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CLERK 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,  
Respondent.

JUDGE LIOI

Misc. No.

5:18 MC

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FEDERAL TRADE COMMISSION'S PETITION TO ENFORCE  
CIVIL INVESTIGATIVE DEMAND

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 a civil investigative demand (CID) issued to Respondent Fully Accountable, LLC.<sup>1</sup>

<sup>1</sup> 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)). 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 FTC v. Infante*, No 4:17-mc-00008-CAB (N. D. Ohio, filed Feb. 7, 2017).

Respondent provides 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 this CID seeking documents and interrogatory responses in the course of that investigation.

As set forth in greater detail in the accompanying memorandum, this Court should enforce the CID because Fully Accountable has failed to comply in multiple respects. The company has produced no documents at all and its responses to interrogatories have been insufficient. For example, the company has refused to produce any information about its ownership and organizational structure, claiming that privately-held companies are exempt from producing such information. It also claims that it is outside of the scope of the Commission's investigation. In fact, neither of those claims justifies noncompliance. Fully Accountable has also withheld information that it claims is confidential, but that too is not a valid ground to refuse production. Finally, Fully Accountable has withheld information by narrowing the scope of the CID through selective interpretations of the CID specifications. This refusal to cooperate has stymied the Commission staff's investigation.

Nor has Fully Accountable appropriately asserted any objections to the CID. The company did not raise any concerns to the investigating staff attorneys or seek

administrative relief through filing a petition to limit or quash the CID with the Commission. The Court should therefore enforce the CID and direct that Fully Accountable produce the information specified within 10 days.

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. 21, 2017);
- Pet. Ex. 3            FedEx Delivery Confirmation, Tracking # 770322176852 (Sept. 26, 2017);
- Pet. Ex. 4            Letter from Assistant Regional Director Larissa Bungo to Rachel Scava (Oct. 16, 2017);
- Pet. Ex. 5            Letter from Harris Senturia to Rachel Scava (Oct. 27, 2017);
- Pet. Ex. 6            Letter from Rachel Scava to Harris Senturia (Nov. 6, 2017);
- Pet. Ex. 7            Letter from Harris Senturia to Rachel Scava (Nov. 15, 2017);  
and
- Pet. Ex. 8            Letter from Rachel Scava to Harris Senturia (Nov. 20, 2017).

### **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 Fully Accountable is found and transacts business here. Pet. Ex. 1, ¶ 3. Venue is also proper under 28 U.S.C. § 1391.

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

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 ongoing 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 in the making of 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 21.

7. The second resolution, File No. 9923259, authorizes the use of compulsory process to investigate whether entities are engaging in, among others, “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 22.

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 23 (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. Among Fully Accountable's clients are a group of entities that have marketed online several dietary supplements, including, but not limited to, a supplement called Geniux (and other names) that purportedly reduces cognitive decline and related conditions. The FTC learned that some consumers claimed that the marketers charged them for such products without authorization. For purposes of the CID at issue, these entities are called "Group A."<sup>2</sup> Pet. Ex. 1, ¶ 4.

11. In addition, Fully Accountable itself is closely related to a second group of entities that centered around a company called Leading Health Supplements. These entities also marketed various supplements online, including skin creams, weight loss supplements, and a purported cognitive assistance supplement. As with the Group A Entities, the entities related to Fully Accountable have also been the subject of numerous consumer complaints regarding their marketing practices, including unauthorized charges to consumers' credit cards. For purposes of the CID at issue, these entities are called "Group B."<sup>3</sup> Pet. Ex. 1, ¶ 5.

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<sup>2</sup> As defined in the CID, the Group A Entities include 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, and any related entities. Pet Ex. 2 at 14-15.

<sup>3</sup> As defined in the CID, the Group B Entities include 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, and any related entities. Pet. Ex. 2 at 15.

### The Commission's Investigation and Civil Investigative Demand

12. This investigation seeks to determine whether Fully Accountable complies with Sections 5 and 12 of the FTC Act through its associations with, and the services it provided to, the Group A and Group B Entities. The topics covered by the CID include the following:

- a. Respondent's ownership, leadership, and organization;
- b. Respondent's relationship with the Group A and Group B Entities, including documents related to contracts, applications, or agreements with these entities;
- c. Accounting records and information for the Group A and Group B Entities, including records and information regarding Geniux product sales, and advertising and research expenses (and sales and advertising expenses for non-Geniux products);
- d. Records relating to payment processing services provided to the Group A and Group B Entities, including records relating to the entities' payment processing activities; and
- e. Consumer complaints and related communications.

Pet. Ex. 1, ¶ 11.

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 no later than October 23, 2017. Pet. Ex. 2 at 4. Each of the resolutions would independently justify the CID, as staff is investigating conduct involving the online marketing of food, drugs, or dietary supplements, and involves alleged unauthorized credit card charges.

14. In issuing the CID, 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)(3), (c)(7); 16 C.F.R. § 2.7. The CID was properly signed by Acting Chairman Maureen K. Ohlhausen pursuant to the resolutions, as required by Section 20 of the FTC Act. *See* Pet. Ex. 2 at 4; *see also* 15 U.S.C. § 57b-1(i); 16 C.F.R. § 2.7(a).

15. The FTC served the CID on Fully Accountable on September 26, 2017, directing it to Christopher Giorgio, Fully Accountable's President. *See* Pet. Ex. 3; *see also* 15 U.S.C. § 57b-1(c)(8); 16 C.F.R. § 4.4(a)(3).

16. After issuing the CID, Commission staff engaged in a meet-and-confer process with the company. After discussions on October 10 and 16, 2017, staff agreed to formally modify the CID, providing a "phased" production with four deadlines: October 23, October 30, November 6, and November 20. Pet. Ex. 1, ¶¶ 13-17; Pet. Ex. 4.

17. At no point in these discussions did Fully Accountable raise any objections or concerns regarding any of the CID specifications. Nor did Fully Accountable file a petition to limit or quash the CID, the administrative remedy provided to CID recipients by the Commission's Rules of Practice. *See* 16 C.F.R. § 2.10; Pet. Ex. 1, ¶¶ 14-15, 18-19.

18. Fully Accountable provided responses on each of the specified deadlines, but these responses did not include any documents. Instead, the company purported to respond to the interrogatories and also lodged numerous objections



and reasons it was not producing information. A chart attached to Mr. Senturia's Declaration as Attachment 1 describes the deficiencies identified by FTC staff in detail. *See* Pet. Ex. 1, Att. 1.

19. In a series of letters exchanged between October 27 and November 20, 2017, FTC staff repeatedly informed Fully Accountable that its productions were deficient and its reasons for noncompliance baseless. Commission staff identified three key deficiencies:

- a. *Improper withholding of information about the company's ownership, leadership, and organization.* Two specifications, S-2 and S-12, ask for information and documents concerning Fully Accountable's ownership and management, as well as its organizational structure and personnel directory. Pet. Ex. 2 at 7, 10. Fully Accountable did not provide any of the requested information or documents. It claimed that it was outside of the scope of the FTC's investigation because it did not provide any marketing or advertising services, in any capacity, for any of the companies listed in the CID and thus did not have to respond. Fully Accountable further claimed that "[a]s a privately held company" it was not required to disclose its ownership or organizational chart. Pet Ex. 6 at 1, 2; *see also* Pet. Ex. 5 at 2; Pet. Ex. 7 at 2 (FTC staff responses).

- b. *Improper withholding of documents about client activity on confidentiality grounds.* Specifications S-13, S-14, S-37, S-38, and S-17 through S-20 all call for information about the Group A and Group B Entities, as well as financial and accounting records for the Group A Entities. *See* Pet. Ex. 2 at 10, 12. Fully Accountable refused to produce this information claiming that contracts prevent it from providing the information unless the FTC either secures consent from each of these entities or provides a “Protective Order.” Pet. Ex. 6 at 2-3; Pet. Ex. 8 at 3.
- c. *Improper withholding of documents relating to contracts, applications, or agreements based on a narrow reading of the specifications.* Specification S-16 of the CID calls for “[a]ll documents relating to contracts, applications, or agreements for any Group A Entity.” Pet. Ex. 2 at 10. Fully Accountable claimed it had no contracts, applications, or agreements with the Group A Entities. It further claimed that while it used “engagement letters,” it had no such letters for these entities.<sup>4</sup> Pet. Ex. 7 at 3. Fully Accountable’s response, however, failed to address whether it has any “documents *relating to contracts, applications, or agreements,*” as the CID specified. Pet. Ex. 2 at 10 (emphasis added). The FTC has reason to believe from other

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<sup>4</sup> Fully Accountable made the same claim with respect to a substantially identical specification calling for the same documents from Group B Entities. *See* Pet. Ex. 2 at 12 (Specification S-40); Pet. Ex. 8 at 3.

information provided that such documents exist. Moreover, Fully Accountable's statement that it has no responsive information cannot be squared with its claim, discussed above, that "contractual obligations" require special protections for confidential information.

- d. Fully Accountable has employed similarly narrow or selective readings of other CID specifications to avoid producing responsive information. For example, although the CID called for information concerning documents disposed of beginning in 2014, Fully Accountable unilaterally employed a much shorter time period in reporting that it had no responsive information. Pet. Ex. 1, ¶ 43. Similarly, although the CID provided a specific definition of the term "Payment Processing," Fully Accountable used a far narrower definition of its own devise. Using such artificially narrowed specifications, Fully Accountable claimed it did not have responsive information. Pet. Ex. 1, ¶ 44

20. Fully Accountable's failure to comply with the September 21, 2017 CID has materially impeded the Commission's ongoing investigation. Pet. Ex. 1, ¶¶ 45-46.

#### **Prayer For Relief**

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

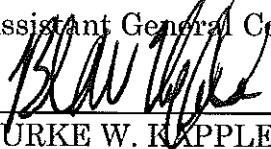
- a. Immediate issuance of an order, substantially in the form attached, directing Respondent Fully Accountable, LLC to show cause why it should not comply in full with the Commission's CID, and setting forth a briefing schedule; and
- b. A prompt determination of this matter and entry of an order:
  - (i) Compelling Respondent to produce the documents and information specified in the September 22, 2017 CID 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

JOEL MARCUS  
Deputy General Counsel for Litigation

LESLIE RICE MELMAN  
Assistant General Counsel for Litigation

  
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Dated: June 6, 2018.

**Petition Exhibit 1**

Declaration of Harris A. Senturia  
(June 5, 2018)

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

FEDERAL TRADE COMMISSION,  
Petitioner,

v.

FULLY ACCOUNTABLE, LLC,  
Respondent.

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 health-related 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 Demand. I have read the petition and exhibits thereto (hereinafter referred to as Pet. Ex.), and verify that Pet. Ex. 2 through Pet. Ex. 8 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. The FTC opened an investigation and issued a civil investigative demand (CID) to Fully Accountable after learning that among Fully Accountable's clients are a group of entities that have marketed online several dietary supplements that purportedly reduce cognitive decline and related diseases and conditions, including, but not limited to, a supplement called Geniux. The FTC also learned that some consumers complained about these entities' marketing practices, and claimed the entities made unauthorized charges to consumers' credit cards. Consistent with the CID, I will refer to this group as the "Group A Entities."<sup>1</sup>

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<sup>1</sup> As defined in the CID, the Group A Entities include Innovated Health LLC, Global Community Innovations LLC, Premium Health Supplies, LLC, Buddha My Bread LLC, Innovated Fulfillment LLC, Vista Media LLC, Emerging Nutrition,

5. The FTC also learned that Fully Accountable itself was closely related to a second group of entities centered around a company called Leading Health Supplements that also marketed dietary supplements online and that were the subject of numerous consumer complaints regarding their marketing practices, including unauthorized charges to consumers' credit cards. Consistent with the CID, I will refer to this group as the "Group B Entities."<sup>2</sup>

6. The Commission issued the CID to Fully Accountable on September 21, 2017 under the authority of three FTC resolutions, each of which authorizes the use of compulsory process to investigate aspects of the conduct at issue. Pet. Ex. 2 at 21-23.

7. 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 or service intended to provide a health benefit" on the grounds that such conduct could amount to "unfair or deceptive acts or practices or in the making of 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 21.

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

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Inc., ShipSmart, LLC, Guerra Company LLC, ASH Abbas LLC, and Your Healthy Lifestyle LLC, and any related entities. Pet Ex. 2 at 14-15.

<sup>2</sup> As defined in the CID, the Group B Entities include 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, and any related entities. Pet. Ex. 2 at 15.



“deceptive or unfair practices involving Internet-related goods or services.” If true, such conduct could violate Sections 5 or 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52. Pet. Ex. 2 at 22.

9. 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.” Pet. Ex. 2 at 23 (emphasis added). If true, 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. Id.*

10. The CID required Fully Accountable to respond to 11 interrogatories and 40 document requests on or before October 23, 2017. Pet. Ex. 2 at 4. I and other FTC staff carefully developed these specifications to elicit the information needed for our investigation.

11. The CID seeks information relating to, among other things, (a) Fully Accountable’s ownership, leadership, and organization; (b) Fully Accountable’s relationship with the Group A and Group B Entities, including documents related to contracts, applications, or agreements with these entities; (c) accounting and financial data for the Group A and Group B Entities, including accounting records for Geniux and non-Geniux products; (d) records relating to payment processing services provided to the Group A and Group B Entities; and (e) consumer complaints and related communications. This information is directly relevant to, and serves the purposes of, the FTC’s investigation in several ways. The

information enables FTC staff to identify individuals relevant to the investigation, to understand Fully Accountable's relationships with its internet marketer clients, and to obtain information about Fully Accountable's roles with respect to its clients' internet marketing operations, including any direct or indirect role Fully Accountable has played in charges made to consumers' accounts.

12. In issuing the CID, 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)(3), (c)(7); 16 C.F.R. § 2.7. The CID was properly signed by Acting Chairman Maureen K. Ohlhausen pursuant to the resolutions, as required by Section 20 of the FTC Act. *See* Pet. Ex. 2 at 4; *see also* 15 U.S.C. § 57b-1(i); 16 C.F.R. § 2.7(a). The FTC served the CID on Fully Accountable on September 26, 2017, directing it to Christopher Giorgio, Fully Accountable's President. *See* Pet. Ex. 3; *see also* 15 U.S.C. § 57b-1(c)(8); 16 C.F.R. § 4.4(a)(3). The CID was delivered and signed for by an individual named "Scava" on September 26, 2017. Pet. Ex. 3.

13. Thirteen days later, on Monday, October 9, 2017 (a federal holiday during which our offices were closed), Rachel Scava of Fully Accountable called my direct line and left a voicemail. In the voicemail, Ms. Scava identified herself as an attorney for Fully Accountable, confirmed receipt of the CID, and indicated that she was calling in accordance with the fourteen-day "meet and confer" obligation set forth in the CID.

14. On Tuesday, October 10, 2017, I spoke with Ms. Scava by telephone. During the call, Ms. Scava identified herself as Fully Accountable's in-house

General Counsel. (I am aware that she also holds the title of Chief Operating Officer.) The only issue that Ms. Scava raised with respect to the CID was a request for an extension of time. She did not express any objection to any of the interrogatories or requests for production. We discussed a possible schedule divided into four phases; with the first phase response to be due on the original due date of October 23, 2017.

15. The next day, on Wednesday, October 11, 2017, I called Ms. Scava to inform her that the Assistant Regional Director would authorize a phased response extension, but that the schedule would be somewhat shorter than the schedule we discussed. I did not reach her until Monday, October 16. Ms. Scava raised no objection to the revised schedule. Nor did she object to or raise any question as to any of the interrogatories or requests for production.

