

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

In the Matter of)	
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)	
DYNAMIC HEALTH OF FLORIDA, LLC,)	
CHHABRA GROUP, LLC,)	DOCKET NO. 9317
DBS LABORATORIES, LLC,)	
VINEET K. CHHABRA, a/k/a VINCENT K. CHHABRA, and)	PUBLIC DOCUMENT
JONATHAN BARASH,)	
Respondents.)	

To: The Honorable Stephen J. McGuire
Chief Administrative Law Judge

**COMPLAINT COUNSEL’S OPPOSITION TO RESPONDENTS’ MOTION FOR
PROTECTIVE ORDER AND STAY OF PROCEEDINGS**

Complaint Counsel hereby oppose “Respondents Vincent Chhabra, Dynamic Health Of South [sic] Florida, LLC And Chhabra Group, LLC’s Second Joint Motion For Protective Order Pursuant to Civ.R.26(C) And For Stay Of Proceedings,” filed December 29, 2004 (“Second Stay Motion”). Respondents’ Second Stay Motion is nothing more than a thinly veiled attempt to further delay these proceedings and avoid their discovery obligations in this matter. In support of its opposition, Complaint Counsel hereby states as follows:

I. BACKGROUND

Respondents’ Second Stay Motion requests that the instant case be stayed until Respondent Vineet Chhabra has been sentenced and serves his 33 month sentence in the criminal

case in Virginia.¹ Second Stay Motion at p. 1. In support of their motion, they argue that “Mr. Chhabra has a real, present apprehension of harm if this case is not stayed” because the government in his criminal case filed a motion to vacate the plea agreement or in the alternative to continue the sentencing date. They also argue that a stay is necessary because this proceeding will undermine Mr. Chhabra’s Fifth Amendment privilege against self incrimination, or unfairly result in Mr. Chhabra’s assertion of the privilege being used against him as an adverse inference. *Id.* at pp. 3-4. As discussed below, these arguments have no merit because Mr. Chhabra’s plea agreement in the criminal case is still in effect and Mr. Chhabra’s Fifth Amendment privilege argument is not supported by the facts and the relevant legal standard. While sentencing has yet to occur in the criminal case, the court, on December 16, 2004, ordered the parties to confer and arrive at a new sentencing date. *See Order*, Exhibit A attached.

II. ARGUMENT

In deciding whether to stay civil proceedings in the face of criminal proceedings, the federal courts have held that a court must make its decision “in light of the particular circumstances and competing interests involved in the case.” *Federal Savings and Loan Inc. v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989). *See also SEC v. Dresser Industries, Inc.*, 628 F.2d 1368, 1375 (D.C. Cir 1980). As discussed below, Respondents’ motion for stay of the proceedings fails to demonstrate the existence of any factors or circumstances that would support or weigh in favor of the granting of a second stay of the proceedings in this case.

¹ *United States v. Vincent Chhabra and Chhabra Group, LLC, et al.*, Criminal No. 03-530-A, United States District Court for the Eastern District of Virginia, Brinkema, J., presiding.

1. **Respondents' request to further stay these proceedings is not warranted**

Respondents have failed to demonstrate that any further stay of these proceedings is warranted. According to Respondents, a stay is needed because "If Mr. Chhabra intends to testify during a deposition or at the trial of this matter, his testimony, at a minimum, could arguably be used to bolster the governments's recent attempt to vacate his guilty plea or at a subsequent criminal trial." Second Stay Motion at p. 6. The simple fact is that the court in the criminal case has already denied the motion to vacate Mr. Chhabra's guilty plea. *See* Exhibit A. Mr. Chhabra's plea agreement is still in effect and the judge in that case has ordered the parties to propose a new date for Mr. Chhabra's sentencing. Thus, Respondents' fears do not warrant a grant of this stay request.

2. **A stay of the proceedings at this time will undermine the Commission's interest in proceeding expeditiously with this litigation, frustrate the public's interest, and constitute an inefficient use of judicial resources**

This is the Respondents' third request for a delay of these proceedings. In July, 2004, they requested that the case be stayed until issuance of a decision in the criminal case, because, *inter alia*, Mr. Chhabra needed to focus on trial preparation in the criminal case. This court stayed the case until October 15, 2004. On November 9, 2004, Respondents requested a thirty-day extension of various deadlines to accommodate personal difficulties faced by Respondents' counsel. On November 16, 2004, the court extended many of the scheduled deadlines by several weeks.

