority, its subpoena power under the statute is not limitless.¹ Limiting the powers of the FTC is especially necessary where, as here, the FTC is pursuing an unlimited inquiry where there is no limit on the scope of the investigation and it continues to issue new CID's to expand its search. The CID here is requesting testimony on broad topics from two (2) non-parties.

Congress has provided the FTC with the authority to conduct reasonable investigations using investigatory tools such as subpoena's and CID's. This authority though, does not grant unlimited investigation authority and the federal courts are used as a safeguard against agency abuse.² The federal courts serve as an independent reviewing authority with "the power to condition

¹ "A subpoena from the FTC is not self-enforcing." *Wearly v. FTC* 616 F.2d 662,665 (3d Cir. 1980).

² *See, e.g., Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

PUBLIC DOCUMENT

enforcement upon observance to [a party's] valid interests.³ Congress has continually denied to confer upon administrative agencies their own subpoena enforcement power. The reason they have not conferred this authority to the administrative agencies and kept the enforcement power with the federal courts is to “ensure that targets of investigations are accorded due process” and because federal courts will not act as rubber stamps on FTC CID's.⁴

The United States Supreme Court established the recognized standard for whether an administrative agency's subpoena should be enforced in *U.S. v Morton Salt Co.*⁵ In *Morton Salt*, the Supreme Court recognized that “a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power.”⁶ The Supreme Court instructed that an agency's subpoena, like the CID at issue here, should not be enforced if it demands information that is (1) not “within the authority of the agency”; (2) “too indefinite”; or (3) not “reasonably relevant to the inquiry.”⁷

Additionally, in *Morton Salt*, the Supreme Court recognized that if the corporation had objected and presented evidence concerning the excessive scope or breadth of the investigation, like FA is here, the corporation “could have obtained any reasonable modification necessary.”⁸

In the application of the *Morton Salt* standard, Courts have consistently held that an administrative subpoena and other investigative demands must be “reasonable.”⁹ We see this application in *FTC v Texaco*, where the court found that the “disclosure sought must always be

³ *Wearly*, 616 F.2d at 655

⁴ Sean Doherty, *Commodity Futures Tradition Common v Collins: Is the Rationale Sound for Establishing an Exception to Subpoena Law for Tax Returns?*, 7 *DePaul Bus. L.J.* 365, 376 (1995).

⁵ 338 US 632,652 (195).

⁶ *Morton*, 338 US at 652.

⁷ *Morton*, 338 US at 62.

⁸ *Morton*, 338 US at 654

⁹ See e.g., *United States v. Constr. Prods. Research, Inc.*, 73 F.3d 464, 471 (2d Cir, 1966) (“the disclosure sought must always be reasonable”); *Texaco*, 555 F.2d at 881 (“the disclosure sought shall not be unreasonable”).

PUBLIC DOCUMENT

reasonable.” When the federal court evaluates the disclosure, the court must consider whether an agency’s demand is unduly burdensome.¹⁰

We further see this consideration of unduly burdensome in *SEC v. Arthur Young & Co.*, where the Court recognized that “the gist of the protection is in the requirement... that the disclosures sought shall not be unreasonable. Correspondingly, the need for moderation in the subpoena’s call is a matter of reasonableness.”¹¹ A CID that is “unduly burdensome or unreasonably broad” fails this test.¹² As such, the time, expense, and whether compliance threatens to unduly disrupt or seriously hinder normal business operations may be raised by a party challenging a civil investigative demand.¹³

Here, the CID’s request for live testimony by Scava is unreasonable and it is unduly burdensome as Scava has not been involved with Elevated since December of 2017 and has not been employed by Fully Accountable, LLC since January 2018. It is burdensome to take an individual who is not the subject of the investigation from their full – time employment and require live testimony on subjects that could be responded to in writing. In addition to the unreasonableness of requiring live testimony on subjects that could better and more efficiently be answered in interrogatories and document specifications, the Investigational Hearing Testimony is overly broad as includes the request for testimony on individuals and companies which are not the subject of the investigation and are thus no reasonably relevant to the investigation of the FTC. Accordingly, Elevated respectfully requests that the Commission limit or quash the challenged Investigational Hearing Testimony as set forth below.

¹⁰ *FTC v Texaco, Inc.*, 555 F.2d 862,882 (DC Cir. 1977)

¹¹ *Arthur Young & Co.*, 584 F.2d at 1030

¹² *Texaco*, 555 F.2d at 882

¹³ *Texaco*, 555 F.2d at 882-83

III. GENERAL OBJECTIONS TO THE CID

A. The Investigational Hearing Testimony is unduly burdensome for Scava and unreasonable for Elevated.

While Congress has provided the FTC with the authority to conduct reasonable investigations through the use of subpoena's and CID's, as the Court found in *FTC v Texaco*, the "disclosure sought must always be reasonable."¹⁴ Further, the Court in *SEC v Arthur Young* found, "the gist of the protection is the requirement...that the disclosures sought shall not be unreasonable."¹⁵ Correspondingly, the need for moderation in the subpoena's call is a matter of reasonableness."¹⁶ A CID that is "unduly burdensome or unreasonably broad fails this test."¹⁷ Because of these standards, the CID should be quashed or significantly limited as it does not pass these tests.