16. That same day, on October 16, 2016, we sent to Ms. Scava via Federal Express a letter signed by Assistant Regional Director Larissa Bungo, modifying the CID. Pet. Ex. 4.

17. The phased response schedule extension granted to Fully Accountable set four deadlines, as follows:

- a. Oct. 23, 2017: Interrogatories S-1 to S-4, S-6, S-8;  
Document requests S-12 to S-14, S-37, S-38;
- b. Oct. 30, 2017: Interrogatories S-5, S-7, S-9;  
Document requests S-15 to S-28;
- c. Nov. 6, 2017: Document requests S-29 to S-36;
- d. Nov. 20, 2017: Interrogatories S-10, S-11; and  
Document requests S-39 to S-51.

Pet. Ex. 4 at 1-2.

18. Ms. Bungo did not otherwise modify the CID. The phased response schedule extension was contingent on “full and complete production” by Fully Accountable. Pet. Ex. 4 at 2. Although Ms. Bungo also invited Ms. Scava to call with any questions, Ms. Scava did not do so.

19. Under the FTC’s Rules of Practice, Fully Accountable could have filed a petition to limit or quash the CID. *See* 16 C.F.R. § 2.10. Such a petition would have been due on October 16, 2017. *Id.* Fully Accountable filed no such petition.

20. I have attached to my declaration a chart that addresses the CID specifications and summarizes Fully Accountable’s response, or lack thereof, to each. *See* Attachment 1. A detailed discussion of each of the productions follows.

21. The first due date under the phased response schedule was Monday, October 23, 2017. We received Fully Accountable’s first phase responses on Tuesday, October 24, 2017. This production consisted of approximately nine pages of objections and responses to the interrogatories then due and two pages of objections to the document requests then due. Fully Accountable did not produce any documents with the first phase responses.

22. One of the interrogatories Fully Accountable was to answer in the first phase, identified as specification S-2, instructed Fully Accountable to:

Identify all officers, directors, members, principals, and owners of the Company and all shareholders with five percent or more ownership of the Company, stating each shareholder’s percentage of ownership, since the Company was formed.

Pet. Ex. 2 at 7.

23. One of the document requests Fully Accountable was to answer in the first phase, identified as specification S-12, instructed Fully Accountable to produce:

A copy of each organization chart and personnel directory for the Company, including email addresses, in effect since July 1, 2014.

Pet. Ex. 2 at 10.

24. Taken together, specifications S-2 and S-12 require Fully Accountable to produce information about Fully Accountable's ownership, leadership, and organizational structure.<sup>3</sup>

25. In response to specifications S-2 and S-12, Fully Accountable refused to provide any of the information requested in specification S-2 or any documents requested in specification S-12.

26. Several of the document requests Fully Accountable was to answer in the first phase, specifications S-13, S-14, S-37, and S-38, instructed Fully Accountable to produce contact or identifying information for the Group A and Group B Entities identified in the CID. Pet. Ex. 2 at 10, 12.

27. In response to those specifications, S-13, S-14, S-37 and S-38, Fully Accountable refused to provide the information, asserting contractual

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<sup>3</sup> As I discussed above, one purpose of the investigation is to learn how Fully Accountable may be related to the Group B Entities. Because the CID defines 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,]" a complete response to these questions would help establish any relationship to the Group B entities. Pet. Ex. 2 at 13 (Specification D-1).

confidentiality duties and requesting a court order. Ms. Scava did not specify what type of court order she sought (*e.g.*, an order compelling production or a protective order) nor did she identify why the statutory confidentiality protections outlined in the CID were not sufficient.

28. In response to the deficient and incomplete first phase response, I sent a letter to Ms. Scava on October 27, 2017, in an attempt to clarify any possible misunderstandings of what was required of Fully Accountable and to identify the deficiencies. Pet. Ex. 5. In that letter, I reiterated the purpose of the CID, the subject of the investigation, and the statutory confidentiality protections. The letter also explained why Fully Accountable's assertions were unfounded and not supported by the relevant case law. The letter requested that Fully Accountable supplement the deficient responses and comply with the second phase response accordingly. *Id.*

29. The second due date under the phased response schedule was Monday, October 30, 2017. Although Ms. Scava emailed me to say that Fully Accountable had sent its response via FedEx, we did not receive any package from Fully Accountable, by any means, on Tuesday, October 31, 2017. Using a tracking number provided by Ms. Scava, we discovered that there was no FedEx package anywhere with that tracking number. The response arrived by FedEx on Wednesday November 1, 2017, with a completely different tracking number from the one Ms. Scava identified. This production consisted of four pages of responses to

interrogatories then due, six pages of narrative responses and objections to the document requests then due, and no documents.

30. The second phase included a document request, specification S-16, which called for “All documents relating to contracts, applications or agreements for any Group A Entity.” Pet. Ex. 2 at 10.

31. Fully Accountable denied having any “contracts, applications or agreements” with the Group A Entities identified as clients, explaining that it had no “specific engagement letter” for any of the Group A Entities. As to documents responsive to the second phase requests that Fully Accountable identified as being in the Company’s possession, specifically specifications 17-20, Fully Accountable again refused to provide such documents, citing a contractual duty of confidentiality, and stated that it would only produce such records if the FTC secured written consent from each of its former clients or a “Protective Order.”

32. On November 6, 2017, Fully Accountable provided a response to my letter of October 27, 2017. Pet. Ex. 6. In that letter, Fully Accountable again denied that the company’s activities were the subject of investigation by the FTC. *Id.* at 1-2. Fully Accountable reiterated that it would not provide any documents without consent from its former clients or an undefined “Protective Order.” Pet. Ex. 6 at 2.

33. The third phase response was due on Monday November 6, 2017. We received this response on Tuesday November 7, 2017. This production consisted of approximately three pages of responses and objections to the document requests then due, and no documents.

34. In the third phase response, Fully Accountable was to produce documents relating the Group A Entities and products other than the Geniux Products. Fully Accountable denied having any such records and did not produce any documents with the third phase responses.

35. On November 15, 2017, I wrote to Ms. Scava informing her that Fully Accountable had failed to comply with the CID requirements. Pet. Ex. 7. I outlined the most critical deficiencies and informed her that unless Fully Accountable corrected them, we would refer the matter to our Office of General Counsel for enforcement in federal district court. *Id.* at 4.

36. In the letter of November 15, 2017, I identified three categories of deficiencies:

a. Ownership, Leadership, and Organization: Fully Accountable had refused to produce information responsive to interrogatory S-2 or document request S-12 that sought this information. I noted that Fully Accountable's status as a privately held company did not provide any basis to refuse to disclose information about the company's recent and current ownership and organization requested by the CID. *Id.* at 2;

b. Documents Related to Client Activity: Fully Accountable had refused to produce information responsive to document requests S-13, S-14, S-17 through S-20, S-37, and S-38 that sought this information. I explained again that the confidentiality of information sought is not an appropriate basis on which to refuse to respond to a CID. *Id.* at 2; and



c. Documents Relating to Contracts, Applications, or Agreements: Fully Accountable gave an evasive and incomplete response to document request S-16, which requested “All documents relating to contracts, applications or agreements for any Group A Entity.” Fully Accountable narrowly phrased its response to deny that it had any “specific engagement letter” for any of the Group A Entities. I emphasized that the plain language of the request was not limited to “specific engagement letter[s],” and noted that Fully Accountable had elsewhere acknowledged having agreements with Group A Entities (including by providing general information about the scope and period of services, and by asserting “contractual” confidentiality obligations). Pet. Ex. 7 at 3. As such, regardless of the form, responsive documents appeared to exist and were called for by the CID. *Id.*

37. Additionally, my letter dated November 15, 2017 outlined for Ms. Scava certain “next steps.” I informed Ms. Scava that Fully Accountable needed to correct the deficiencies by November 20, 2017 to prevent a referral to the Office of General Counsel for enforcement proceedings. *Id.* at 4.

38. On November 20, 2017, Ms. Scava sent a letter to me via email. She responded following the three categories discussed in my letter to her of November 15, 2017. Ms. Scava simply repeated her earlier positions that I addressed in my letter and did not agree to cure the deficiencies I noted or produce any additional information. Pet. Ex. 8.

39. The fourth and final phase response was due November 20, 2017. In the final phase response, Fully Accountable was to respond to two interrogatories

about its preparation of its CID responses, and to produce documents relating to entities identified in the CID as Group B Entities.

40. We received Fully Accountable's production on November 21. This production consisted of approximately three pages of narrative responses and objections to the requests then due, and no documents. Fully Accountable again responded to several specifications, S-41 through S-44, by refusing to provide such documents without consent from the clients or a still-undefined "Protective Order," and cited a contractual duty of confidentiality.

41. In the fourth phase response, Fully Accountable gave an evasive and incomplete response to document request S-40, which requested "All documents relating to contracts, applications or agreements for any Group B Entity." As it had done before, Fully Accountable narrowly phrased its response to deny that it had any "specific engagement letter" for any of the Group B Entities. (This response to specification S-40 was substantially identical to Fully Accountable's response to specification S-16, directly addressed in my letter of November 15, 2017.)

42. These were not the only occasions where Fully Accountable improperly and impermissibly reinterpreted a CID specification narrowly to avoid producing responsive information.

43. For example, in its fourth phase response, Fully Accountable was to respond to interrogatory S-10 that requested information regarding the destruction, disposal, or transfer of any documents responsive to the CID. The applicable time period for S-10 "is from July 1, 2014, until the date of full and complete compliance

with this CID.” Pet. Ex. 2 at 7. Rather than respond using this applicable time period, Fully Accountable issued a bare denial premised on its own, narrower time period: the period during which it prepared responses to the CID. Elsewhere in its responses, however, Fully Accountable indicated that it had previously transferred documents that would have been responsive to the CID. For example, in response to document request S-46, Fully Accountable stated, in part, that it had returned documents to closed Group B Entities. By unilaterally narrowing the time period applicable to interrogatory S-10, Fully Accountable improperly avoided providing information about the circumstances of those transfers.

44. Fully Accountable employed a similar approach with respect to requests pertaining to payment processing activities and the Group A and Group B Entities. “Payment Processing” is a defined term in the CID and includes, among other things, “providing a merchant, financial institution, person, or entity, directly or indirectly, with the access or means to charge or debit a cardholder’s account” and “monitoring, tracking, and reconciling payments, returns, refunds, and chargebacks.” Pet. Ex. 2 at 15 (Specification D-16). In Ms. Scava’s November 20, 2018 letter, she wrote:

At no time, was Fully Accountable contracted to provide any marketing, advertising, or payment processing (*charging of consumers*) for the Group A or Group B Entity’s [sic] which would be in violation of the FTC Act’s [sic] cited.

Pet. Ex. 8 at 2 (emphasis added). The reference to “charging of consumers” shows again how Fully Accountable unilaterally narrowed the CID in order to avoid providing information relating to other services included in the definition of


“Payment Processing,” such as assisting those clients with credit card payment processing arrangements, and compiling and reporting its clients’ financial statistics relating to payments, returns, refunds, and chargebacks.

45. In summary, Fully Accountable has produced no documents at all. The company has provided partial responses to the interrogatories, but has refused to respond or has provided only evasive answers to many of them. *See* Att. 1. Given Fully Accountable’s willingness to narrow or reinterpret the language of the CID in order to avoid providing responses, it is not clear to staff which (if any) interrogatories it has responded to completely.

46. Fully Accountable’s non-compliance with the CID has burdened, delayed, and impeded the Commission’s investigation.

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

Executed on June 5, 2018

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

Attachment 1:  
Deficiencies in Fully Accountable’s CID Response

**Attachment 1: Deficiencies in Fully Accountable's CID Response<sup>1</sup>**

Spec. No.	Specification Request	Fully Accountable Response
<b>INTERROGATORIES</b>		
S-1	State the Company's full legal name, principal address, telephone number, the date and state of incorporation or licensing, and all other names under which the Company has done business.	<u>Phase 1 (Oct. 23, 2017)</u> : Fully Accountable provided an answer.
S-2	Identify all officers, directors, members, principals, and owners of the Company and all shareholders with five percent or more ownership of the Company, stating each shareholder's percentage of ownership, since the Company was formed.	<u>Phase 1 (Oct. 23, 2017)</u> : Fully Accountable refused to respond on the grounds that it was outside of the scope of the investigation and that it was not required to respond as a "privately held entity".  See Pet. Ex. 1, ¶¶ 22-25; Pet. Ex. 6 at 1-2.
S-3	Provide the names, addresses, officers, directors, owners, and states of incorporation of all of the Company's wholly or partially owned subsidiaries, parent companies, unincorporated divisions, joint ventures, partnerships, operations under assumed names, affiliates, and predecessor companies, and describe the relationship of each to the Company.	<u>Phase 1 (Oct. 23, 2017)</u> : Fully Accountable stated no such entities existed.
S-4	Describe in detail each of the services the Company provided to	<u>Phase 1 (Oct. 23, 2017)</u> : Fully Accountable provided ambiguous

<sup>1</sup> This attachment was developed based on FTC staff's analysis of the limited responses provided by Fully Accountable. As the custodian of its own records, Fully Accountable itself has the most accurate information regarding its possession, custody, and control of materials responsive to the CID.

	<p>the Group A Entities in connection with the Geniux Products. For each category of services identified (e.g., accounting, payment processing, business advising, advertising, etc.), provide:</p> <p>a. The dates during which such services were provided;</p> <p>b. The Group A Entity(ies) to which such services were provided; and</p> <p>c. The names, telephone numbers, and e-mail addresses of all current or former employees of the Company who performed such services.</p>	<p>rather than detailed descriptions of services (e.g., “executive CFO services” and “executive coaching”). In addition, in every instance, the company claimed that it could not identify even a single one of its current or former employees who performed any services for any of the entities.</p> <p>Elsewhere, the company also redefined the term “payment processing” to refer only to “charging of consumers.” See Pet. Ex. 8 at 2; Pet Ex. 1, ¶ 44. The CID definition of “Payment Processing” is broader and includes additional activities Fully Accountable does not address. See Pet. Ex. 2 at 15 (Specification D-16).</p>
<p>S-5</p>	<p>With respect to each Geniux Product sold separately, state:</p> <p>a. The total amount of gross annual sales and net annual sales in terms of units and dollars, during 2014, 2015, 2016, and 2017 to date;</p> <p>b. The total dollar amount spent on advertising, marketing, or other promotion, including commissions or any other payments to ad servers, affiliate advertisers, and affiliate networks, during 2014, 2015, 2016, and 2017 to date; and</p> <p>c. The total dollar amount spent on research and development during</p>	<p><u>Phase 2 (Oct. 30, 2017):</u> Fully Accountable claimed that it could not answer this interrogatory because it did not have accounting or advertising information for specific products.</p>

	<p>2014, 2015, 2016, and 2017 to date.</p> <p>If you maintain financial data on a fiscal schedule that differs from the calendar year schedule, provide this data according to those fiscal years and identify the dates of the fiscal year.</p>	
S-6	<p>Describe in detail each of the services the Company provided to the Group A Entities in connection with the Group A Other Consumer Products. For each category of services identified (e.g., accounting, payment processing, business advising, advertising, etc.), provide:</p> <p>a. The dates during which such services were provided;</p> <p>b. The Group A Entity(ies) to which such services were provided; and</p> <p>c. The names, telephone numbers, and e-mail addresses of all current or former employees of the Company who performed such services.</p>	<p><u>Phase 1 (Oct. 23, 2017)</u>: Fully Accountable provided ambiguous rather than detailed descriptions of services (e.g., “executive CFO services” and “executive coaching”). In addition, in every instance, the company claimed that it could not identify even a single one of its current or former employees who performed any services for any of the entities.</p> <p>Elsewhere, the company also redefined the term “payment processing” to refer only to “charging of consumers.” See Pet. Ex. 8 at 2; Pet Ex. 1, ¶ 44. The CID definition of “Payment Processing” is broader and includes additional activities Fully Accountable does not address. See Pet. Ex. 2 at 15 (Specification D-16).</p>
S-7	<p>With respect to each Group A Other Consumer Product sold separately, state:</p> <p>a. The total amount of gross annual sales and net annual sales in terms of units and</p> <p>dollars, during 2014, 2015, 2016, and 2017 to date; and</p> <p>b. The total dollar amount spent on</p>	<p><u>Phase 2 (Oct. 30, 2017)</u>: Fully Accountable claimed that it could not answer this interrogatory because it did not have accounting or advertising information for specific products.</p>