Since the resumption of this administrative proceeding, Complaint Counsel has moved forward with discovery expeditiously, consistent with the tight deadlines imposed by the Scheduling Order in this case. Considerable resources have been invested in undertaking

discovery, including procuring the services of independent experts and lay witnesses for trial. Complaint Counsel has issued document requests, interrogatories, and requests for admissions; filed its witness list; and provided Respondents with two lengthy expert reports. We have obtained documents from seven third parties. Based upon the progress to date, Complaint Counsel plans to conduct depositions in advance of the February 11, 2005 cut off date. Further, we expect to file a motion for summary decision on or before the February 28, 2004 deadline.

It is true that Respondents have made little progress in their defense of this matter. Respondents have routinely failed to comply with discovery requests, or failed to provide adequate responses. They filed no expert witness reports, although the court provided them an extension of time for such a filing. While they cite Mr. Kravitz's personal problems as a reason for delay, the fact is that the Commission's rules do not require that a respondent be represented by counsel. Thus, Respondents' failure to defend this case does not provide grounds for a further stay.²

Respondents maintain that a stay is necessary to protect Mr. Chhabra's Fifth Amendment privilege against self-incrimination. Complaint Counsel has already addressed this issue in its two prior motions to compel in this matter. As indicated in those filings, Mr. Chhabra waived his Fifth Amendment privilege when he entered a plea agreement with the United States

² It is also important to note that the government's motion to vacate in the Criminal Case cites Mr. Chhabra's failure to cooperate under the terms of the plea agreement as the basis for its motion. *See Government's Motion To Vacate Plea Or In The Alternative to Continue Sentencing Date for Defendants Vincent K. Chhabra, VKC Consulting, LLC, And Chhabra Group, LLC.* at p. 1. Exhibit B attached. Obviously, Mr. Chhabra is required to cooperate with the government pursuant to the plea agreement. *See Plea Agreement*, at ¶¶ 12-21. However, Respondents seek to utilize Mr. Chhabra's failure to cooperate in that case as a basis to delay the proceedings in the instant matter. Such an attempted manipulation of the legal system should not be rewarded.

government that requires him, among other things, to “cooperate fully and truthfully with the United States.” Indeed, recent case law has held that, “It is well settled that a defendant may waive his right . . . to claim his Fifth Amendment privilege against self-incrimination by negotiating a voluntary plea agreement with the government.” *United States v. Scruggs*, 356 F.3d 539, 546 (4th Cir. 2003) (quoting *United States v. Wiggins*, 907 F.2d 51, 52 (4th Cir. 1990)). In *Scruggs*, the court also noted that, “a number of courts have recognized that ‘a plea agreement that states in general terms the defendant’s obligation to cooperate with the government can constitute a waiver of the defendant’s Fifth Amendment privilege against self-incrimination.’” *Id.* (citing *United States v. Bad Wound*, 203 F.3d 1072, 1075 (8th Cir. 2000); *United States v. Lawrence*, 918 F.2d 68, 72 (8th Cir. 1990); *United States v. Resto*, 74 F.3d 22, 27 (2nd Cir. 1996); *United States v. Wise*, 603 F.2d 1101, 1104 (4th Cir. 1979)).

Furthermore, even if the court concludes that Mr. Chhabra has not waived his Fifth Amendment privilege, a stay is unnecessary. The public interest requires that Complaint Counsel take prompt action to protect consumers from deceptive practices even when there is a competing interest in an individual’s invoking of his Fifth Amendment privilege. *See FTC v. Parade of Toys, Inc.*, 1997 U.S. Dist LEXIS 17153 (D.Kansas) (denying request for a stay, noting that the public interest in enforcing the consumer protection laws outweighed the individual’s interest in avoiding the dilemma of invoking his Fifth Amendment privilege). Although Respondents have discontinued sales of the challenged products, there is currently no bar to their resumption of sales of these products under the same or different trade names prior to a resolution of the instant case. It has been Complaint Counsel’s experience that people can engage in FTC Act violations

while incarcerated. Respondents have refused to settle the case.³ Thus, any further stay of these proceedings may provide Respondents with sufficient time to engage in the same or similar deceptive activities as challenged in this case.

Complaint Counsel maintains that the granting of any additional stay would also be inconsistent with the Commission's objective of reducing the time taken to render decisions in adjudicative proceedings. *See* FTC Rules of Practice Amendments, 61 Fed. Reg. at 50640 (Sept. 26, 1996). In making those amendments, the Commission's note that unnecessary delay in adjudications can have a negative impact on the Commission's adjudicatory program and law enforcement mission. *Id.* Moreover, that "Delay can extend legal uncertainty for respondents and third parties, and may reduce the efficacy of any remedies resulting from such proceedings." *Id.* A further stay of these proceedings will adversely impact the Commission's resources and harm the public's interest.