It is unduly burdensome to require an individual who is not involved in the entity that has been issued the CID nor the Company that is being investigated to provide oral testimony. Scava has not been involved with Elevated in any capacity since December of 2017 and has not been involved in any capacity with Fully Accountable, LLC since January of 2018. The Investigative Hearing Testimony while cut and dry questions, are listed as "subjects" that will be discussed. There is no moderation of "reasonableness" in these "subjects" making them unreasonably broad. As stated, this type of unduly burdensome and unreasonably broad fails the test for reasonableness of a CID.¹⁸

¹⁴ *Texaco*, 555 F.2d at 881

¹⁵ *Arthur Young & Co.*, 584 F.2d at 1030

¹⁶ *Arthur Young & Co.*, 584 F.2d at 1030

¹⁷ *Texaco*, 555 F.2d at 882

¹⁸ *Arthur Young & Co.*, 584 F.2d at 1030 and *Texaco*, 555 F.2d at 882.

PUBLIC DOCUMENT

It is an abuse of power to have open ended questions in an investigation that has a specific purpose; especially when the inquiries fall outside the scope of the investigation. The authority of the FTC to issue a CID to a non-party with open ended questions is the abuse of power that Congress has continually limited and reserved for the federal courts.

Therefore, the Court must quash or limit the Investigative Hearing topics as they are unduly burdensome and unreasonably broad and fail the test as defined in *SEC v Arthur Young*.¹⁹

B. The CID improperly seeks irrelevant information from Elevated/Scava that is outside the scope of the FTC's investigation and information that is overly broad with no limit.

The test for the relevancy of an administrative subpoena is "whether the information sought is 'reasonably relevant' to the agency's inquiry, as we see in *Morton*.²⁰ The CID at issue, must "not [be] so overbroad as to reach into areas that are irrelevant or immaterial... [and] the test is relevance to the specific purpose."²¹ Accordingly, the CID should be limited or quashed because it demands Oral Testimony from Elevated/Scava that is not reasonably relevant to the FTC's investigation.

The FTC failed to limit the requests to information and documents that relate to the purpose of the FTC's investigation. The investigation as stated in the CID is "... to determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the CID, and related entities and individuals have made or participated in making in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or

¹⁹ *Arthur Young & Co.*, 584 F.2d at 1030

²⁰ *FTC v. Anderson*, 631 F.2d 741, 745-46 (D.C. Cir. 1979).

²¹ *Arthur Young and Co.*, 584 F.2d at 1028; 1030.

PUBLIC DOCUMENT

participating in the charging, in any respect, for consumer products without consumers' authorization in violation of Section 5 of the FTC Act, ...”.

As you will see in the Specific Objections below, the oral testimony subjects exceed Fully Accountable, LLC, the Group A or Group B Entities or Persons and are not related entities that are included in Group A and Group B Entities definitions, which are the subject of the investigation. Requiring oral testimony on companies and individuals that are not the subject of the investigation would require Elevated/Scava to answer questions on companies and individuals that are outside the scope of the investigation. It would be unreasonable to question and produce testimony from a non-party on subjects that are not the subject of the investigation. The FTC cannot require testimony that is not reasonably relevant and outside the scope of the FTC's investigation.²²

Accordingly, the Investigative Hearing Testimony should be quashed by the Court for not being reasonably relevant to the investigation and for being outside the scope of the investigation.

IV. SPECIFIC OBJECTIONS TO THE CID

With the above as a backdrop, Elevated asserts the following specific objections to the CID by Investigative Hearing Topic listed:

TOPIC 1: Your employment (or other relationship) with Fully Accountable, including all titles Fully Accountable gave you or that you used, and your compensation.

The CID that was issued, was issued to Elevated Health, LLC and not to Sarah Scava. This request is specific to Sarah Scava's employment with Fully Accountable, LLC. It is unreasonable to issue a CID to an entity and then ask questions that are not relevant to that entity in the investigation that is being conducted.

²² *Morton*, 338 US at 652

PUBLIC DOCUMENT

Further, this Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and dry. The FTC should not be able to construe this as an open-ended question with no limit, as that would be abuse of their power to investigate.²³

Thus, this Topic should be quashed in its entirety for asking an irrelevant question to Elevated. Should it be found that this topic is relevant, it should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

TOPIC 2: Work that you performed for Fully Accountable and its clients, including any work you performed for any of the Group A Entities or Group B Entities.

The CID that was issued was issued to Elevated Health, LLC and not to Sarah Scava. This request is specific to the work that Sarah Scava performed when she was employed with Fully Accountable, LLC. It is unreasonable to issue a CID to an entity and then ask questions that are not relevant to that entity and its role in the investigation being conducted.