	<p>advertising, marketing, or other promotion,</p> <p>including commissions or any other payments to ad servers, affiliate advertisers,</p> <p>and affiliate networks, during 2014, 2015, 2016, and 2017 to date.</p> <p>If you maintain financial data on a fiscal schedule that differs from the calendar year schedule, provide this data according to those fiscal years and identify the dates of the fiscal year.</p>	
S-8	<p>Describe in detail each of the services the Company provided to the Group B Entities in connection with the Group B Consumer Products. For each category of services identified (e.g., accounting, payment processing, business advising, advertising, etc.), provide:</p> <p>a. The dates during which such services were provided;</p> <p>b. The Group B Entity(ies) to which such services were provided; and</p> <p>c. The names, telephone numbers, and e-mail addresses of all current or former employees of the Company who performed such services.</p>	<p><u>Phase 1 (Oct. 23, 2017)</u>: Fully Accountable provided ambiguous rather than detailed descriptions of services (e.g., “executive CFO services” and “executive coaching”). In addition, in every instance, the company claimed that it could not identify even a single one of its current or former employees who performed any services for any of the entities.</p> <p>Elsewhere, the company also redefined the term “payment processing” to refer only to “charging of consumers.” See Pet. Ex. 8 at 2; Pet Ex. 1, ¶ 44. The CID definition of “Payment Processing” is broader and includes additional activities Fully Accountable does not address. See Pet. Ex. 2 at 15 (Specification D-16).</p>
S-9	<p>With respect to each Group B Consumer Product sold separately, state:</p>	<p><u>Phase 2 (Oct. 30, 2017)</u>: Fully Accountable claimed that it could not answer this interrogatory because it did not have accounting</p>



	<p>a. The total amount of gross annual sales and net annual sales in terms of units and dollars, during 2014, 2015, 2016, and 2017 to date; and</p> <p>b. The total dollar amount spent on advertising, marketing, or other promotion, including commissions or any other payments to ad servers, affiliate advertisers, and affiliate networks, during 2014, 2015, 2016, and 2017 to date.</p> <p>If you maintain financial data on a fiscal schedule that differs from the calendar year schedule, provide this data according to those fiscal years and identify the dates of the fiscal year.</p>	<p>or advertising information for specific products.</p>
<p>S-10</p>	<p>Identify all persons at the Company who participated in preparing responses to this CID</p>	<p><u>Phase 4 (Nov. 20, 2017):</u> Fully Accountable identified only one individual: its CEO.</p> <p>This response suggests that the CEO did not consult with the company's Chief Operating Officer for any assistance in responding to the CID (e.g., to assist in identifying any of the company's employees who provided any services to any of the Group A or Group B entities). The COO also has represented herself to be in-house counsel for the company, has corresponded with FTC counsel, and was the person who transmitted each phased response to FTC counsel. As such, this response alternatively suggests that the company may be seeking to shield the COO's business activities, business communications, and business knowledge through overbroad and undisclosed</p>

		assertions of attorney-client privilege. Despite specific instructions in the CID requiring identification of assertions of privilege, the company has not made any explicit claims of privilege in response to the CID.
S-11	<p>If, for any document specification in this CID, documents that would have been responsive were destroyed, mislaid, transferred, deleted, altered, or overwritten:</p> <p>a. Describe in detail the document;</p> <p>b. State the date such document was destroyed, mislaid, transferred, deleted, altered, or overwritten;</p> <p>c. Describe the circumstance under which such document was destroyed, mislaid, transferred, deleted, altered, or overwritten; and</p> <p>d. Identify the person authorizing such action.</p>	<p><u>Phase 4 (Nov. 20, 2017)</u>: Fully Accountable stated that during “the preparation of the responses for this Civil Investigative Demand,” no documents were destroyed, mislaid, transferred, deleted, altered, or overwritten.</p> <p>This response does not account for the complete applicable time period of the CID, which runs from July 1, 2014 to the date of full and complete compliance. Pet. Ex. 2 at 7. <i>See also</i> Pet. Ex. 1, ¶ 43.</p>
<b>DOCUMENT REQUESTS</b>		
<b>Organization Charts/Personnel Directories</b>		
S-12	A copy of each organization chart and personnel directory for the Company, including email addresses, in effect since July 1, 2014.	<p>No documents produced.</p> <p><u>Phase 1 (Oct. 23, 2017)</u>: Fully Accountable admitted such documents exist but refused to respond to this request. <i>See</i> Pet. Ex. 1, ¶¶ 22-25; Pet. Ex. 6 at 1-2.</p>
<b>Group A Entities – Geniux Products</b>		
S-13	Documents sufficient to provide all contact or identifying information	No documents produced.

	<p>regarding any Group A Entity, including but not limited to:</p> <p>(a) name;</p> <p>(b) addresses used for business;</p> <p>(c) telephone and/or fax numbers;</p> <p>(d) Internet Protocol address log-in information; and</p> <p>(e) email addresses, instant messaging addresses, and/or website addresses used for business.</p>	<p><u>Phase 1 (Oct. 23, 2017)</u>: Fully Accountable refused to respond to this request on grounds of confidentiality. See Pet. Ex. 1, ¶¶ 26-27.</p>
<p>S-14</p>	<p>Documents sufficient to identify any Group A Entity owner, officer, manager, employee, or agent, or other person acting on behalf of any Group A Entity.</p>	<p>No documents produced.</p> <p><u>Phase 1 (Oct. 23, 2017)</u>: Fully Accountable refused to respond to this request on grounds of confidentiality. See Pet. Ex. 1, ¶¶ 26-27.</p>
<p>S-15</p>	<p>All communications relating to any Geniux Product, between you and any Group A Entity or any person purporting to represent any Group A Entity, whether internal or external, including but not limited to email communications and chat logs.</p>	<p>No documents produced.</p> <p><u>Phase 2 (Oct. 30, 2017)</u>: Fully Accountable stated that it did not have communications regarding “the Geniux Product” [sic] and did not provide any service to any of the Group A Entities “with regard to the Geniux Product [sic] specifically.”</p> <p>This answer limited to “the Geniux Product” improperly narrows Fully Accountable’s response. In the CID, “Geniux Product(s)” is defined as any products offered or marketed for sale by the Group A entities that purport to prevent or mitigate cognitive decline and related diseases, including Geniux, EVO,</p>

		Xcel, and Ion-Z. Pet. Ex. 2 at 15 (Specification D-11).
S-16	All documents <i>relating to</i> contracts, applications, or agreements for any Group A Entity. Pet. Ex. 2 at 10 (emphasis added).	No documents produced.  <u>Phase 2 (Oct. 30, 2017)</u> : Fully Accountable stated that it did not have any contracts, applications, or agreements. The company did not identify whether it has documents “relating to” such agreements, as called for by the CID. See Pet Ex. 1, ¶¶ 30-31.
S-17	Annual balance sheets and profit and loss statements for any Group A Entity during 2014, 2015, 2016, and 2017 to date. If the Company maintains financial data on a fiscal schedule that differs from the calendar year schedule, provide this data according to those fiscal years and provide the dates of the fiscal year.	No documents produced.  <u>Phase 2 (Oct. 30, 2017)</u> : Fully Accountable admitted such documents exist but it refused to produce these records on grounds of confidentiality. See Pet. Ex. 1, ¶ 31.  Fully Accountable also indicated that several Group A entities cancelled its services and asked that some of their records be transferred to another accounting provider.
S-18	Documents sufficient to show the gross and net sales calculations for any Group A Entity during 2014, 2015, 2016, and 2017 to date.	No documents produced.  <u>Phase 2 (Oct. 30, 2017)</u> : Fully Accountable admitted such documents exist but it refused to produce these records on grounds of confidentiality. See Pet. Ex. 1, ¶ 31.  Fully Accountable also indicated that several Group A entities cancelled its services and asked that some of their records be transferred to another accounting provider.
S-19	The complete QuickBooks or similar bookkeeping software file for any	No documents produced.

	Group A Entity.	<p><u>Phase 2 (Oct. 30, 2017):</u> Fully Accountable admitted such documents exist but it refused to produce these records on grounds of confidentiality. <i>See</i> Pet. Ex. 1, ¶ 31.</p> <p>Fully Accountable also indicated that several Group A entities cancelled its services and asked that some of their records be transferred to another accounting provider.</p>
S-20	General and subsidiary ledgers for all Group A Entities. For this document request, "general and subsidiary ledgers" includes any files created or recognized in the Company's accounting records or software, including but not limited to cash or cash equivalent accounts, accounts receivable, and accounts payable.	<p>No documents produced.</p> <p><u>Phase 2 (Oct. 30, 2017):</u> Fully Accountable admitted such documents exist but it refused to produce these records on grounds of confidentiality. <i>See</i> Pet. Ex. 1, ¶ 31.</p> <p>Fully Accountable also indicated that several Group A entities cancelled its services and asked that some of their records be transferred to another accounting provider.</p>
S-21	Documents sufficient to show how the Company determined the annual expenditures for the advertising, marketing, or promotion, including through ad servers, affiliate advertisers, or affiliate networks, of the Geniux Products, during 2014, 2015, 2016, and 2017 to date.	<p>No documents produced.</p> <p><u>Phase 2 (Oct. 30, 2017):</u> Fully Accountable stated that it had no such documents because it did not participate in advertising or marketing for "the Geniux product" [sic].</p> <p>This answer improperly limits the response to "the Geniux product" despite the CID's definition. <i>See</i> Pet. Ex. 2 at 15 (Specification D-11).</p>
S-22	Documents sufficient to show any payments to any ad server, affiliate advertiser, affiliate network, or	<p>No documents produced.</p> <p><u>Phase 2 (Oct. 30, 2017):</u> Fully</p>

	marketing technology provider relating to any of the Geniux Products, during 2014, 2015, 2016, and 2017 to date.	Accountable stated that it did not have any responsive information. The company added that it formerly had such records relating to one Group A entity but that it returned these records to this client.
S-23	<p>All documents related to any payment responsive to Specification S-22, including but not limited to:</p> <p>(a) the amounts of such payments; and</p> <p>(b) the method of payment, such as</p> <p style="padding-left: 40px;">(i) bank and account number of the payment,</p> <p style="padding-left: 40px;">(ii) the credit or debit card, and any accompanying identifying information concerning the credit or debit card holder, used to make payment, or</p> <p style="padding-left: 40px;">(iii) account information for any other payment account from which you received payment for services.</p>	<p>No documents produced.</p> <p><u>Phase 2 (Oct. 30, 2017):</u> Fully Accountable stated that none of the Group A Entities were currently clients and, accordingly, it removed any credit card information from its system and destroyed it.</p>
S-24	All communications between you and any ad server, affiliate advertiser, affiliate network, or marketing technology provider related to any Geniux Products.	<p>No documents produced.</p> <p><u>Phase 2 (Oct. 30, 2017):</u> Fully Accountable stated that it did not have such communications regarding “the Geniux Product” [sic].</p> <p>This answer improperly limits the response to “the Geniux Product” despite the CID’s definition. <i>See</i> Pet. Ex. 2 at 15 (Specification D-11).</p>
S-25	Documents sufficient to show all payment processing activity related	No documents produced.

	<p>to the Geniux Products, including but not limited to:</p> <p>(a) merchant applications, documents related to underwriting, and other documents related to the opening and closing of merchant accounts or other accounts used for payment processing; and</p> <p>(b) account statements or other documents sufficient to show</p> <p>(i) billing descriptors,</p> <p>(ii) reserves,</p> <p>(iii) transaction volumes and dollar amounts,</p> <p>(iv) refunds, and</p> <p>(v) chargebacks.</p>	<p><u>Phase 2 (Oct. 30, 2017)</u>: Fully Accountable stated that it did not provide payment processing services specific to Geniux Product [sic] and did not provide certain other services similarly related to processing.</p> <p>This answer improperly limits the response to “the Geniux Product” despite the CID’s definition. <i>See</i> Pet. Ex. 2 at 15 (Specification D-11).</p>
S-26	<p>All communications between you and any Group A Entity, ISO, or any provider of payment processing services, related to any document responsive to Specification S-25.</p>	<p>No documents produced.</p> <p><u>Phase 2 (Oct. 30, 2017)</u>: Fully Accountable stated that it did not have such documents because it did not provide such services specific to “the Geniux Product” [sic].</p> <p>This answer improperly limits the response to “the Geniux Product” despite the CID’s definition. <i>See</i> Pet. Ex. 2 at 15 (Specification D-11).</p>
S-27	<p>All complaints or inquiries related to any Geniux Products, including complaints received from or through consumers, retailers, the Better Business Bureau, and governmental or regulatory bodies.</p>	<p>No documents produced.</p> <p><u>Phase 2 (Oct. 30, 2017)</u>: Fully Accountable stated that it did not have such documents because it did not provide services related to complaints.</p>



S-28	All communications related to any complaint responsive to Specification S-27.	No documents produced.  <u>Phase 2 (Oct. 30, 2017)</u> : Fully Accountable stated that it did not have such documents because it did not provide services related to complaints.
<b>Group A Other Consumer Products</b>		
S-29	All communications relating to affiliate advertisers, affiliate networks, or marketing technology providers, pertaining to any Group A Other Consumer Products, between you and any Group A Entity or any person purporting to represent any Group A Entity, whether internal or external, including but not limited to email communications and chat logs.	No documents produced.  <u>Phase 3 (Nov. 6, 2017)</u> : Fully Accountable stated that it did not have such documents because it did not provide such services "specifically."
S-30	Documents sufficient to show how the Company determined the annual expenditures for the advertising, marketing, or promotion, including through ad servers, affiliate advertisers, or affiliate networks, of the Group A Other Consumer Products, during 2014, 2015, 2016, and 2017 to date.	No documents produced.  <u>Phase 3 (Nov. 6, 2017)</u> : Fully Accountable stated that it did not have such documents because it did not provide services that involved such information.
S-31	Documents sufficient to show any payments to any ad server, affiliate advertiser, affiliate network, or marketing technology provider relating to any of the Group A Other Consumer Products, during 2014, 2015, 2016, and 2017 to date.	No documents produced.  <u>Phase 3 (Nov. 6, 2017)</u> : Fully Accountable stated that it did not have such documents. The Company further stated that it only had such information for one Group A Entity and that it returned these documents to that entity.
S-32	All communications between you	No documents produced.