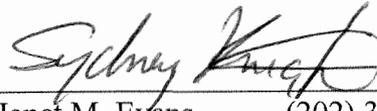
III. CONCLUSION

As pointed out above, the particular circumstance and competing interests of this case do not warrant the granting of a stay of these proceedings. Accordingly, Complaint Counsel

³ Complaint Counsel engaged in lengthy efforts to settle this matter prior to the issuance of the complaint. Further, we remain willing to accept a settlement consistent with the terms of the Notice Order issued by the Commission.

respectfully requests that this court deny the Respondents' Second Joint Motion For Stay.

Respectfully submitted,



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

In the Matter of)	
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DYNAMIC HEALTH OF FLORIDA, LLC,)	DOCKET NO. 9317
CHHABRA GROUP, LLC,)	
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VINEET K. CHHABRA, a/k/a VINCENT K. CHHABRA, and)	PUBLIC DOCUMENT
JONATHAN BARASH,)	
Respondents.)	
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**[Proposed] ORDER REGARDING RESPONDENTS' MOTION FOR PROTECTIVE
ORDER AND STAY OF PROCEEDINGS**

On _____, Respondents Dynamic Health of Florida, LLC, Chhabra Group, LLC, and Vincent Chhabra filed a Joint Motion For Protective Order Pursuant to Civ.R.26(C) And For Stay Of Proceedings.

IT IS HEREBY ORDERED that Respondents Joint Motion For Protective Order Pursuant to Civ.R.26(C) And For Stay Of Proceedings is DENIED.

ORDERED:

Stephen J. McGuire
Chief Administrative Law Judge

Dated:

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of January, 2005 filed and served the attached **COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION FOR PROTECTIVE ORDER AND STAY OF PROCEEDINGS** and **[Proposed] ORDER** upon the following as set forth below:

(1) the original and one (1) paper copy filed by hand delivery and one electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, D.C. 20580
E-mail: secretary@ftc.gov

(2) two (2) paper copies served by hand delivery to:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., N.W. Room H-112
Washington, D.C. 20580

(3) one (1) electronic copy via email and one (1) paper copy via overnight delivery to:

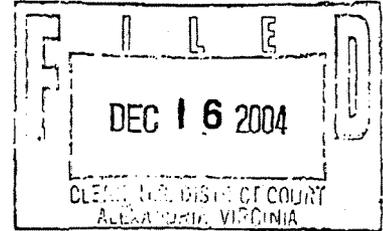
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I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original, and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.


Sydney Knight

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



UNITED STATES OF AMERICA)
)
)
 v.)
)
)
 VINCENT K. CHHABRA, ET AL.,)
)
)
 Defendants.)
)

1:03cr530 (LMB)

ORDER

Before the Court is the Government's Motion to Vacate Plea or in the Alternative to Continue Sentencing Date for Defendants Vincent K Chhabra, VKC Consluting, LLC, and Chhabra Group, LLC ("Motion to Vacate"). Given that some of the documents seized from defendant Chhabra were not provided to him by the Government and given that the Government has not made a sufficient showing of bad faith in defendant Chhabra's effort to comply with the plea agreement, the Government's Motion to Vacate is DISMISSED WITHOUT PREJUDICE with regard to vacating the plea agreement.

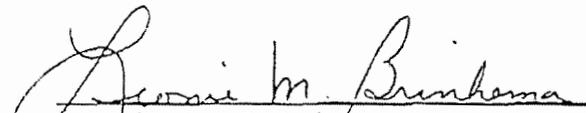
Accordingly, to allow defendant Chhabra time to fulfill his obligations under the plea agreement before sentencing, the Government's Motion is GRANTED with regard to continuing the three

defendants' sentencing dates; and it is hereby

ORDERED that the parties confer and suggest to the Court a new sentencing date for the three defendants.

The Clerk is directed to remove the Government's Motion from the docket for Friday, December 17, 2004, and to forward copies of this Order to counsel of record and United States Probation Officer Carla G. Coopwood.

Entered this 16th day of December, 2004.


Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

FILED

Alexandria Division

2004 DEC 15 P 2:47

UNITED STATES OF AMERICA)

v.)

VINCENT K. CHHABRA, *et al.*)

Defendants)

1:03cr530 (LMB)

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

GOVERNMENT'S MOTION TO VACATE PLEA OR
IN THE ALTERNATIVE TO CONTINUE SENTENCING DATE
FOR DEFENDANTS VINCENT K. CHHABRA,
VKC CONSULTING, LLC. AND CHHABRA GROUP, LLC

The United States moves to vacate the plea of Defendant Chhabra, or in the alternative, to continue the sentencing date from the scheduled date of December 17, 2004, for Defendants Vincent K. Chhabra, VKC Consulting, LLC, and Chhabra Group, LLC.