Further, this Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and dry. The FTC should not be able to construe this as an open-ended question with no limit, as that would be abuse of their power to investigate.²⁴

Thus, this Topic should be quashed in its entirety for asking an irrelevant question to Elevated. Should it be found that this topic is relevant, it should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's

²³ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

²⁴ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

PUBLIC DOCUMENT

investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

TOPIC 3: The formation of Elevated Health.

The CID that was issued stated that the subject of the investigation is "... to determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the CID, and related entities and individuals have made or participated in making in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization in violation of Section 5 of the FTC Act, ..."

Elevated Health is not defined as either Fully Accountable, a Group A Entity, or a Group B Entity. The formation of Elevated Health is not reasonably relevant to the investigation as its formation does not help in determination of if the parties being investigated participated or engaged in any of the activities stated.

Thus, because this information is outside the scope of the investigation and it is not reasonably relevant to the investigation, this topic should be quashed in its entirety.

TOPIC 4: The business of Elevated Health, including but not limited to, Elevated Health's business model and business practices, all sources of revenue and investment, and the disposition of funds.

As stated for Topic 3, Elevated Health is not defined as either Fully Accountable, a Group A Entity, or a Group B Entity. The business of Elevated Health, including but not limited to, Elevated Health's business model and business practices, all sources of revenue and investment,

PUBLIC DOCUMENT

and the disposition of funds of Elevated Health is not reasonably relevant to the investigation as this information does not help in the determination of if the parties being investigated participated or engaged in any of the activities stated. Further, the business practices of Elevated are not in question and the information that would be provided in this topic is outside the scope of the investigation and is unreasonably irrelevant.

Thus, because this information is outside the scope of the investigation and it is not reasonably relevant to the investigation, this topic should be quashed in its entirety.

TOPIC 5: Your role or roles with Elevated Health, and all income you received from Elevated Health.

This Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and dry. The FTC should not be able to construe this as an open ended question with no limit, as that would be abuse of their power to investigate.²⁵

Thus, this Topic should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

TOPIC 6: Any other person's role or roles in connection with Elevated Health, including but not limited to Rachel Scava's role or roles in connection with Elevated Health.

This Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and

²⁵ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

PUBLIC DOCUMENT

dry. The FTC should not be able to construe this as an open ended question with no limit, as that would be abuse of their power to investigate.²⁶

Thus, this Topic should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

TOPIC 7: All relationships between Elevated Health and Fully Accountable.

This Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and dry. The FTC should not be able to construe this as an open ended question with no limit, as that would be abuse of their power to investigate.²⁷

Thus, this Topic should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

TOPIC 8: All relationships between Elevated Health and Group A or Group B Entities.

This Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and dry. The FTC should not be able to construe this as an open ended question with no limit, as that would be abuse of their power to investigate.²⁸

²⁶ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

²⁷ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

²⁸ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

PUBLIC DOCUMENT

Thus, this Topic should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

TOPIC 9: All relationships between Elevated Health and any of the following entities: Scava Holdings, LLC; CMG Tax and Consulting, LLC; VEF International, Inc; and TCWT Holdings, LLC.

As stated for Topic 3, Elevated Health is not defined as either Fully Accountable, a Group A Entity, or a Group B Entity. The relationships of Elevated Health, and Scava Holdings, LLC; CMG Tax and Consulting, LLC; VEF International, Inc; and TCWT Holdings, LLC is outside the scope of the investigation, It is not reasonably relevant to require the disclosure of this information because it does not help in the determination of if the parties being investigated participated or engaged in any of the activities stated. Further, asking this information is a fishing tactic that is an abuse of power by the FTC.

Thus, because this information is outside the scope of the investigation and it is not reasonably relevant to the investigation, this topic should be quashed in its entirety.

TOPIC 10: All relationships between Elevated Health and any entity you know or understand to be connected, directly or indirectly, with you, Rachel Scava, Christopher M Giorgio, or Vincent Fisher.

As stated for Topic 3, Elevated Health is not defined as either Fully Accountable, a Group A Entity, or a Group B Entity. The relationships of Elevated Health, and any entity you know or understand to be connected, directly or indirectly, with you, Rachel Scava, Christopher M Giorgio, or Vincent Fisher is outside the scope of the investigation. It is not reasonably relevant to require

PUBLIC DOCUMENT

the disclosure of this information because it does not help in the determination of if the parties being investigated participated or engaged in any of the activities stated. Further, asking this information is a fishing tactic that is an abuse of power by the FTC.

Thus, because this information is outside the scope of the investigation and it is not reasonably relevant to the investigation, this topic should be quashed in its entirety.

TOPIC 11: Work that you performed for any of the Group A Entities or Group B Entities outside of the scope of your employment (or other relationship) with Fully Accountable, and all income you received from any of those entities.

The CID that was issued was issued to Elevated Health, LLC and not to Sarah Scava. This request is specific to Sarah Scava and the work that she performed for the Group A and Group B Entities. It is unreasonable to issue a CID to an entity and then ask questions that are not relevant to that entity and its role in the investigation being conducted.