	and any ad server, affiliate advertiser, affiliate network, or marketing technology provider related to any Group A Other Consumer Products.	<u>Phase 3 (Nov. 6, 2017)</u> : Fully Accountable stated that it did not have such documents because it did not provide such services.
S-33	<p>Documents sufficient to show all payment processing activity related to the Group A Other Consumer Products, including but not limited to:</p> <p>(a) merchant applications, documents related to underwriting, and other documents related to the opening and closing of merchant accounts or other accounts used for payment processing; and</p> <p>(b) account statements or other documents sufficient to show</p> <p>(i) billing descriptors,</p> <p>(ii) reserves,</p> <p>(iii) transaction volumes and dollar amounts,</p> <p>(iv) refunds, and</p> <p>(v) chargebacks.</p>	<p>No documents produced.</p> <p><u>Phase 3 (Nov. 6, 2017)</u>: Fully Accountable stated that it did not provide payment processing services “specific” to these products and did not provide certain other services similarly related to processing.</p>
S-34	All communications between you and any Group A Entity, ISO, or any provider of payment processing services, related to any document responsive to Specification S-33.	<p>No documents produced.</p> <p><u>Phase 3 (Nov. 6, 2017)</u>: Fully Accountable stated that it did not have such documents because it did not provide such services.</p>
S-35	All complaints related to any Group A Other Consumer Products, including complaints received from	<p>No documents produced.</p> <p><u>Phase 3 (Nov. 6, 2017)</u>: Fully</p>

	or through consumers, retailers, the Better Business Bureau, and governmental or regulatory bodies.	Accountable stated that it did not have such documents because it did not provide services related to complaints.
S-36	All communications related to any complaint responsive to Specification S-35.	No documents produced.  <u>Phase 3 (Nov. 6, 2017):</u> Fully Accountable stated that it did not have such documents because it did not provide services related to complaints.
<b>Group B Entities – Group B Consumer Products</b>		
S-37	Documents sufficient to provide all contact or identifying information regarding any Group B Entity, including but not limited to:  (a) name;  (b) addresses used for business;  (c) telephone and/or fax numbers;  (d) Internet Protocol address log-in information; and  (e) email addresses, instant messaging addresses, and/or website addresses used for business.	No documents produced.  <u>Phase 1 (Oct. 23, 2017):</u> Fully Accountable refused to respond to this request on grounds of confidentiality. See Pet. Ex. 1, ¶¶ 26-27.
S-38	Documents sufficient to identify any Group B Entity owner, officer, manager, employee, or agent, or other person acting on behalf of any Group B Entity.	No documents produced.  <u>Phase 1 (Oct. 23, 2017):</u> Fully Accountable refused to respond to this request on grounds of confidentiality. See Pet. Ex. 1, ¶¶ 26-27.
S-39	All communications relating to affiliate networks, affiliate advertisers, and marketing	No documents produced.  <u>Phase 4 (Nov. 20, 2017):</u> Fully

	technology providers, pertaining to any Group B Consumer Products, between you and any Group B Entity or any person purporting to represent any Group B Entity, whether internal or external, including but not limited to email communications and chat logs.	Accountable stated that it did not have such documents because it did not provide such services with regard to consumer products "specifically."
S-40	All documents relating to contracts, applications, or agreements for any Group B Entity.	No documents produced.  <u>Phase 4 (Nov. 20, 2017):</u> Fully Accountable stated that it did not have any contracts, applications, or agreements. The company did not identify whether it has documents "relating to" such agreements, as called for by the CID. <i>See</i> Pet Ex. 1, ¶ 41.
S-41	Annual balance sheets and profit and loss statements for any Group B Entity during 2014, 2015, 2016, and 2017 to date. If the Company maintains financial data on a fiscal schedule that differs from the calendar year schedule, provide this data according to those fiscal years and provide the dates of the fiscal year.	No documents produced.  <u>Phase 4 (Nov. 20, 2017):</u> Fully Accountable admitted that such documents exist, but it refused to produce on grounds of confidentiality. <i>See</i> Pet. Ex. 1, ¶ 40.
S-42	Documents sufficient to show the gross and net sales calculations for any Group B Entity during 2014, 2015, 2016, and 2017 to date.	No documents produced.  <u>Phase 4 (Nov. 20, 2017):</u> Fully Accountable admitted that such documents exist, but it refused to produce on grounds of confidentiality. <i>See</i> Pet. Ex. 1, ¶ 40.
S-43	The complete QuickBooks or similar bookkeeping software file for any Group B Entity.	No documents produced.  <u>Phase 4 (Nov. 20, 2017):</u> Fully Accountable admitted that such documents exist, but it refused to

		produce on grounds of confidentiality. See Pet. Ex. 1, ¶ 40.
S-44	General and subsidiary ledgers for all Group B Entities. For this document request, "general and subsidiary ledgers" includes any files created or recognized in the Company's accounting records or software, including but not limited to cash or cash equivalent accounts, accounts receivable, and accounts payable.	No documents produced.  <u>Phase 4 (Nov. 20, 2017)</u> : Fully Accountable admitted that such documents exist, but it refused to produce on grounds of confidentiality. See Pet. Ex. 1, ¶ 40.
S-45	Documents sufficient to show how the Company determined the annual expenditures for the advertising, marketing, or promotion, including through ad servers, affiliate advertisers, or affiliate networks, of the Group B Consumer Products, during 2014, 2015, 2016, and 2017 to date.	No documents produced.  <u>Phase 4 (Nov. 20, 2017)</u> : Fully Accountable stated that it did not have such documents because it did not provide such services.
S-46	Documents sufficient to show any payments to any ad server, affiliate advertiser, affiliate network, or marketing technology provider relating to any of the Group B Consumer Products, during 2014, 2015, 2016, and 2017 to date.	No documents produced.  <u>Phase 4 (Nov. 20, 2017)</u> : Fully Accountable stated that it did not have such documents because it returned them to "this client" [sic].
S-47	All communications between you and any ad server, affiliate advertiser, affiliate network, or marketing technology provider related to any Group B Consumer Products.	No documents produced.  <u>Phase 4 (Nov. 20, 2017)</u> : Fully Accountable stated that it did not have such documents because it did not provide such services.
S-48	Documents sufficient to show all payment processing activity related to the Group B Consumer Products, including but not limited to:	No documents produced.  <u>Phase 4 (Nov. 20, 2017)</u> : Fully Accountable stated that it did not have such documents either because

	<p>(a) merchant applications, documents related to underwriting, and other documents related to the opening and closing of merchant accounts or other accounts used for payment processing; and</p> <p>(b) account statements or other documents sufficient to show</p> <p>(i) billing descriptors,</p> <p>(ii) reserves,</p> <p>(iii) transaction volumes and dollar amounts,</p> <p>(iv) refunds, and</p> <p>(v) chargebacks.</p>	<p>it did not provide such services with regard to “specific” products or because it returned these documents to the Group B Entities or because it did not have documentation “specific to the Group B Other Products” [sic].</p>
S-49	<p>All communications between you and any Group B Entity, ISO, or any provider of payment processing services, related to any document responsive to Specification S-48.</p>	<p>No documents produced.</p> <p><u>Phase 4 (Nov. 20, 2017)</u>: Fully Accountable stated that it did not have such documents because it did not provide such services.</p>
S-50	<p>All complaints related to any Group B Consumer Products, including complaints received from or through consumers, retailers, the Better Business Bureau, and governmental or regulatory bodies.</p>	<p>No documents produced.</p> <p><u>Phase 4 (Nov. 20, 2017)</u>: Fully Accountable stated that it did not have such documents because it did not provide such services.</p>
S-51	<p>All communications related to any complaint responsive to Specification S-50.</p>	<p>No documents produced.</p> <p><u>Phase 4 (Nov. 20, 2017)</u>: Fully Accountable stated that it did not have such documents because it did not provide such services.</p>

**Petition Exhibit 2**

Civil Investigative Demand to Fully  
Accountable, LLC

(Sept. 21, 2017)



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

Office of the Secretary

SEP 22 2017

Via Federal Express  
Christopher Giorgio  
President  
Fully Accountable LLC  
2680 West Market Street  
Fairlawn, OH 44333

FTC Matter No. 1723195

Dear Mr. Giorgio:

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](mailto: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 how you should provide your response.

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

Very truly yours,

A handwritten signature in black ink that reads "Donald S. Clark". The signature is written in a cursive style with a long horizontal line extending to the right.

Donald S. Clark  
Secretary of the Commission





United States of America  
Federal Trade Commission

**CIVIL INVESTIGATIVE DEMAND**

1. TO

Fully Accountable, LLC  
2680 West Market Street  
Fairlawn, OH 44333

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 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING	YOUR APPEARANCE WILL BE BEFORE
	DATE AND TIME OF HEARING OR DEPOSITION

- You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.
- You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.
- You are required to produce the tangible things described on the attached schedule. Produce such things to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS, ANSWERS TO INTERROGATORIES, REPORTS, AND/OR TANGIBLE THINGS MUST BE AVAILABLE  
**OCT 23 2017**

3. SUBJECT OF INVESTIGATION

See attached Schedule and attached resolutions.

<p>4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN</p> <p>Custodian: Samuel Baker, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114</p> <p>Deputy Custodian: Jon Miller Steiger, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114</p>	<p>5. COMMISSION COUNSEL</p> <p>Harris A. Senturia Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114 (216) 263-3420</p>
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DATE ISSUED <b>9/21/17</b>	COMMISSIONER'S SIGNATURE 
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**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. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. 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 5.

**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](http://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://ftc.gov/FTCRulesofPractice>. Paper copies are available upon request.

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**Form of Certificate of Compliance\***

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

If a document or tangible thing responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to its submission and the reasons for the objections have been stated.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Sworn to before me this day

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

\*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents 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](mailto: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. FTC counsel will request that you give priority to responses to interrogatories and document requests pertaining to the Geniux Products, as defined herein. 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. You must make available at the meeting personnel knowledgeable about your information or records management systems, your systems for electronically stored information, custodians likely to have information responsive to this CID, and any other issues relevant to compliance with this CID.

**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.

**Manner of Production:** You may produce documentary material or tangible things by making them available for inspection and copying at your principal place of business. Alternatively, you may send all responsive documents and tangible things to Mr. Samuel Baker, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114. If you are sending the materials, use a courier service such as Federal Express or UPS because heightened security measures delay postal delivery to the FTC. You must inform FTC counsel by email or telephone of how you intend to produce materials responsive to this CID at least five days before the return date.

**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.

**Certification of Records of Regularly Conducted Activity:** Attached is a Certification of Records of Regularly Conducted Activity. Please execute and return this Certification with your response. Completing this certification may reduce the need to subpoena you to testify at future proceedings to establish the admissibility of documents produced in response to this CID.

**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.

### **INTERROGATORIES**

- S-1. State the Company's full legal name, principal address, telephone number, the date and state of incorporation or licensing, and all other names under which the Company has done business.
- S-2. Identify all officers, directors, members, principals, and owners of the Company and all shareholders with five percent or more ownership of the Company, stating each shareholder's percentage of ownership, since the Company was formed.
- S-3. Provide the names, addresses, officers, directors, owners, and states of incorporation of all of the Company's wholly or partially owned subsidiaries, parent companies, unincorporated divisions, joint ventures, partnerships, operations under assumed names, affiliates, and predecessor companies, and describe the relationship of each to the Company.
- S-4. Describe in detail each of the services the Company provided to the Group A Entities in connection with the Geniux Products. For each category of services identified (e.g., accounting, payment processing, business advising, advertising, etc.), provide:

- a. The dates during which such services were provided;
- b. The Group A Entity(ies) to which such services were provided; and
- c. The names, telephone numbers, and e-mail addresses of all current or former employees of the Company who performed such services.

S-5. With respect to each Geniux Product sold separately, state:

- a. The total amount of gross annual sales and net annual sales in terms of units and dollars, during 2014, 2015, 2016, and 2017 to date;
- b. The total dollar amount spent on advertising, marketing, or other promotion, including commissions or any other payments to ad servers, affiliate advertisers, and affiliate networks, during 2014, 2015, 2016, and 2017 to date; and
- c. The total dollar amount spent on research and development during 2014, 2015, 2016, and 2017 to date.

If you maintain financial data on a fiscal schedule that differs from the calendar year schedule, provide this data according to those fiscal years and identify the dates of the fiscal year.

S-6. Describe in detail each of the services the Company provided to the Group A Entities in connection with the Group A Other Consumer Products. For each category of services identified (e.g., accounting, payment processing, business advising, advertising, etc.), provide:

- a. The dates during which such services were provided;
- b. The Group A Entity(ies) to which such services were provided; and
- c. The names, telephone numbers, and e-mail addresses of all current or former employees of the Company who performed such services.

S-7. With respect to each Group A Other Consumer Product sold separately, state:

- a. The total amount of gross annual sales and net annual sales in terms of units and dollars, during 2014, 2015, 2016, and 2017 to date; and
- b. The total dollar amount spent on advertising, marketing, or other promotion, including commissions or any other payments to ad servers, affiliate advertisers, and affiliate networks, during 2014, 2015, 2016, and 2017 to date.

If you maintain financial data on a fiscal schedule that differs from the calendar year schedule, provide this data according to those fiscal years and identify the dates of the fiscal year.

S-8. Describe in detail each of the services the Company provided to the Group B Entities in connection with the Group B Consumer Products. For each category of services

identified (e.g., accounting, payment processing, business advising, advertising, etc.), provide:

- a. The dates during which such services were provided;
- b. The Group B Entity(ies) to which such services were provided; and
- c. The names, telephone numbers, and e-mail addresses of all current or former employees of the Company who performed such services.

S-9. With respect to each Group B Consumer Product sold separately, state:

- a. The total amount of gross annual sales and net annual sales in terms of units and dollars, during 2014, 2015, 2016, and 2017 to date; and
- b. The total dollar amount spent on advertising, marketing, or other promotion, including commissions or any other payments to ad servers, affiliate advertisers, and affiliate networks, during 2014, 2015, 2016, and 2017 to date.

If you maintain financial data on a fiscal schedule that differs from the calendar year schedule, provide this data according to those fiscal years and identify the dates of the fiscal year.

S-10. Identify all persons at the Company who participated in preparing responses to this CID.

S-11. If, for any document specification in this CID, documents that would have been responsive were destroyed, mislaid, transferred, deleted, altered, or overwritten:

- a. Describe in detail the document;
- b. State the date such document was destroyed, mislaid, transferred, deleted, altered, or overwritten;
- c. Describe the circumstance under which such document was destroyed, mislaid, transferred, deleted, altered, or overwritten; and
- d. Identify the person authorizing such action.

## DOCUMENTS

Produce the following documents. Where documents responsive to any specification below are stored in magnetic or electronic form, produce such documents in media as set forth in the attached **Federal Trade Commission Bureau of Consumer Protection Production Requirements**.



**Organization Charts/Personnel Directories**

- S-12. A copy of each organization chart and personnel directory for the Company, including email addresses, in effect since July 1, 2014.

**Group A Entities – Geniux Products**

- S-13. Documents sufficient to provide all contact or identifying information regarding any Group A Entity, including but not limited to: (a) name; (b) addresses used for business; (c) telephone and/or fax numbers; (d) Internet Protocol address log-in information; and (e) email addresses, instant messaging addresses, and/or website addresses used for business.
- S-14. Documents sufficient to identify any Group A Entity owner, officer, manager, employee, or agent, or other person acting on behalf of any Group A Entity.
- S-15. All communications relating to any Geniux Product, between you and any Group A Entity or any person purporting to represent any Group A Entity, whether internal or external, including but not limited to email communications and chat logs.
- S-16. All documents relating to contracts, applications, or agreements for any Group A Entity.
- S-17. Annual balance sheets and profit and loss statements for any Group A Entity during 2014, 2015, 2016, and 2017 to date. If the Company maintains financial data on a fiscal schedule that differs from the calendar year schedule, provide this data according to those fiscal years and provide the dates of the fiscal year.
- S-18. Documents sufficient to show the gross and net sales calculations for any Group A Entity during 2014, 2015, 2016, and 2017 to date.
- S-19. The complete QuickBooks or similar bookkeeping software file for any Group A Entity.
- S-20. General and subsidiary ledgers for all Group A Entities. For this document request, "general and subsidiary ledgers" includes any files created or recognized in the Company's accounting records or software, including but not limited to cash or cash equivalent accounts, accounts receivable, and accounts payable.
- S-21. Documents sufficient to show how the Company determined the annual expenditures for the advertising, marketing, or promotion, including through ad servers, affiliate advertisers, or affiliate networks, of the Geniux Products, during 2014, 2015, 2016, and 2017 to date.
- S-22. Documents sufficient to show any payments to any ad server, affiliate advertiser, affiliate network, or marketing technology provider relating to any of the Geniux Products, during 2014, 2015, 2016, and 2017 to date.
- S-23. All documents related to any payment responsive to Specification S-22, including but not

limited to: (a) the amounts of such payments; and (b) the method of payment, such as (i) bank and account number of the payment, (ii) the credit or debit card, and any accompanying identifying information concerning the credit or debit card holder, used to make payment, or (iii) account information for any other payment account from which you received payment for services.