Defendant Chhabra is currently in breach of his plea agreement entered on August 31, 2004, for the following reasons: (1) he did not fully complete a Form OBD 500; (2) he has not obtained records of assets from third parties; (3) he has not turned over jewelry listed as forfeitable in the indictment; and (4) he has not been truthful about his assets.

The plea agreement required him, *inter alia*, to complete and sign a Form OBD 500. On December 14, 2004, a signed Form OBD 500 was submitted to the government, however, it is not complete, due, allegedly, to lack of sufficient information.¹ For example, the section

¹Defendant Chhabra did not even inform the government until early November that he could not complete the form because the government seized all his financial records. The government endeavored to provide Defendant Chhabra with access to the seized documents by shipping several boxes of documents to Florida, where Defendant Chhabra resides. A cursory review of these boxes was made by a former employee of Defendant Chhabra last week. One box was inadvertently not shipped; however, there is no indication this box would have allowed

requiring the recitation of monetary transfers was not completed at all. Another section concerning life insurance was also not completed, despite the fact that Defendant Chhabra could have obtained information directly from his insurance company during the last two months to complete this section.

It is clear Defendant Chhabra has not “taken all steps as requested by the United States to obtain from any other parties by any lawful means any records of assets owned at any time by the defendant” as required in paragraph 18 of the plea agreement. Defendant Chhabra has not obtained records from his former attorney Tim Richards or from others that would show the disposition of assets. On December 10, 2004, the government was told through counsel that \$2.5 million of Defendant’s Chhabra money had been transferred from India to Germany by Defendant Chhabra’s father, Naresh Chhabra, on instruction from former Chhabra attorney Tim Richards in December 2003 when Defendant Chhabra was incarcerated on the charges in the indictment in this case. On December 13, 2004, government counsel questioned Mr. Richards about the transfer. Mr. Richards maintained he had no knowledge of any such \$2.5 million transfer, and that the only monies he was aware of were sent to attorney Max Kravitz pursuant to this Court’s repatriation order.² The fact that Mr. Richards freely provided pertinent information to the government via telephone indicates that the records were probably available to Mr. Chhabra all along.

for the completion of the form.

² Max Kravitz contacted government counsel last spring about \$175,000 he received and was holding in escrow pending the outcome of the Chhabra trial.

Defense counsel has informed the government that Naresh Chhabra, Defendant Chhabra's father, has agreed to request documentary evidence of the \$2.5 million transfer from his bank in India and contends he does not have any paperwork in the United States showing the transfer.

Defendant informed the government during a debriefing on December 7, 2004, that he believed some of the jewelry detailed in the forfeiture notice in the indictment was in Ohio at his fiancé's mother's home and that he would obtain the jewelry and turn it over to the government before sentencing. He has yet to do so.

Finally, Defendant Chhabra was given a polygraph examination yesterday by a polygrapher for the Federal Bureau of Investigation (FBI). The polygrapher's preliminary assessment was that Defendant Chhabra had not been truthful about asset information.³

Therefore, Defendant Chhabra's plea should be vacated, or in the alternative, the sentencing should be continued to allow additional time for him to fulfill his obligations under the plea agreement.⁴ Because the sentencing of Defendant Chhabra could affect the orders of forfeiture for Defendant Chhabra's companies, VKC Consulting, LLC, and Chhabra Group, LLC, the sentencing date for those companies should also be postponed.

Should the Court decide to vacate Defendant Chhabra's plea, the government requests that all statements made by him pursuant to the agreement be admissible against him at trial and the provisions of paragraph 21c of his plea agreement be enforced. *See United States v. Scruggs*, 356 F.3d 539, 545 (4th Cir. 2004) (government's cancellation of plea agreement due to breach

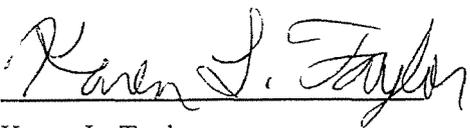
³ Polygraph results must be reviewed and verified at FBI headquarters to be considered final.

⁴ The government has not submitted a proposed order with this motion but will prepare one in accordance with this Court's decision.

did not deprive government of right to use at trial statements made by defendant pursuant to agreement); *United States v. West*, 2 F.3d 66, 70 (4th Cir. 1993).

Respectfully submitted,

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United States Attorney

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