Further, this Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and dry. The FTC should not be able to construe this as an open ended question with no limit, as that would be abuse of their power to investigate.²⁹

Thus, this Topic should be quashed in its entirety for asking an irrelevant question to Elevated and the investigation. Should it be found that this topic is relevant, it should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

²⁹ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

PUBLIC DOCUMENT

TOPIC 12: Work that you performed for any of the following entities, and all income you received from them: Scava Holdings, LLC; CMG Tax and Consulting, LLC; VEF International, Inc; and TCWT Holdings, LLC.

The CID that was issued was issued to Elevated Health, LLC and not to Sarah Scava. This request is specific to Sarah Scava and the work that she performed for the Scava Holdings, LLC, CMG Tax & Consulting, LLC, VEF International, LLC and TCWT Holdings, LLC. It is unreasonable to issue a CID to an entity and then ask questions that are not relevant to that entity and its role in the investigation being conducted.

Further, this Investigative Hearing Topic is outside the scope of the investigation as the business and practices of these entities are not the subject of the investigation. The work that may or may not have been performed by Scava for these entities will not contribute in any capacity to the determination of the subject of the investigation. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is outside the scope of the investigation and not reasonably relevant to the

Thus, this Topic should be quashed in its entirety for asking an irrelevant question to Elevated and the investigation. It should further be quashed in its entirety as the subject of the topic is outside the investigation and does not provide any facts that assist in the determination of the matter of the subject.

TOPIC 13: Work that you performed, directly or indirectly for any entity you understand to be connected, directly or indirectly, with Rachel Scava, Christopher M. Girogio, or Vincent Fisher outside the scope of your employment (or relationship) with Fully Accountable, and all income you received from any such entities.

PUBLIC DOCUMENT

The CID that was issued was issued to Elevated Health, LLC and not to Sarah Scava. This request is specific to Sarah Scava and the work that she performed for Rachel Scava, Christopher M. Giorgio, and Vincent Fisher. It is unreasonable to issue a CID to an entity and then ask questions that are not relevant to that entity and its role in the investigation being conducted.

Further, this Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and dry. The FTC should not be able to construe this as an open ended question with no limit, as that would be abuse of their power to investigate.³⁰

Thus, this Topic should be quashed in its entirety for asking an irrelevant question to Elevated and the investigation. Should it be found that this topic is relevant, it should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

CONCLUSION

For the foregoing reasons, FA respectfully requests that the Commission limit or quash the challenged Investigative Hearing Testimony as set forth above.

³⁰ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

PUBLIC DOCUMENT

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to 16 C.F.R 2.7(d)(2), counsel for Petitioner conferred with Counsel, Harris Senturia, Esq on September 29, 2018 at 12:00 pm EST October 1, 2018, and October 3, 2018 in a good faith effort to resolve. Counsel on file, Harris Senturia, Esq and counsel for Elevated Health, LLC have not been able to reach an agreement by the deadline to file this petition.

Respectfully Submitted,



Rachel L Scava (0092694)
Fully Accountable, LLC
2680 West Market St
Akron, Ohio 44333
Telephone: (216) 810 – 4705
Facsimile: (234) 542 – 1029
Email: rachel.scava@fullyaccountable.com
Attorney for Petitioner Elevated Health, LLC

PUBLIC DOCUMENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following via overnight Federal Express and electronic mail on this 3rd day of October, 2018.

Harris A Senturia
1111 Superior Ave, Suite 200
Cleveland, Ohio 44114
hsenturia@ftc.gov

Donald Clark, Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-113
Washington, DC 20580



RACHEL L. SCAVA

Petition Exhibit 6

**Order Denying Petitions to Limit or Quash
Civil Investigative Demands**

(Nov. 19, 2018)

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

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine Wilson

In the Matters of

**CIVIL INVESTIGATIVE DEMAND TO
FULLY ACCOUNTABLE, LLC DATED
SEPTEMBER 10, 2018**

and

**CIVIL INVESTIGATIVE DEMAND TO
SARAH SCAVA DATED SEPTEMBER 10, 2018**

)
) **File No. 1723195**
) **November 19, 2018**
)
)
)
)
)
)
)
)
)

**ORDER DENYING PETITIONS TO LIMIT AND QUASH
CIVIL INVESTIGATIVE DEMANDS**

By WILSON, Commissioner:

Fully Accountable, LLC (“Fully Accountable”) and Elevated Health, LLC (“Elevated Health”) petition to quash or limit civil investigative demands (“CID”) for testimony issued by the Commission as part of the Commission’s investigation of Fully Accountable and its relationships with various internet marketers of dietary supplements and other products. Fully Accountable seeks to quash or limit a CID seeking testimony by a company representative pursuant to FTC Rule 2.7(h), 16 C.F.R. § 2.7(h). Elevated Health, an affiliate of Fully Accountable, did not receive a CID. Nonetheless, it seeks to quash or limit a CID for testimony issued to Sarah Scava, a former employee of Fully Accountable with ties to Elevated Health.¹ For the reasons stated below, we deny the petitions.