- S-24. All communications between you and any ad server, affiliate advertiser, affiliate network, or marketing technology provider related to any Geniux Products.
- S-25. Documents sufficient to show all payment processing activity related to the Geniux Products, including but not limited to: (a) merchant applications, documents related to underwriting, and other documents related to the opening and closing of merchant accounts or other accounts used for payment processing; and (b) account statements or other documents sufficient to show (i) billing descriptors, (ii) reserves, (iii) transaction volumes and dollar amounts, (iv) refunds, and (v) chargebacks.
- S-26. All communications between you and any Group A Entity, ISO, or any provider of payment processing services, related to any document responsive to Specification S-25.
- S-27. All complaints or inquiries related to any Geniux Products, including complaints received from or through consumers, retailers, the Better Business Bureau, and governmental or regulatory bodies.
- S-28. All communications related to any complaint responsive to Specification S-27.

#### **Group A Other Consumer Products**

- S-29. All communications relating to affiliate advertisers, affiliate networks, or marketing technology providers, pertaining to any Group A Other Consumer Products, between you and any Group A Entity or any person purporting to represent any Group A Entity, whether internal or external, including but not limited to email communications and chat logs.
- S-30. Documents sufficient to show how the Company determined the annual expenditures for the advertising, marketing, or promotion, including through ad servers, affiliate advertisers, or affiliate networks, of the Group A Other Consumer Products, during 2014, 2015, 2016, and 2017 to date.
- S-31. Documents sufficient to show any payments to any ad server, affiliate advertiser, affiliate network, or marketing technology provider relating to any of the Group A Other Consumer Products, during 2014, 2015, 2016, and 2017 to date.
- S-32. All communications between you and any ad server, affiliate advertiser, affiliate network, or marketing technology provider related to any Group A Other Consumer Products.
- S-33. Documents sufficient to show all payment processing activity related to the Group A



Other Consumer Products, including but not limited to: (a) merchant applications, documents related to underwriting, and other documents related to the opening and closing of merchant accounts or other accounts used for payment processing; and (b) account statements or other documents sufficient to show (i) billing descriptors, (ii) reserves, (iii) transaction volumes and dollar amounts, (iv) refunds, and (v) chargebacks.

- S-34. All communications between you and any Group A Entity, ISO, or any provider of payment processing services, related to any document responsive to Specification S-33.
- S-35. All complaints related to any Group A Other Consumer Products, including complaints received from or through consumers, retailers, the Better Business Bureau, and governmental or regulatory bodies.
- S-36. All communications related to any complaint responsive to Specification S-35.

#### **Group B Entities – Group B Consumer Products**

- S-37. Documents sufficient to provide all contact or identifying information regarding any Group B Entity, including but not limited to: (a) name; (b) addresses used for business; (c) telephone and/or fax numbers; (d) Internet Protocol address log-in information; and (e) email addresses, instant messaging addresses, and/or website addresses used for business.
- S-38. Documents sufficient to identify any Group B Entity owner, officer, manager, employee, or agent, or other person acting on behalf of any Group B Entity.
- S-39. All communications relating to affiliate networks, affiliate advertisers, and marketing technology providers, pertaining to any Group B Consumer Products, between you and any Group B Entity or any person purporting to represent any Group B Entity, whether internal or external, including but not limited to email communications and chat logs.
- S-40. All documents relating to contracts, applications, or agreements for any Group B Entity.
- S-41. Annual balance sheets and profit and loss statements for any Group B Entity during 2014, 2015, 2016, and 2017 to date. If the Company maintains financial data on a fiscal schedule that differs from the calendar year schedule, provide this data according to those fiscal years and provide the dates of the fiscal year.
- S-42. Documents sufficient to show the gross and net sales calculations for any Group B Entity during 2014, 2015, 2016, and 2017 to date.
- S-43. The complete QuickBooks or similar bookkeeping software file for any Group B Entity.
- S-44. General and subsidiary ledgers for all Group B Entities. For this document request, "general and subsidiary ledgers" includes any files created or recognized in the

- Company's accounting records or software, including but not limited to cash or cash equivalent accounts, accounts receivable, and accounts payable.
- S-45. Documents sufficient to show how the Company determined the annual expenditures for the advertising, marketing, or promotion, including through ad servers, affiliate advertisers, or affiliate networks, of the Group B Consumer Products, during 2014, 2015, 2016, and 2017 to date.
- S-46. Documents sufficient to show any payments to any ad server, affiliate advertiser, affiliate network, or marketing technology provider relating to any of the Group B Consumer Products, during 2014, 2015, 2016, and 2017 to date.
- S-47. All communications between you and any ad server, affiliate advertiser, affiliate network, or marketing technology provider related to any Group B Consumer Products.
- S-48. Documents sufficient to show all payment processing activity related to the Group B Consumer Products, including but not limited to: (a) merchant applications, documents related to underwriting, and other documents related to the opening and closing of merchant accounts or other accounts used for payment processing; and (b) account statements or other documents sufficient to show (i) billing descriptors, (ii) reserves, (iii) transaction volumes and dollar amounts, (iv) refunds, and (v) chargebacks.
- S-49. All communications between you and any Group B Entity, ISO, or any provider of payment processing services, related to any document responsive to Specification S-48.
- S-50. All complaints related to any Group B Consumer Products, including complaints received from or through consumers, retailers, the Better Business Bureau, and governmental or regulatory bodies.
- S-51. All communications related to any complaint responsive to Specification S-50.

### 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. **"Identify"** or **"the identity of"** requires identification of (a) natural persons by name, title, present business affiliation, present business address, telephone number, and email address or, if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, and the identities of your contact persons at the business or organization.

D-4. **"Advertisement"** or **"Advertising"** or **"Ad"** means any written or verbal statement, illustration, or depiction that promotes the sale of a good or service or is designed to increase consumer interest in a brand, good, or service. Advertising media includes, but is not limited to: packaging and labeling; promotional materials; print; television; radio; and Internet, social media, and other digital content.

D-5. **"Ad server"** shall mean any person or entity that formerly or currently stores, maintains, and serves online advertisements (i.e., places advertisements on websites or other digital platforms) on behalf of another. The ad server may use an automated bidding system and may provide additional services, such as reporting regarding the dissemination and performance of particular advertisements.

D-6. **"Affiliate advertiser"** or **"publisher"** shall mean any entity or person that formerly or currently advertises, promotes, or otherwise markets the products, services, or programs of any of the Geniux Entities, for consideration, either by direct arrangement with any Geniux Entity or through an affiliate network, and in consideration for which any Geniux Entity or affiliate network pays or promises to pay pursuant to agreed-upon means, which include: (1) a share of any Geniux Entity's revenues that derive from sales to consumers who viewed or clicked on an affiliate advertiser's advertisements for any Geniux Entity's products, services, or programs; and (2) fees for specific consumer actions, such as visiting any Geniux Entity's website, purchasing a product from any Geniux Entity, or signing up for a trial offer promoted by any Geniux Entity.

D-7. **"Affiliate network"** shall mean any entity or person that provides or provided services connecting any advertiser or merchant (i.e., sellers of products, services or programs), including any of the Geniux Entities, and affiliate advertisers and that compensates or arranges for the compensation of affiliate advertisers based on agreed-upon means, which include: (1) a share of any Geniux Entity's revenues that derive from sales to consumers who viewed or clicked on an affiliate advertiser's advertisements for any Geniux Entity's products, services, or programs; and (2) fees for specific consumer actions, such as visiting any Geniux Entity's website, purchasing a product from any Geniux Entity, or signing up for a trial offer promoted by any Geniux Entity.

D-8. **"Chargeback"** means a transaction that a card issuer returns as a financial liability to an acquiring or merchant bank, usually because of a disputed transaction. The acquirer may then return or "charge back" the transaction to the merchant.

D-9. **"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-10. "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.

D-11. "Geniux Product(s)" shall mean any products marketed or offered for sale by any of the Group A Entities that purport to prevent or mitigate cognitive decline and related diseases or conditions, including, but not limited to, Geniux, EVO, Xcel, and Ion-Z.

D-12. "Group A Other Consumer Product(s)" shall mean any products marketed or offered for sale to consumers by any of the Group A Entities, other than the Geniux Products. Group A Other Consumer Product(s) includes, but is not limited to, products marketed as containing Forskolin or Garcinia Cambogia.

D-13. "Group B Consumer Product(s)" shall mean any products marketed or offered for sale to consumers by any of the Group B Entities. Group B Consumer Product(s) includes, but is not limited to, products marketed as Pura Bella, Allure Beauty, Hydra Eyes Cream, Phyto-Renew, or Cognimaxx, and products marketed as containing Forskolin or Garcinia Cambogia.

D-14. "Independent Sales Organization" or "ISO" means any person or entity that markets payment processing services, refers merchants for payment processing services, or otherwise assists merchants in obtaining payment processing services.

D-15. "Marketing technology provider" shall mean any entity or person that provides or provided products or services to track or analyze digital marketing results or return on investment (ROI) relating to any Geniux Product, Group A Other Consumer Product, or Group B Consumer Product, including, but not limited to: (1) collecting and analyzing data about customer traffic, affiliate advertiser or network attribution, purchases, or payments; (2) measuring cross-channel cost and performance; or (3) generating reports regarding digital marketing tracking or results.

D-16. "Payment Processing" means the performance of any function of collecting, formatting, charging, transmitting, or processing, whether directly or indirectly, a cardholder's payment for goods or services. Payment processing includes: providing a merchant, financial institution, person, or entity, directly or indirectly, with the access or means to charge or debit a cardholder's account; monitoring, tracking, and reconciling payments, returns, refunds, and chargebacks; providing refund services to a merchant; and disbursing funds and receipts to merchants.

D-17. "Publisher website" shall mean any entity or person that publishes affiliate advertisers' advertisements on its website or other digital platform, in exchange for compensation.



## INSTRUCTIONS

- 1-1. 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).
- 1-2. 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).
- 1-3. 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).
- 1-4. 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.
- 1-5. Identification of Responsive Documents:** For specifications requesting production of documents, you must identify in writing the documents that are responsive to the specification. Documents that may be responsive to more than one specification of this CID need not be produced more than once. If any documents responsive to this CID have been previously supplied to the FTC, you may identify the documents previously provided and the date of submission.
- 1-6. Maintain Document Order:** You must produce documents in the order in which they appear in your files or as electronically stored. If documents are removed from their original

folders, binders, covers, containers, or electronic source, you must specify the folder, binder, cover, container, or electronic media or file paths from which such documents came.

**I-7. Numbering of Documents:** You must number all documents in your submission with a unique identifier such as a bates number or a document ID.

**I-8. Production of Copies:** Unless otherwise stated, you may submit copies in lieu of original documents if they are true, correct, and complete copies of the originals and you preserve and retain the originals in their same state as of the time you received this CID. Submission of copies constitutes a waiver of any claim as to the authenticity of the copies should the FTC introduce such copies as evidence in any legal proceeding.

**I-9. Production in Color:** You must produce copies of advertisements in color, and you must produce copies of other materials in color if necessary to interpret them or render them intelligible.

**I-10. Electronically Stored Information:** See the attached FTC Bureau of Consumer Protection Production Requirements ("Production Requirements"), which detail all requirements for the production of electronically stored information to the FTC. You must discuss issues relating to the production of electronically stored information with FTC staff prior to production.

**I-11. 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-12. Interrogatory Responses:** For specifications requesting answers to written interrogatories, answer each interrogatory and each interrogatory subpart separately and fully, in writing, and under oath.

**I-13. Submission of Documents in Lieu of Interrogatory Answers:** You may answer any written interrogatory by submitting previously existing documents that contain the information requested in the interrogatory so long as you clearly indicate in each written interrogatory response which documents contain the responsive information. For any interrogatory that asks you to identify documents, you may, at your option, produce the documents responsive to the

interrogatory so long as you clearly indicate the specific interrogatory to which such documents are responsive.

**Federal Trade Commission Bureau of Consumer Protection**  
**Production Requirements**  
 Revised July 2017

In producing information in response to this CID, you must comply with the following production requirements, unless the FTC agrees otherwise. If you have any questions about these requirements, please contact FTC Counsel before production.

**Production Format**

1. **General Format:** Provide load-ready electronic productions with: (a) an Opticon Image load file (.OPT) containing a line for every image file; and (b) a delimited data load file (.DAT) containing a line for every document, with bates references, metadata fields, and native file links, where applicable.
2. **Electronically Stored Information (“ESI”):** Documents stored in electronic format in the ordinary course of business must be produced in the following format:
  - a. For ESI other than the categories described below, submit in native electronic format with extracted text or Optical Character Recognition (OCR), all metadata, and corresponding image renderings converted to Group IV, 300 DPI, single-page Tagged Image File Format (TIFF) or color JPEG images (if color is necessary to interpret the contents or render them intelligible).
  - b. For Microsoft Excel, Access, or PowerPoint files, submit in native format with extracted text and metadata. Data compilations in Excel spreadsheets or in delimited text formats must contain all underlying data, formulas, and algorithms without redaction.
  - c. For other spreadsheet, database, presentation, or multimedia formats; instant messages; or proprietary applications, discuss production format during the meet and confer.
3. **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business must be scanned and submitted as 300 DPI individual single page TIFFs (or color JPGs when necessary to interpret documents or render them intelligible), with corresponding document-level OCR text and logical document determination in an accompanying load file.
4. **Extracted Text/OCR:** Submit text as document-level text files, named for the beginning bates number, and organized into a folder separate from images. We cannot accept Unicode text files.
5. **Document Identification:** Provide a unique DocId or bates number for each hard copy or electronic document, consisting of a prefix and a consistent number of numerals using leading zeros. Do not use a space to separate the prefix from numbers.
6. **Attachments:** Preserve the parent/child relationship by producing attachments as separate documents, numbering them consecutively to the parent email, and including a reference to all attachments.
7. **Metadata Production:** For each document submitted electronically, include standard metadata fields in a standard ASCII delimited data load file. The first line of the data load file shall include the field names. Submit date and time data in separate fields. Use these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	<	20
Quote Character	q	254



Multi Entry delimiter	®	174
<Return> Value in data	~	126

8. **De-duplication:** Do not use de-duplication or email threading software without FTC counsel approval.
9. **Password-Protected Files:** Remove passwords prior to production. If password removal is not possible, provide the original and production filenames and the password under separate cover.
10. **Sensitive PII or SHI:** Use data encryption to protect any Sensitive PII or SHI (as defined in the CID Schedule). Provide encryption passwords in advance of delivery, under separate cover.

**Producing and Submitting Media to the FTC**

1. Prior to production, scan all media and data for viruses and confirm the media and data are virus-free.
2. For productions smaller than 50 GB, the FTC can accept electronic file transfer via FTC-hosted secure file transfer protocol (Accellion or SecureZip). Contact FTC counsel to request this option. The FTC cannot accept files via Dropbox, Google Drive, OneDrive, or other third-party file transfer sites.
3. Use the least amount of media necessary for productions. Acceptable media formats are CDs, DVDs, flash drives, and hard drives. Format all media for use with Windows 7.
4. Use a courier service (e.g., Federal Express, UPS) because heightened security measures delay postal delivery. Mark the exterior of all packages containing electronic media with the following:

**MAGNETIC MEDIA – DO NOT X-RAY  
MAY BE OPENED FOR INSPECTION**

5. Provide a production transmittal letter with each production that includes:
  - a. Production volume name (e.g., Volume 1), date of production, and numeric DocID number range of all documents included in the production;
  - b. List of custodians and the DocID number range for each custodian;
  - c. Total number of records and all underlying images, emails, and associated attachments, native files, and databases in the production
  - d. List of load file fields in the order in which they are organized in the data file.

**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:**

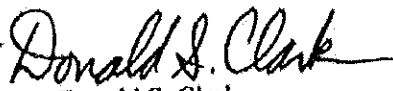
To investigate whether unnamed persons, partnerships, or corporations, or others engaged directly or indirectly in the advertising or marketing of dietary supplements, foods, drugs, devices, or any other product or service intended to provide a health benefit or to affect the structure or function of 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:

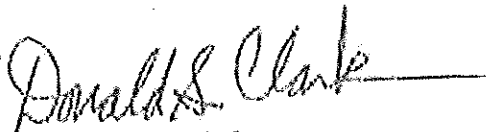
To determine whether unnamed persons, partnerships or corporations have been or are engaged in the deceptive or unfair use of e-mail, metatags, computer code or programs, or deceptive or unfair practices involving Internet-related goods or services, in violation of Sections 5 or 12 of the Federal Trade 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:**

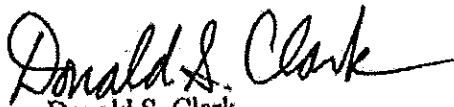
To determine whether unnamed persons, partnerships, corporations, or others have engaged in or are engaging in deceptive or unfair acts or practices in or affecting commerce, in connection with making unauthorized charges or debits to consumers' accounts, including unauthorized charges or debits to credit 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

**CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY**  
**Pursuant to 28 U.S.C. § 1746**

1. I, \_\_\_\_\_, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Fully Accountable, LLC (the "Company") and attached hereto.
3. The documents produced and attached hereto by the Company are originals or true copies of records of regularly conducted activity that:
  - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
  - b) Were kept in the course of the regularly conducted activity of the Company; and
  - c) Were made by the regularly conducted activity as a regular practice of the Company.

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

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**Petition Exhibit 3**

FedEx Delivery Confirmation

Tracking # 770322176852

(Sept. 26, 2017)



From: TrackingUpdates@fedex.com  
To: Senturia, Harris  
Subject: FedEx Shipment 770322176852 Delivered  
Date: Tuesday, September 26, 2017 1:55:34 PM

FedEx®

## Your package has been delivered

Tracking # 770322176852

Ship date:  
Fri, 9/22/2017

Delivery date:  
Tue, 9/26/2017 1:52 pm

Linda Hall  
Federal Trade Commission  
Washington, DC 20024  
US

Delivered

Fully Accountable, LLC  
c/o Christopher Giorgio,  
President  
2680 West Market Street  
FAIRLAWN, OH 44333  
US

### Shipment Facts

Our records indicate that the following package has been delivered.

<b>Tracking number:</b>	770322176852
<b>Status:</b>	Delivered: 09/26/2017 1:52 PM Signed for By: J.SCAVA
<b>Purchase order number:</b>	0612
<b>Reference:</b>	1723195/588203
<b>Signed for by:</b>	J.SCAVA
<b>Delivery location:</b>	FAIRLAWN, OH
<b>Delivered to:</b>	Receptionist/Front Desk
<b>Service type:</b>	FedEx 2Day
<b>Packaging type:</b>	FedEx Envelope
<b>Number of pieces:</b>	1
<b>Weight:</b>	0.50 lb.
<b>Special handling/Services:</b>	Direct Signature Required Deliver Weekday
<b>Standard transit:</b>	9/26/2017 by 4:30 pm

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 12:55 PM CDT on 09/26/2017.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above.

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

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Thank you for your business.



**Petition Exhibit 4**

Letter from Assistant Regional Director  
Larissa Bungo to Rachel Scava

(Oct. 16, 2017)



United States of America  
FEDERAL TRADE COMMISSION  
East Central Region

Larissa Bungo  
Assistant Regional Director  
East Central Region

1111 Superior Avenue, Suite 200  
Cleveland, Ohio 44114

(216) 263-3403 (Direct Dial)  
(216) 263-3426 (Facsimile)  
(216) 263-3455 (Main Office)  
Email lbungo@ftc.gov

October 16, 2017

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

Re: Federal Trade Commission Civil Investigative Demand issued September 22,  
2017

Ms. Scava:

In light of your conversation with attorney Harris Senturia on October 10, 2017, requesting additional time for Fully Accountable to comply with the referenced Civil Investigative Demand (CID), I am granting Fully Accountable an additional four weeks (beyond the time already provided in the CID) to provide a phased response.

In the first phase of the response, Fully Accountable will provide responses to interrogatories S-1 through S-4, S-6, and S-8. Fully Accountable will also provide responsive documents to specifications S-12 through S-14, S-37, and S-38. Those responses and documents must be provided or made available by the close of business on October 23, 2017.

In the second phase of the response, Fully Accountable will provide responses to interrogatories S-5, S-7, and S-9. Fully Accountable will also provide responsive documents to specifications S-15 through S-28. Those responses and documents must be provided or made available by the close of business on October 30, 2017.

In the third phase of the response, Fully Accountable will provide responsive documents to specifications S-29 through S-36. Those documents must be provided or made available by the close of business on November 6, 2017.

Rachel Scava  
Fully Accountable, LLC  
October 16, 2017

Page 2 of 2

In the fourth phase of the response, Fully Accountable will provide responses to interrogatories S-10 and S-11. Fully Accountable will also provide responsive documents to specifications S-39 through S-51. Those responses and documents must be provided or made available by the close of business on November 20, 2017.

Additionally, as noted by Mr. Senturia during your phone conversation, all references to "Geniux Entity" in the definitions of "affiliate advertiser" (or "publisher") and "affiliate network" should be amended to read "Group A Entity or Group B Entity," and all relevant responses should reflect this change.

No other modifications of the dates and terms of the CID are intended or offered. We continue to reserve all rights of the Commission with respect to the CID as originally propounded. The agreement set forth in this letter is contingent on full and complete production in accordance with the procedure outlined herein.

If you have any further questions, please contact FTC counsel Harris Senturia at (216) 263-3420 or FTC counsel Adrienne Watson at (216) 263-3411. You may also contact me at the above email or phone number.

Sincerely,



Larissa Bungo  
Assistant Regional Director  
East Central Region

**Petition Exhibit 5**

Letter from Harris Senturia to Rachel Scava

(Oct. 27, 2017)



UNITED STATES OF AMERICA  
Federal Trade Commission  
EAST CENTRAL REGION

Harris A. Senturia  
Attorney  
1111 Superior Ave., Suite 200  
Cleveland, Ohio 44114  
Phone: (216) 263-3420  
hsenturia@ftc.gov

October 27, 2017

Via Email: [rachel.scava@fullyaccountable.com](mailto:rachel.scava@fullyaccountable.com)  
Rachel Scava  
Chief Operating Officer and General Counsel  
Fully Accountable, LLC  
2680 West Market Street  
Fairlawn, OH 44333

Re: Federal Trade Commission Civil Investigative Demand issued September 22,  
2017

Dear Ms. Scava,

We have received and reviewed Fully Accountable's first phase response to the referenced Civil Investigative Demand (CID). Substantial deficiencies in that response indicate that you and Fully Accountable have arrived at incorrect assumptions regarding the CID and the company's responsibility to respond to it. As you did not disclose these assumptions in our communications prior to Larissa Bungo's letter to you of October 16, 2017, we were not aware of them until you provided the deficient response.

First, as stated in the cover letter that arrived with the CID:

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.

(Letter of September 22, 2017, from Donald S. Clark to Christopher Giorgio) (emphasis added). This purpose is also set forth in full in the part of the CID Schedule, on page two, headed "**SUBJECT OF INVESTIGATION**" (bold and underline in original).

Rachel Scava  
October 27, 2017

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Fully Accountable's business practices are within the subject of this investigation, as identified in the cover letter and schedule that accompanied the CID. In refusing to respond to specifications S-2 and S-12, Fully Accountable has made unfounded assertions and assumptions to the contrary. Those assertions and assumptions are incorrect, and in any event provide no grounds for the company's refusal to provide the specified information.

Second, please know that confidentiality is not a proper basis for Fully Accountable's refusal to produce requested documents. This is well-established law. *See FTC v. Invention Submission Corp.*, 1991 U.S. Dist. LEXIS 5523, \*15-\*16 (D.D.C. Feb. 14, 1991), *aff'd*, 965 F.2d 1086, 1089 (D.C. Cir. 1992); *FTC v. Rockefeller*, 441 F. Supp. 234, 242 (S.D.N.Y. 1977) (citing *FTC v. Tuttle*, 244 F.2d 605, 616 (2d Cir. 1957); *FTC v. Green*, 252 F. Supp. 153, 156-57 (S.D.N.Y. 1966) (citing *FTC v. Tuttle*, 244 F.2d 605 (2d Cir. 1957); *cf. Federal Communications Commission v. Schreiber*, 381 U.S. 279, 85 S.Ct. 1459, 14 L.Ed.2d 383 (1965)).

As with the first question, the FTC addressed its confidential treatment of information that Fully Accountable provides in response to the CID in both the cover letter and in the CID Schedule.

**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.**

(Letter of September 22, 2017, from Donald S. Clark to Christopher Giorgio) (emphasis in original). Identical language appears on page one of the CID Schedule.

Accordingly, there is no merit to Fully Accountable's assertion of confidentiality as grounds to refuse to produce documents in response to specifications S-13, S-14, S-37, and S-38.

Third, and finally, you did not raise either of these issues in the meet and confer process that preceded Larissa Bungo's letter to you of October 16. You and I spoke on the telephone for about fifteen minutes on October 10, and then had a short follow-up call on October 16. You did not identify these issues in either of those calls, nor in any voicemail, and you did not send any correspondence to me at any time from the September 26 delivery date of the CID until the response that arrived in our office on October 24. The first paragraph on the first page of the CID Schedule instructed that in the meet and confer process: "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."

Rachel Scava  
October 27, 2017

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Given that Fully Accountable had ample time and opportunity ahead of the October 16 letter to raise any questions or to disclose that the company intended to refuse to respond to certain specifications, the company's decision to wait to reveal these issues until delivery of the first phase response is insupportable.

The October 16 letter from Larissa Bungo to you included the following paragraph:

No other modifications of the dates and terms of the CID are intended or offered. We continue to reserve all rights of the Commission with respect to the CID as originally propounded. **The agreement set forth in this letter is contingent on full and complete production in accordance with the procedure outlined herein.**

(Letter of October 16, 2017, from Larissa Bungo to Rachel Scava) (emphasis added). Fully Accountable's first phase response as delivered on October 24 was not "full and complete production in accordance with" the procedure set forth in the October 16 letter.

Please supplement Fully Accountable's first phase response to provide full and complete production in response to specifications S-2, S-12 through S-14, S-37, and S-38. Please deliver the responsive information and documents no later than November 6, 2017. This is not an extension; it is an effort to address a deficiency.

In the meantime, please ensure that in the second phase response, due October 30, 2017, Fully Accountable provides full and complete production in response to specifications S-5, S-7, S-9, and S-15 through S-28, in accordance with the procedure set forth in the October 16 letter.

If you have any questions, please contact me at the telephone number above, or my co-counsel Adrienne Watson at (216) 263-3411. You may also contact me at the above email address.

Very truly yours,



Harris A. Senturia



**Petition Exhibit 6**

Letter from Rachel Scava to Harris Senturia

(Nov. 6, 2017)



# FULLY ACCOUNTABLE

Your Back Office Solution

Federal Trade Commission  
ATTN: Harris A Senturia  
1111 Superior Ave, Suite 200  
Cleveland, Ohio 44114

**RE: Letter Dated October 27, 2017**

Dear Mr. Senturia:

Fully Accountable, LLC is in receipt of your letter dated October 27, 2017. Below is Fully Accountable's response to your letter.

**Fully Accountable, LLC's Business Practices**

In response to your statement that "Fully Accountable's business practices are under investigation..." The CID that was issued is investigating marketing practices and deceptive or unfair acts or practices regarding consumer charging as stated in the CID that was received by Fully Accountable and restated in your letter October 27, 2017 (relevant part quoted):

*"... 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 Section 5 and 12 of the Federal Act ("FTC Act"), 15 U.S.C Section 45 and 52, or have engaged in deceptive or unfair practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization in violation of Section 5 of teh FTC Act..."*

Fully Accountable did not provide any marketing or advertising services, in any capacity, for any of the companies listed in the CID. Fully Accountable also did not provide any payment services to any of the Group A or Group B Entity's whereby it charged any consumer for any product that any Group A or Group B Entity may have sold.

November 6, 2017

At no time, did any of the Group A or Group B Entity's engage Fully Accountable for any marketing, advertising, or payment processing service. Fully Accountable, LLC is a bookkeeping/accounting, CFO Executive Consulting service, back-office service provider, and tax preparer for small businesses; which are the only services that some of the Group A and Group B Entity's contracted Fully Accountable to provide to them.

Fully Accountable disclosed all of the services that it provided to each of the Group A and Group B Entity's. At no time, was Fully Accountable contracted to provide any marketing, advertising, or payment processing (charging of consumers) for the Group A or Group B Entity's which would be in violation of the FTC Act's cited.

As stated, Fully Accountable would sign an Affidavit stating that the following individuals that are listed as Group A Entity individuals have no ownership interest in Fully Accountable:

- Ashraf Abbas;
- Rafat Abbas;
- Fred Guerra;
- Lanty Gray; and
- Robby Salaheddine.

In addition, Fully Accountable stated that it would also sign an Affidavit stating that the same Group A individuals that are listed above have no position or role inside Fully Accountable and that at no point have they ever had any position or role inside Fully Accountable.

Fully Accountable served solely as a vendor for some of the Group A and Group B Entity's, and never provided any service that would be in violation of the FTC Act. As a privately held company, it will not be disclosing its ownership or organizational chart.

### **Confidentiality**

In regards to your second point that confidentiality is not a proper basis. As Fully Accountable stated in its Round 2 Response, if you provide a Letter of Consent to Disclose from its previous clients or a Protective Order for Fully Accountable, it will provide the information requested in those Interrogatories that it has, and will produce that Document Specifications that Fully Accountable is in possession of.

Please note, that Fully Accountable did not provide services to some of the Group A and Group B Entity's listed and thus will be unable to produce anything for those Entity's. In addition, because these were all former clients, as has been noted, Fully Accountable either returned or forwarded the accounting and/or files to the new accounting service provider or back to the client. In order to respond to the Interrogatories and produce the Document Specifications, Fully Accountable will require one of the two (2) methods above be met so that it meets its contractual obligations with its previous clients.

Should you have any questions, please advise.

All The Best,

A handwritten signature in black ink, appearing to read 'R. Scava', written in a cursive style.