¹ Petitioners have not attached the challenged CIDs to their petitions. To assist the reader, we have therefore appended the CIDs hereto as Orders Exhibit 1 (CID issued to Fully Accountable) and Exhibit 2 (CID issued to Sarah Scava). Because of its relevance to resolution of the pending petitions, the CID for documents issued to Fully Accountable on September 21, 2017 is attached as Order Exhibit 3. Citations to text in these exhibits refer to Bates numbers appearing in the bottom margins.

I. Background

The challenged CIDs arise from the Commission's ongoing investigation of Fully Accountable, a company based in Fairlawn, Ohio. Fully Accountable provides back office services to internet marketers, including accounting, bookkeeping, and general business consulting. It also helps its clients to obtain and manage credit card payment processing accounts.

The Commission's investigation has focused on the services Fully Accountable provides to two groups of entities and the nature of Fully Accountable's relationships with these entities. The first group, called "Group A," consists of clients of Fully Accountable and includes several companies that market or have marketed dietary supplements online, including a supplement that purportedly reduces cognitive decline and related conditions. The second, called "Group B," includes several companies that appear to be affiliates of Fully Accountable. The purpose of the investigation is to determine whether, in providing services to these groups or others, Fully Accountable has engaged in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C.

On September 21, 2017, the Commission issued a CID to Fully Accountable seeking the production of documents and interrogatory responses. Order Ex. 3. The CID included a "Subject of Investigation," which describes the subject of the investigation as follows:

Whether Fully Accountable, the Group A Entities, or the Group B Entities . . . *and related entities and individuals*, have made or participated in making, in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization, in violation of Section 5 of the FTC Act, and whether Commission action to obtain monetary relief would be in the public interest.

See Order Ex. 3 at 6 (emphasis added).

The CID defined "Fully Accountable" to include "its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing, including, but not limited to, Christopher Giorgio and Rachel Scava." Order Ex. 3 at 12. The CID similarly defined the Group A and Group B Entities to encompass several specifically identified corporate entities as well as their related entities and individuals.² *Id.* at 13-14.

² Like the definition for "Fully Accountable" the definitions for Group A and Group B also included any "wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, successors, and affiliates, and all directors, officers, members,

At Fully Accountable's request, FTC staff modified the CID to allow the company to produce its documents and interrogatory responses on rolling deadlines spanning a four-week period in October and November 2017. Despite these modifications and extensions, Fully Accountable failed to produce *any* documents and its interrogatory responses omitted required details about its ownership, leadership, and organizational structure. Additionally, it provided only evasive answers to several interrogatory requests.

When Fully Accountable refused to address these deficiencies, the Commission instituted CID enforcement proceedings in the Northern District of Ohio. *See Federal Trade Commission v. Fully Accountable, LLC*, No. 5:18-mc-00054-SL (N.D. Ohio June 8, 2018). On August 13, 2018, the district court issued an order directing Fully Accountable to comply fully with the CID within 10 days. Fully Accountable made supplemental productions and submitted to the Commission a certificate of compliance. After FTC staff examined the supplemental productions, they determined that deficiencies remained. Accordingly, on September 21, 2018, the Commission filed a status report with the district court stating that the Commission does not "agree at this time that Fully Accountable has complied in full[,]" and further informed the court that it had "undertaken additional investigational steps to assess the completeness of the production and to move the matter forward generally." *Id.*, Doc. 15.

The two CIDs at issue constitute part of the "additional investigational steps" referenced in the Commission's status report. The CID issued to Fully Accountable requires the company to designate a witness to appear and testify at an FTC investigational hearing on seven topics. The designated topics include a description of the steps Fully Accountable took to comply with the earlier CID. Other topics include a description of Fully Accountable's relationship with a former employee, Sarah Scava, and with petitioner, Elevated Health, a firm that may be affiliated with or related to Fully Accountable.³ *See* Order Ex. 1 at 6. A separate CID asks Sarah Scava to testify on 13 topics. Among other topics, the CID requires Ms. Scava to describe her relationship to Fully Accountable and Elevated Health as well as Elevated Health's relationships to Fully Accountable and other entities. *See* Order Ex. 2 at 6-7.

As required by FTC Rule 2.7(k), 16 C.F.R. 2.7(k), FTC staff and counsel for Fully Accountable – Rachel Scava – conferred by telephone on September 24, 2018. A few days later, counsel Rachel Scava called FTC staff, and stated that she also represented Sarah Scava. In a series of telephone calls between September 28 and October 3, 2018, she conferred with staff regarding possible modifications to the CID issued to Sarah Scava. During these telephone calls, FTC staff also offered to conduct the

employees, agents, consultants, and other persons" working on behalf of several specified individuals. Order Ex. 3 at 13-14.

³ A search of public records shows that Sarah Scava registered Elevated Health LLC with the Ohio Secretary of State on December 20, 2016.

investigational hearing on a Saturday near Sarah Scava's personal residence, an offer that was rejected. Rachel Scava did not inform staff that she also represents Elevated Health until she filed the instant petition on behalf of that company, and did not meet or confer with staff, as required by the FTC's Rules of Practice, at any point in connection with Elevated Health.

II. Fully Accountable's CID is Relevant and Does Not Impose an Undue Burden

A. The CID Calls for Relevant Testimony.

Fully Accountable's principal challenge is to the relevance of the designated topics to the subject matter of the ongoing investigation. It contends that Specifications 6 and 7 – which call for testimony about the company's relationships with Elevated Health and Sarah Scava – fall outside the scope of the Commission's investigation. Fully Accountable Pet. 5-6. It also contends that Specifications 3, 4, and 5 – which require Fully Accountable to testify about the company's efforts to comply with the earlier CID, its document preservation practices, and its records management systems – is “overly broad,” because, according to Fully Accountable, it provided the same information in its response to the earlier CID. *Id.* at 7. Fully Accountable also contends that Specifications 3, 4, and 5 fail to limit the topics to the subject matter of the inquiry and that its “business practices as a whole are not the subject of the inquiry and it's [sic] business practices are not reasonably relevant to the investigation.” *Id.*

As courts have long observed, the purpose of an FTC investigation is to learn whether there is reason to believe that the law has been or is being violated and, if so, to ascertain whether the issuance of a complaint would be in the public interest. *See FTC v. Texaco, Inc.*, 555 F.2d 862, 872 (D.C. Cir. 1977) (*en banc*) (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950)). In this context, the standard for relevance of administrative compulsory process is broad and more “relaxed” than in an adjudication. *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992). A CID request need not be limited to that information necessary to prove specific charges; to the contrary, it may call for documents and information that are relevant “to the investigation” – a boundary that may be broadly defined by the agency. *Id.*

Applying these standards here, we conclude that Fully Accountable's objections are meritless. Specifications 6 and 7 plainly and obviously relate to the FTC's investigation into Fully Accountable and its relationships with its clients, affiliates, and related companies and individuals. Those topics raised in the CID will help determine the existence and extent of the relationships between and among Fully Accountable, Sarah Scava, and Elevated Health. Specifications 3, 4, and 5 are also clearly relevant to assessing Fully Accountable's responses to the FTC's investigation. To advance the Commission's mission, FTC staff must be allowed latitude in taking steps to explore relevant topics by issuing supplemental process and taking testimony, particularly where, as here, a company has been lax in responding to the Commission's informational needs. These facts have particular relevance here, where Fully Accountable's responses to the earlier CID made its own document management a key issue and required the

Commission to seek judicial intervention. Indeed, the procedures that a company has adopted – or failed to adopt – in documenting its business practices as well as its efforts to respond to process are relevant in *any* investigation.

Fully Accountable's sweeping claim that "FA business practices as a whole are not the subject of the inquiry and it's [sic] business practices are not reasonably relevant to the investigation[,]" cannot be squared with the long established standards for relevance in administrative investigations. Fully Accountable appears to claim that the FTC may not investigate a systemic or enterprise-wide practice. But the question whether a particular practice pervades an organization is independent of the question whether a request for information about that practice qualifies as legally relevant; indeed, enterprise-wide practices are often the subject of Commission investigations. To the extent that the CID here asks Fully Accountable about the company's practices for document management, control, or disposal, these requests seek relevant information about why requested information was not provided in response to the initial CID.

B. The CID Does Not Impose Undue Burden.

Fully Accountable also asserts that the CID for testimony imposes undue burden because it requires the company to duplicate its responses to the original CID. It cites Specifications 1 and 2, which call for testimony about "the Company's responses to the Interrogatories set forth in the CID issued September 21, 2017[,]" and the "documents produced by the Company in response to the CID issued September 21, 2017." Fully Accountable Pet. 8-9. These objections are meritless.

We acknowledge that testifying in an investigational hearing imposes burdens, including the time and expense of legal preparation, disruption of normal business operations, travel time and expense, and commitment of personal time. Every CID places some degree of burden on the recipient, and is "necessary" to further an agency's inquiry and the public interest. *See, e.g., Texaco*, 555 F.2d at 882. But the standard for establishing that a CID imposes an *undue* burden on the recipient is a high one. Thus, to meet this standard, a CID recipient must show that a CID "threatens to unduly disrupt or seriously hinder" its normal business operations. *Id.*; *see also EEOC v. Maryland Cup Corp.*, 785 F.2d 471, 479 (4th Cir. 1986). Fully Accountable has not made such a showing.