Rachel L. Scava, Esq  
Fully Accountable, LLC  
Ph: 330.940.1440 ext 2203  
Em: [rachel.scava@fullyaccountable.com](mailto:rachel.scava@fullyaccountable.com)

**Petition Exhibit 7**

Letter from Harris Senturia to Rachel Scava

(Nov. 15, 2017)



Harris A. Senturia  
Attorney  
1111 Superior Ave., Suite 200  
Cleveland, Ohio 44114  
Phone: (216) 263-3420  
hsenturia@ftc.gov

UNITED STATES OF AMERICA  
Federal Trade Commission  
EAST CENTRAL REGION

November 15, 2017

Via Email: [rachel.scava@fullyaccountable.com](mailto:rachel.scava@fullyaccountable.com)

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

Re: Federal Trade Commission Civil Investigative Demand (CID)  
issued on September 22, 2017

Dear Ms. Scava:

I am writing in regard to the CID issued to Fully Accountable on September 22, 2017 and Fully Accountable's responses to date, including your letter dated November 6, 2017. As we discuss in greater detail below, these responses are deficient and have failed to comply with the CID. I am therefore writing to advise you that unless Fully Accountable corrects these deficiencies and provides a full and complete response by November 20, 2017, we will have no choice but to refer this matter to our Office of General Counsel for enforcement in federal district court.

Background

After the Commission issued the CID to Fully Accountable, we engaged in a meet-and-confer process regarding the company's compliance. You and I spoke on the telephone for about fifteen minutes on October 10, and then had a short follow-up call on October 16. Following those discussions, on October 16, 2017, Larissa Bungo, Assistant Regional Director for the FTC's East Central Region, formally modified the CID to provide a "phased" production with four deadlines: October 23, October 30, November 6, and November 20, 2017.

We received Fully Accountable's first phase response on October 24. In that response, Fully Accountable provided approximately nine pages of objections and responses to the interrogatories then due, two pages of objections to requests for documents then due, and no documents. On October 27, I wrote to you to explain that Fully Accountable's assertions on

Rachel Scava  
November 14, 2017

Page 2

which it based its refusal to provide information about the company and records relating to its clients were both erroneous and untimely.

We received Fully Accountable's second phase response on November 1. In that response, Fully Accountable provided approximately four pages of responses to interrogatories then due, six pages of narrative responses and objections to requests for documents then due, and no documents. We received Fully Accountable's third phase response on November 7. In that response, Fully Accountable provided approximately three pages of narrative responses to requests for documents then due, and no documents.

To date, other than its narrative responses and objections, Fully Accountable has provided no documents in response to the CID. In addition to the company's limited narrative responses, you sent us a letter on November 6, 2017, setting forth a response to my letter of October 27.

### Deficiencies

We have reviewed the information provided by Fully Accountable to date and have identified a number of deficiencies. The following are the most salient:

1. Ownership, Leadership, and Organization. Specifications S-2 and S-12 of the CID call for information about Fully Accountable's ownership, leadership, and organizational structure. As discussed in your November 6, 2017 letter, Fully Accountable has refused to provide this information, claiming that "[a]s a privately held company, it will not be disclosing its ownership or organizational chart." You have not cited any authority supporting this position and indeed we are not aware of any. Fully Accountable's status as a privately held company does not provide any basis to conceal information about the company's recent and current ownership and organization requested by the CID. Fully Accountable's refusal to respond to these specifications is therefore deficient.
2. Documents Related to Client Activity. Specifications S-13, S-14, S-37, and S-38 (all due on October 23), and S-17 through S-20 (all due on October 30), call for identifying information relating to certain entities and associated individuals, and for financial records related to those entities. Fully Accountable has refused to provide information in response to these specifications, citing concerns about confidentiality. The company, however, never addressed why the FTC's statutory confidentiality protections – which we described to you in no fewer than three separate documents: (1) the CID cover letter; (2) the CID Schedule; and (3) my letter to you dated October 27, 2017 – are insufficient or provide a basis for the company's noncompliance. Indeed, my October 27 letter not only highlighted these protections again, but also cited case authority for the settled law that confidentiality is not an appropriate basis on which to refuse to respond to a CID.

Fully Accountable pressed this issue in its November 1 responses when it asserted that, "Each of the precedents that you have cited in your letter on October 27, 2017 had a protective order or other consent that protected the party disclosing the information." This is an incorrect reading of these cases, however. For example, in *FTC v. Invention Submission Corp.*, 1991 U.S.



Rachel Scava  
November 14, 2017

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Dist. LEXIS 5523 (D.D.C. Feb. 14, 1991), *aff'd*, 965 F.2d 1086, 1089 (D.C. Cir. 1992), cited in the letter, the court explicitly declined to require consent and went on to state that

the FTC Act itself expressly forbids public disclosure by the Commission of confidential information obtained by CIDs. If at some point, information will become public, respondent may move for a protective order barring public disclosure of confidential information.

1991 U.S. Dist. LEXIS 5523 at \*19 (footnotes omitted). None of these cases support Fully Accountable's refusal to comply with these specifications.

Moreover, even if either of the above positions were valid objections to the CID (and they are not), Fully Accountable has failed to raise them to the Commission. Fully Accountable did not mention either issue in the meet-and-confer process that preceded Larissa Bungo's October 16, 2017 letter. Nor did Fully Accountable raise either claim in a petition to limit or quash the CID, which is the method prescribed by the Commission's Rules of Practice for making "all assertions of protected status or other factual or legal objections to the Commission compulsory process." 16 C.F.R. § 2.10(a). Fully Accountable's failure either to properly exhaust its claims or to produce the information specified means that its response to these specifications is deficient.

3. Documents Relating to Contracts, Applications, or Agreements. Specification S-16 of the CID calls for the production of "[a]ll documents relating to contracts, applications, or agreements" for any entities in the group referred to as the Group A Entities. The response to specification S-16 was due by October 30. (Specification S-40 calls for the same information for any entities in the group referred to as the Group B Entities, and the response to specification S-40 will be due by the final deadline of November 20.) In its November 1 response to specification S-16, Fully Accountable claimed that it had no documents responsive to this specification:

Fully Accountable does not have any of the Group A Entity contracts, applications, or agreements. Typically, we have contracts with each of our clients, but these specific clients joined our practice early in our business development and we do not have a specific engagement letter on file.

This explanation is deficient for two main reasons. First, by their terms, these specifications are not limited to "specific engagement letter[s]" but include "all documents relating to contracts, applications, or agreements" with the identified entities. Second, elsewhere in its responses, Fully Accountable has referred to agreements with the identified entities, including by generally identifying scope and time period of services provided, and by asserting that there are "contractual" confidentiality obligations. Regardless of what form they took – whether in letters, or emails, or notes, or any other record – documents relating to terms of these business relationships appear to exist. Fully Accountable must produce them in order to comply with the CID.

Rachel Scava  
November 14, 2017

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Next Steps

Larissa Bungo's October 16, 2017 letter to you noted that the agreement to provide an extension was "contingent on full and complete production in accordance with the procedure outlined" in the letter. For the reasons discussed above, Fully Accountable's responses to date have not been "full and complete [and] in accordance with" the procedure set forth in the October 16 letter. Fully Accountable must therefore correct these deficiencies and provide all responsive information and documents no later than November 20, 2017, the last of the phased deadlines. Please note that this statement does not modify the CID, which has not been modified since October 16, 2017.

If Fully Accountable fails to provide a full and complete production in response to the CID by November 20, 2017, our office will have no choice but to refer this matter to our Office of General Counsel to consider enforcement proceedings in United States District Court. Please note that, while this investigation is nonpublic, any resulting enforcement proceeding would be public.

If you have any questions, please contact me at the telephone number above, or my co-counsel Adrienne Watson at (216) 263-3411. You may also contact me at the above email address, or my co-counsel Adrienne Watson at [awatson@ftc.gov](mailto:awatson@ftc.gov). Please note that I will be away from the office the week of November 20, so please copy Ms. Watson on any email correspondence to me that week.

Very truly yours,

*s/Harris A. Senturia*

Harris A. Senturia

cc: Burke Kappler, Attorney, Office of General Counsel (by e-mail to [bkappler@ftc.gov](mailto:bkappler@ftc.gov))  
Katie Baker, Attorney, Office of General Counsel (by e-mail to [kbaker@ftc.gov](mailto:kbaker@ftc.gov))

**Petition Exhibit 8**

Letter from Rachel Scava to Harris Senturia

(Nov. 20, 2017)



# FULLY ACCOUNTABLE

Your Back Office Solution

Federal Trade Commission  
ATTN: Harris A Senturia  
1111 Superior Ave, Suite 200  
Cleveland, Ohio 44114

***RE: Letter Dated November 15, 2017- Protective Order Needed***

Dear Mr. Senturia:

Fully Accountable, LLC is in receipt of your letter dated November 15, 2017. Below is Fully Accountable's response to the deficiencies that were listed,

1. Ownership, Leadership, and Organization.

The CID that was issued to Fully Accountable is investigating the following as stated in the CID and the letter dated October 27, 2017 (relevant part quoted):

*"... 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 Section 5 and 12 of the Federal Act ("FTC Act"), 15 U.S.C Section 45 and 52, or have engaged in deceptive or unfair 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..."*

Fully Accountable did not provide any marketing or advertising services, in any capacity, for any of the companies listed in the CID. Fully Accountable also did not provide any payment services to any of the Group A or Group B Entity's whereby it charged any consumer for any product that any Group A or Group B Entity may have sold.

At no time, did any of the Group A or Group B Entity's engage Fully Accountable for any marketing, advertising, or payment processing service. Fully Accountable, LLC is a bookkeeping/accounting, CFO Executive Consulting service, back-office service provider, and

November 20, 2017

tax preparer for small businesses; which are the only services that some of the Group A and some of the Group B Entity's contracted Fully Accountable to provide to them. In addition, Fully Accountable is a B2B business and does not participate in the any B2C business practices which are being investigated in the CID.

As previously stated, Fully Accountable disclosed all of the services that it provided to each of the Group A and Group B Entity's. At no time, was Fully Accountable contracted to provide any marketing, advertising, or payment processing (charging of consumers) for the Group A or Group B Entity's which would be in violation of the FTC Act's cited.

Fully Accountable reiterates that Fully Accountable will sign an Affidavit stating that the following individuals that are listed as Group A Entity individuals have no ownership interest in Fully Accountable:

- Ashraf Abbas;
- Rafat Abbas;
- Fred Guerra;
- Lanty Gray; and
- Robby Salaheddine.

In addition, Fully Accountable stated that it would also sign an Affidavit stating that the same Group A individuals that are listed above have no position or role inside Fully Accountable and that at no point have they ever had any position or role inside Fully Accountable.

Fully Accountable has outside investors and shareholders that it has obligations to. Fully Accountable remains willing to sign an Affidavit stating that none of those parties above participated in any capacity with Fully Accountable and that Fully Accountable did not provide any services to and of the Group A or Group B Entity's that are being investigated. The company is a privately held company under the state laws of Ohio and while the Federal Trade Commission is investigating the practices of the Group A and Group B Entity's, Fully Accountable is not in the business of selling directly to consumers nor did it provide any services to the Group A and Group B Entity's which are under investigation by the FTC. As such, Fully Accountable will not be disclosing its ownership or organizational chart.

## 2. Documents Related to Client Activity

I want to renew for you on behalf of Fully Accountable that the Company wants to cooperate with your investigation and has stated it will turn over the items that it is in possession of but in order to do so is seeking protection from the FTC with a Protective Order. Fully Accountable has contractual obligations with any business that formerly was or currently is a client and in order not to put Fully Accountable in a position where it breaches a contract with it's current and former client is not unreasonable.

November 20, 2017

It's actually unconscionable to suggest such a violation (breaching a contract and confidentiality with a former or current client) when it is a reasonable course of action to provide Fully Accountable a Protective Order if it's necessary to receive the information in the CID from Fully Accountable and not directly through the target channels. Fully Accountable's terms and conditions contractually stipulates to clients and former clients that it will seek protection in matters where information is required to be disclosed.

As such, please provide the proper protection necessary for Fully Accountable to prevail in a breach of contractual obligations. Fully Accountable has also provided to you who they moved the files to when the client's ceased Fully Accountable's service - who may not be contractually obligated as Fully Accountable is with the various accounting files.

3. Documents Relating to Contracts, Applications, or Agreements.

Fully Accountable is not in possession of any contracts, applications, or agreements of any of the Group A or Group B Entity's. Any contract that Fully Accountable may have been in possession of was returned to the client when services were ceased. Fully Accountable simply pointed out that its contract with the Client did not exist because of the timing of when the client joined the firm.

Should you have any questions, please advise.

All The Best,

A handwritten signature in black ink, appearing to read 'Rma', is written over the typed name 'Rachel L Scava, Esq'.

Rachel L Scava, Esq  
Fully Accountable, LLC  
Ph: 330.940.1440 ext 2203  
Em: rachel.scava@fullyaccountable.com

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

FEDERAL TRADE COMMISSION,  
Petitioner,

v.

FULLY ACCOUNTABLE, LLC  
Respondent.

Mis No. 5.18 MC

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

The Federal Trade Commission brought this proceeding to enforce a civil investigative demand (CID) issued to Fully Accountable, LLC as part of an investigation into whether Fully Accountable and associated entities or individuals have complied with Sections 5 and 12 of the FTC Act. Fully Accountable has not adequately complied with the CID. It has produced no documents at all and has provided inadequate responses to interrogatories. The company has withheld some concededly responsive information on the basis of ill-founded legal claims. It has withheld other information by narrowly interpreting the CID specifications inconsistently with the definitions set forth in the CID itself. As a result, Fully



Accountable has stymied the Commission's investigation by preventing its staff from gathering necessary information.

Specifically, Fully Accountable has improperly withheld information falling into three categories: (1) information about its ownership, organization and leadership, withheld on the spurious grounds that Fully Accountable is not within the scope of the Commission's investigation or that privately-held companies need not respond to process; (2) information about its relationships with other entities, withheld on the unfounded claim that such information is confidential; and (3) information responsive to a number of the CID's specifications, withheld by rewriting key terms defined by the CID itself. Nor has Fully Accountable properly presented its objections and grounds for noncompliance to the Commission. In the absence of an order directing Respondent to comply with the CID as written, the Commission will lack information that it needs to carry out its investigation. The Commission therefore respectfully asks this Court to grant the Commission's enforcement petition and to direct Fully Accountable to provide a complete response within 10 days from the date of the Court's order.

#### Argument

For the reasons shown below, the Commission is entitled to judicial enforcement of its CID.<sup>1</sup> Fully Accountable has waived its arguments for noncompliance by failing to exhaust its administrative remedies. Even if it can raise

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<sup>1</sup> This memorandum incorporates by reference the statements of fact in its accompanying petition and declaration of Harris A. Senturia.

the claims, they are meritless. Accordingly, this Court should grant the Commission's petition to enforce the CID and enter its own order requiring Fully Accountable to produce all of the required materials within 10 days. *See* 15 U.S.C. § 57b-1(h)

**I. Standards For Enforcement Of Agency Process.**

"[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, 641 (1950)). "While the court's function is 'neither minor nor ministerial,' *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. at 217 n.57, 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*)); *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); *Winters Nat'l Bank*, 601 F.2d at 398.

Furthermore, proceedings to enforce administrative investigative subpoenas and CIDs are entitled to summary disposition. *United States v. Will*, 671 F.2d 963, 968 (6th Cir. 1982). They are special statutory matters cognizable under Fed. R. Civ. P. 81(a)(5), properly instituted by a petition and order to show cause rather than by complaint and summons. *See, e.g., Markwood*, 48 F.3d at 974.