In any investigation, a CID recipient's responses to interrogatories and document production specifications may leave questions unanswered. To enable FTC staff to move an investigation forward and ultimately to make appropriate recommendations to the Commission, FTC staff may need to convene an investigational hearing to further develop the facts. For this reason, the FTC Rules of Practice lay out detailed provisions for investigational hearings, including how they are to be conducted and the rights of witnesses. *See* 16 C.F.R. §§ 2.7(f), 2.9. The need to convene investigational hearings is particularly important in this instance, given the questions that have been raised about the adequacy of Fully Accountable's search for responsive materials and its document preservation practices. Because testimony provides a crucial opportunity for Commission

staff to obtain information and test a company's responses in real time, we find that the value to the Commission of investigational hearings outweighs any reasonable burdens they may impose.

III. As a Third Party, Elevated Health Is Not Entitled to File a Petition to Quash an FTC CID

Elevated Health, LLC seeks to quash or limit the CID issued to Sarah Scava on September 10, 2018. As an initial matter, we note that Elevated Health is mistaken in asserting that the CID in question was issued to Elevated Health, with Sarah Scava designated as the individual to provide testimony on behalf of the entity. *See* Elevated Health Pet. 3-4. In fact, the Commission did not issue a CID to Elevated Health. It issued the CID to Sarah Scava personally to testify on the basis of her own knowledge of the designated topics. *See* Order Ex. 2 at 1, 3, 6 (specifying Sarah Scava as CID recipient).

Given these circumstances, Elevated Health may not seek to limit or quash Ms. Scava's CID. Section 20(c) of the FTC Act, 15 U.S.C 57b-1(c), authorizes the Commission to issue a CID to "any person" the Commission has reason to believe has documents, tangible things, or information relevant to unfair or deceptive acts in or affecting commerce. In turn, Section 20(f)(1) states that after being served with a CID, "such person" may file a "petition for an order by the Commission modifying or setting aside the demand." 15 U.S.C. § 57b-1(f)(1). Section 20(f) makes no provision, however, for such a petition to be filed by any person other than the person served with the CID. *Id.* Because Elevated Health's petition is not properly before the Commission, we decline to consider any of the arguments it advances in support of its petition to quash or limit.

Even if Elevated Health could file such a petition, Elevated Health's failure to comply with the requirement that it meet and confer with FTC staff prior to filing means that its arguments are not properly before the Commission. The Commission takes this procedural requirement seriously, as shown by two separate provisions in the Commission's Rules. Rule 2.7(k) cautions that "[t]he Commission will not consider petitions to quash or limit absent a pre-filing meet and confer session with Commission staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process." 16 C.F.R. § 2.7(k). Rule 2.10 then directs CID recipients to include with any petition to limit or quash a statement describing the circumstances and attendees at the conference with staff and further provides that "[f]ailure to include the required statement may result in a denial of the petition." 16 C.F.R. § 2.10(a)(2). While Rachel Scava met and conferred with FTC staff regarding the CID issued to Sarah Scava, we are informed that she stated that she was doing so on behalf of Ms. Scava, not Elevated Health. We thus understand that FTC staff was not even aware Rachel Scava represented Elevated Health until she filed the instant petition on behalf of the company. Nor has Elevated Health presented any "extraordinary circumstances" justifying a departure from these rules. Accordingly, the Commission declines to consider Elevated Health's arguments in support of its petition to quash or limit.

In any event, the arguments advanced by Elevated Health would not call for any limitations on the scope of inquiry for testimony set forth in the CID. Elevated Health's petition presents a number of repetitive arguments that, taken together, amount to the following objections: (1) the CID is unreasonable because Ms. Scava is no longer involved with the subject company, *see, e.g.*, Elevated Health Pet. 7; (2) the CID is unreasonable because it seeks information about entities and individuals outside of the scope of the investigation, *see id.* at 8-9, 11, 14, 16, 17; and (3) the CID's requests for testimony are unduly burdensome and Sarah Scava should be permitted to respond in writing. *See id.* at 10-15, 17.

These objections provide no basis for limiting or quashing the CID. It is entirely permissible for Commission staff to seek testimony from individuals formerly involved with subject companies, including former employees. Moreover, for the reasons discussed above, neither Sarah Scava nor Elevated Health falls outside of the scope of the investigation, which extends to entities and individuals "related" to Fully Accountable. *See, e.g.*, Order Ex. 2 at 1, 5-6, 10-12 (resolutions); *see also Invention Submission Corp.*, 965 F.2d at 1090. Furthermore, the Commission is well within its rights in this instance to elect to require live testimony as an investigatory tool pursuant to the FTC Act and its implementing regulations. *See* 15 U.S.C. § 57b-1(c)(1); 16 C.F.R. §2.7(f).

IV. CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED THAT** Fully Accountable, LLC's Petition to Limit or Quash Civil Investigative Demand be, and hereby is, **DENIED**.

IT IS FURTHER ORDERED THAT Elevated Health, LLC's Petition to Limit or Quash Civil Investigative Demand is not properly before the Commission, and accordingly is **DENIED**.

IT IS FURTHER ORDERED THAT Sarah Scava shall comply in full with the Commission's Civil Investigative Demand and shall appear ready to testify on the specified topics at the designated location on **November 29, 2018 at 9:00 a.m.**, or at other such date, time, and location as FTC staff may determine.

IT IS FURTHER ORDERED THAT Fully Accountable, LLC shall comply in full with the Commission's Civil Investigative Demand and shall appear ready to testify on the specified topics at the designated location on **November 30, 2018 at 9:00 a.m.**, or at other such date, time, and location as FTC staff may determine.

By the Commission, Chairman Simons recused.

Donald S. Clark
Secretary

SEAL:

ISSUED: November 19, 2018

Petition Exhibit 7

Email chain between from Rachel Scava and
Harris Senturia re: Investigational hearings
this week

(Nov. 26-28, 2018)

From: Rachel Scava <rachel.scava@fullyaccountable.com>
Sent: Wednesday, November 28, 2018 3:13 PM
To: Senturia, Harris <HSENTURIA@ftc.gov>
Cc: Jenkins, Adrienne M. <ajenkins@ftc.gov>
Subject: Re: Investigational hearings this week

Good Afternoon Harris,

This afternoon I filed with the District Court a Petition to Enforce the Petition to Quash and Limit for both Fully Accountable and Sarah Scava. While you should receive notice through the system, I have attached it here as well. I will send the exhibits in a separate email as they are too large.

At this time we will not be scheduling a hearing for Sarah Scava or Fully Accountable until the determination is made by the Court.

Have a great day,

Rachel Scava

On Wed, Nov 28, 2018 at 9:34 AM Senturia, Harris <HSENTURIA@ftc.gov> wrote:

Good morning Rachel,

As of now, Sarah Scava is due to appear tomorrow. Obviously, we would like to work with you on rescheduling the date, as demonstrated in the offer of seven different possible alternative dates in my email below from two days ago. But I have not heard back from you, and we are not going to agree to an open-ended extension. Please respond today so we can get the agreed date set and formalized. Thank you.

Regards,
Harris

Harris A. Senturia
East Central Region
Federal Trade Commission
1111 Superior Avenue, Suite 200
Cleveland, Ohio 44114-2507
Tel: (216) 263-3420
Cell: (202) 256-0261
hsenturia@ftc.gov

From: Senturia, Harris
Sent: Monday, November 26, 2018 3:40 PM

To: 'Rachel Scava' <rachel.scava@fullyaccountable.com>
Cc: Jenkins, Adrienne M. <ajenkins@ftc.gov>
Subject: RE: Investigational hearings this week

Good afternoon Rachel,

Thank you for your reply. For purposes of clarity and efficiency, let's see if we can settle on a date for the Sarah Scava hearing first, then look at scheduling the Fully Accountable hearing.

For Sarah Scava, we can be available December 6, 7, 10, 11, 12, 13 or 14. Please let us know which of those dates will work. Thank you.

Regards,
Harris

Harris A. Senturia
East Central Region
Federal Trade Commission
1111 Superior Avenue, Suite 200
Cleveland, Ohio 44114-2507
Tel: (216) 263-3420
Cell: (202) 256-0261
hsenturia@ftc.gov

From: Rachel Scava <rachel.scava@fullyaccountable.com>
Sent: Monday, November 26, 2018 3:17 PM
To: Senturia, Harris <HSENTURIA@ftc.gov>
Cc: Jenkins, Adrienne M. <ajenkins@ftc.gov>
Subject: Re: Investigational hearings this week

Good Afternoon Harris and Adrienne,

I did receive notice this morning the petitions were both denied. Due to the timing and notice over a holiday weekend, Thursday and Friday will not work as I am unavailable. Please let me know some other days and times that will work for you.

I hope you both had a lovely holiday.

Rachel

On Mon, Nov 26, 2018 at 11:12 AM Senturia, Harris <HSENTURIA@ftc.gov> wrote:

Good morning Rachel,

I hope that you had a good Thanksgiving holiday.

I understand that the Commission's decision denying the petitions to quash was sent to you last week. We look forward to seeing you here in Cleveland this Thursday,

November 29, with Sarah Scava, and on Friday, November 30, with Chris Giorgio as the designee for Fully Accountable.

The Sarah Scava hearing on Thursday the 29th will take place on the fourth floor of the building (1111 Superior Avenue), while the Fully Accountable hearing on Friday the 30th will be on the second floor of the building.

Please feel free to contact Adrienne and me with any questions.

Regards,
Harris

Harris A. Senturia
East Central Region
Federal Trade Commission
1111 Superior Avenue, Suite 200
Cleveland, Ohio 44114-2507
Tel: (216) 263-3420
Cell: (202) 256-0261
hsenturia@ftc.gov

--
Rachel Scava

CHIEF OPERATING OFFICER

(216) 810-4705 ext. 2203

rscava

Website. www.fullyaccountable.com

Blog. www.fullyaccountable.com/blog

--
Rachel Scava

CHIEF OPERATING OFFICER

(216) 810-4705 ext. 2203

rscava

Website. www.fullyaccountable.com

Blog. www.fullyaccountable.com/blog