**II. The CID Is Within the Commission's Authority, Seeks Relevant Documents, And Is Neither Indefinite Nor Unreasonable.**

The CID satisfies all the standards governing enforcement of FTC compulsory process. It is well within the Commission's authority, was properly issued, seeks information and documents relevant to the Commission's investigation, and is neither indefinite nor unreasonable.

**A. The CID Is Within the Commission's Authority.**

The Commission lawfully and properly issued the CID as part of an investigation into whether Fully Accountable and associated entities and individuals have violated the FTC Act. The Commission issued the CID under Section 20 of the FTC Act, 15 U.S.C. § 57b-1, which authorizes the Commission to issue CIDs “[w]henever 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, ¶¶ 7-9; Pet Ex. 2 at 21-23. Finally, the Commission

issued the CID consistent with all governing requirements. Pet. Ex. 1, ¶ 12; 15 U.S.C. §§ 57b-1(c)(2), (c)(3), (c)(7); 16 C.F.R. § 2.7.

**B. The Documents And Information Sought Are 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 may call for documents and information that are relevant “to the investigation” – a boundary that may be broadly 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.”).<sup>2</sup>

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<sup>2</sup> *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 & n.26 (finding sufficient a resolution authorizing investigation of reporting of natural gas reserves in southern Louisiana

The information sought by the CID is directly relevant to the three investigational resolutions that independently authorize its issuance. That information will enable FTC staff to identify individuals relevant to the investigation, to understand Respondent's relationships with its internet marketer clients, to obtain information about Respondent's roles with respect to its clients' internet marketing operations, and to discern Respondent's role in charges made to consumers' accounts. Pet. Ex. 1, ¶ 11. Each category of information will directly assist Commission staff in determining whether Respondent, its owners and managers, or its clients and affiliates have violated applicable laws.

**C. The CID Is 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 CID here meets this definition because all of its specifications and definitions are plainly expressed and easily understandable.

The CID is 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

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as well as the conduct "relating to the exploration and development, production, or marketing of natural gas, petroleum, and petroleum products, and other fossil fuels").

CID was issued on September 21, 2017 with a return date of October 23, 2017, providing Fully Accountable more than 30 days to respond. Pet. Ex. 2 at 4. FTC staff further accommodated Fully Accountable by modifying the CID to permit the company to make a phased production over the following month, concluding on November 20. Pet. Ex. 1, ¶¶ 16-17; Pet. Ex. 4. Nor is the CID overbroad or burdensome. Its requests were carefully developed by FTC staff to elicit the information necessary to the investigation; even a cursory review shows that they clearly and specifically describe the information requested. The information at issue—phone lists, organization charts, contract terms, and the like—is material that any business should have readily accessible.

Fully Accountable has never suggested otherwise. At no time during multiple meet-and-confer discussions did Fully Accountable object to the CID or raise concerns about its reasonableness or definiteness. Staff modified the CID expressly to alleviate Fully Accountable's concerns. Any contrary claims by Fully Accountable at this point are not properly before the Court.

### **III. Fully Accountable Has Improperly Withheld Responsive Information.**

Fully Accountable's excuses for its failure to produce the requested documents and information are meritless. The excuses fall into three categories: that Fully Accountable is outside the scope of the Commission's investigation; that the information sought is confidential; and that the CID does not in fact request certain information. Because Fully Accountable did not raise these objections in a

petition to limit or quash the CID, however, the company has waived these arguments. Even if the court chose to consider these claims on the merits, Fully Accountable is wrong on each count for the reasons we discuss below.

**A. Fully Accountable Waived Any Challenges To The CID By Failing To Raise Them Before The FTC.**

Fully Accountable has waived any challenge to the CID. 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, 193-94 (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.

Fully Accountable did not petition the FTC to limit or quash the CID at issue. It did not even raise informally with staff any concerns or objections regarding the CID requests during lengthy negotiations over its response. To the contrary, Fully Accountable waited until its responses were due and then informed staff that it elected to limit its responses unilaterally. Because Fully Accountable failed to exhaust its remedies before the Commission, the company may not now assert its objections as a defense in this CID enforcement proceeding.

**B. Fully Accountable May Not Withhold Ownership, Leadership, or Organizational Structure Information.**

Specifications S-2 and S-12 ask Fully Accountable to produce information about the ownership, leadership, and organization of the company. Fully Accountable has refused to produce this information for two reasons, neither of which justifies noncompliance.

1. Fully Accountable denies that it is involved in the conduct under investigation. The claim rests on a brief description of the investigation from the cover letter to the CID, which stated that the investigation is examining conduct “in connection with the marketing of consumer products” and potentially “deceptive or unfair practices by charging, or participating in the charging, in any respect, for consumer products without consumers’ authorization.” Pet. Ex. 6 at 1; Pet. Ex. 2 at 1. Citing that description, Fully Accountable claims it is outside this scope because it “did not provide any marketing or advertising services, in any capacity, for any of the companies listed in the CID” and because it “did not provide any payment



services to any of the Group A or Group B Entity's [sic] whereby it charged any consumer for any product that any Group A or Group B Entity may have sold." Pet. Ex. 6 at 1.

The claim fails, however, because Respondent's description of the investigation cannot be squared with the Commission's resolutions, which were attached to the CID, *see* Pet. Ex. 2 at 21-23, and are controlling, notwithstanding Fully Accountable's interpretation of the cover letter. "[T]he validity of Commission subpoenas is to be measured against the purposes stated in the resolution, and not by reference to extraneous evidence." *Invention Submission Corp.*, 965 F.2d at 1092 (citing *Carter*, 636 F.2d at 789); *see also Texaco*, 555 F.2d at 874 (stating that the "scope and purpose of the FTC's investigation" is "set forth in the Commission's resolution"); 16 C.F.R. § 2.6 (Commission rule providing that resolution gives statement of scope and purpose of investigation).

Three separate resolutions authorize the FTC to investigate whether Fully Accountable (1) is directly *or indirectly* involved in the advertising and marketing of dietary supplements and other health-related consumer products, (2) is engaged in deceptive or unfair acts or practices involving Internet-related goods or services; or (3) is engaged in unfair or deceptive acts or practices *in connection with* making unauthorized charges to consumers' accounts. Pet. Ex. 2 at 21-23. Fully Accountable's position is thus inconsistent with the actual scope of the investigation, which reaches further than whether Fully Accountable *itself* engaged in online advertising and marketing or charged consumers. Fully Accountable may

not redefine the conduct under investigation and refuse to produce responsive information on the claim that it does not fall within the newly narrowed definition.

Moreover, Fully Accountable's unsupported denial of involvement is not a sufficient response to a CID request. "Even if one were to regard the request for information in this case as caused by nothing more than official curiosity, nevertheless law-enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest." *Morton Salt*, 338 U.S. at 652.

2. Fully Accountable next argues that "[a]s a privately held company, it will not be disclosing its ownership or organizational chart." Pet. Ex. 6 at 2. That excuse amounts to a claim that privately-held companies are immune from administrative compulsory process in a way that publicly-traded entities are not. That is incorrect.

Congress expressly authorized the Commission to investigate "persons," which it defined as "any natural person, partnership, corporation, association, or other legal entity." 15 U.S.C. § 57b-1(a)(6); *see also* 15 U.S.C. § 57b-1(c)(1) (authorizing the Commission to issue CIDs to "any person"). That definition plainly covers private companies such as Fully Accountable, which therefore may not decline to respond to the CID because it is privately held.<sup>3</sup>

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<sup>3</sup> As Mr. Senturia notes, the CID defines 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

**C. Fully Accountable May Not Withhold Information on Grounds of Confidentiality.**

Specifications S-13, S-14, S-37, S-38, S-17 through S-20, and S-41 through S-44 request information about the Group A and Group B Entities, including financial and accounting records. *See* Pet. Ex. 2 at 10-12. Fully Accountable asserts that “contractual obligations [to] its previous clients” prevent it from submitting some of that information without either a “Letter of Consent to Disclose” from the clients or a “Protective Order.” Pet. Ex. 6 at 2-3.

That reasoning is false; courts routinely reject the idea that confidentiality justifies withholding information requested by a CID. Congress “did not condition the right to subpoena information on the sensitivity of the information sought. So long as the subpoena meets the requirements of the FTC Act, is properly authorized, and within the bounds of relevance and reasonableness, the confidential information is properly requested and must be complied with.” *FTC v. Invention Submission Corp.*, Misc. No. 89-272(RCL), 1991 WL 47104, at \*4 (D.D.C. Feb. 14, 1991), *aff’d*, 965 F.2d 1086 (D.C. Cir. 1992); *accord FTC v. Rockefeller*, 441 F. Supp. 234, 242 (S.D.N.Y. 1977) (citing *FTC v. Tuttle*, 244 F.2d 605, 616 (2d Cir. 1957); *FTC v. Green*, 252 F. Supp. 153, 157 (S.D.N.Y. 1966) (same). As these courts recognize, any other approach would allow companies under investigation to escape scrutiny by placing their information under confidentiality agreements, seriously undermining the Commission’s law enforcement efforts.

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Rachel Scava.” Pet. Ex. 1, ¶ 24 n.3; Pet. Ex. 2 at 13 (Specification D-1). Thus a complete response to these specifications should reflect this definition.

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Fully Accountable's confidentiality concerns are also unwarranted in light of statutes and rules that protect information gathered via CID from disclosure. The FTC Act and the Commission's Rules expressly restrict public disclosure by the Commission of confidential information obtained by CIDs. *See* 15 U.S.C. §§ 46(f), 57b-2(b) & (f); 16 C.F.R. §§ 4.10(a)(2), (a)(8), (a)(9); *see also Invention Submission Corp.*, 1991 WL 47104, at \*4. Should the FTC need to release information, in a court filing, for example, it must notify Fully Accountable and give it the opportunity to seek a protective order barring public disclosure. 16 C.F.R. § 4.10(g). Those protections render a protective order premature at this point.<sup>4</sup>

**D. Fully Accountable Cannot Withhold Information Based on Selective Interpretations of the CID Specifications.**

Fully Accountable claims that it has no documents or information responsive to several of the CID's specifications. But the purported lack of information rests on narrow, selective interpretations of the CID. For instance, specification S-16 asks for "[a]ll documents related to contracts, applications, or agreements with any Group A Entity." Pet. Ex. 2 at 10. Fully Accountable responded that it "does not have any of the Group A Entity contracts, applications, or agreements," because "these specific clients joined our practice early in our business development and we do not have a specific engagement letter on file." Pet. Ex. 7 at 3. Specification S-40

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<sup>4</sup> Indeed, Respondent's request for a protective order now presumes that disclosure to the Commission will result in public revelation. "Such a presumption runs contrary to the Supreme Court's instruction that administrative agencies are entitled to the presumption 'that they will act properly and according to law.'" *U.S. Dept. of Educ. v. Nat'l Collegiate Athletic Ass'n*, 2006 WL 3198822, at \*8 (S.D. Ind. Sept. 8, 2006) (quoting *FCC v. Schreiber*, 381 U.S. 279, 296 (1965)).

is substantially identical with respect to the Group B Entities, and Fully Accountable gave a substantially identical response. Pet. Ex. 1, ¶ 41; Pet. Ex. 2 at 12.

The response does not correspond to the actual specification, which calls for “[a]ll documents *relating to*” contracts or agreements, not merely contracts and agreements themselves. Pet. Ex. 2 at 10 (emphasis added). Thus, emails, notes, memoranda, text messages, or any other documents that *relate to* a contract with the Group A Entities would be responsive and should have been produced. Fully Accountable’s response indicates that it read the specification too narrowly. The response is also difficult to square with the claim that contracts with the Group A and B entities require confidentiality.

Fully Accountable used similar tricks to avoid responding to other requests. For example, specification S-11 asked Fully Accountable to state whether any documents were “destroyed, mislaid, transferred, deleted, altered, or overwritten” for the period from “**July 1, 2014, until the date of full and complete compliance with this CID.**” Pet. Ex. 2 at 7, 9 (emphasis in original). Instead of responding to the CID as written, Fully Accountable unilaterally applied its own limitation to the time period during it prepared its responses to the CID. On the basis of that far more narrow window, the company claimed it had no responsive information. At the same time, other answers to the CID indicated that had the correct time period been applied, Fully Accountable would have had responsive information. For example, in a letter dated November 6, the company stated that it

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“either returned or forwarded the accounting and/or files to the new accounting service provider or back to the client.” Pet. Ex. 6 at 3. Fully Accountable did not include this information in its response to this specification.

Fully Accountable did the same thing with the CID’s definition of “Payment Processing.” The CID defined that term to mean “the performance of any function of collecting, formatting, charging, transmitting, or processing, whether directly or indirectly, a cardholder’s payment for goods or services.” Pet. Ex. 2 at 15 (Specification D-16).<sup>5</sup> The company applied a narrower definition that excluded several of these activities, effectively reducing the term to “charging of consumers,” an activity that Fully Accountable claimed it did not do. Pet. Ex. 6 at 2. In fact, however, the CID sought information well beyond the direct charging of consumers. To the extent that Fully Accountable was “directly or indirectly” involved in any of these activities and has responsive information, it must produce those materials. Pet. Ex. 2 at 15 (Specification D-16) (emphasis added).

CID recipients are not free to ignore or redefine material terms of the demand specifications. If Fully Accountable believed the CID to be overbroad, it should have raised its concerns first with FTC staff and then (if necessary) with the Commission itself through a petition to limit or quash the CID. Having failed to

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<sup>5</sup> The CID definition also provides specific examples of activities included in “Payment Processing” such as: “providing a merchant, financial institution, person, or entity, directly or indirectly, with the access or means to charge or debit a cardholder’s account; monitoring, tracking, and reconciling payments, returns, refunds, and chargebacks; providing refund services to a merchant; and disbursing funds and receipts to merchants.” Pet. Ex. 2 at 15 (Specification D-16).

pursue either administrative course, Fully Accountable may not refuse to respond to the CID as written.

**Conclusion**

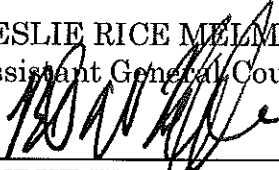
For these reasons, the Court should grant the Commission's petition to enforce the CID and enter an order requiring Fully Accountable, LLC to produce the requested documents and interrogatory responses within 10 days.

Respectfully submitted,

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Dated: June 6, 2018

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

FEDERAL TRADE COMMISSION,  
Petitioner,

v.

FULLY ACCOUNTABLE, LLC,  
Respondent.

Misc. No. 5.18 MC

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[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 Respondent, Fully Accountable, LLC, to comply with a civil investigative demand (CID), issued to it on September 21, 2017, in aid of an FTC law enforcement investigation.

The Court has considered the Federal Trade Commission's Petition to Enforce Civil Investigative Demand 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 Respondent Fully Accountable, LLC, appear at \_\_\_\_\_ a.m./p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 2017, in Courtroom No. \_\_\_\_\_ of the United States Courthouse for the Northern District of Ohio, Eastern Division<sup>1</sup> 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 CID. 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 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 affidavit, a specific description of the witness's proposed testimony) and explain why Respondent believes that live testimony is required; and

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<sup>1</sup> 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.

Respondent must appear at the courthouse indicated above.

IT IS FURTHER ORDERED that, if 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 \_\_\_\_\_, 2018. 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 Respondent on the \_\_\_\_\_ day of \_\_\_\_\_, 2018; 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 Respondent and/or its counsel, using as expeditious means as practicable.

SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2018.

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UNITED STATES DISTRICT JUDGE