

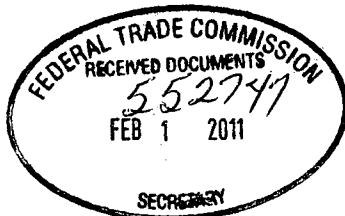
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ORIGINAL



February 1, 2011
PUBLIC
DOCUMENT

By Hand Delivery and Electronic Filing

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

Re: *In the matter of: POM Wonderful LLC, et al., Docket No. 9344*

Dear Judge Chappell:

Enclosed please find Respondents' Expert Witness List, which is also being provided to Complainant's counsel. Due to the voluminous nature of the exhibits referenced in the List, we have omitted the exhibits from this filing, but are providing them to Complainant's counsel under a separate cover.

Very Truly Yours,

A handwritten signature in black ink, consisting of the initials "SLP" followed by a forward slash and the letters "MBB".

Skye L. Perryman

Counsel for Respondents

enclosure

cc:

Mary Johnson

ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

RESPONDENTS' EXPERT WITNESS LIST

Pursuant to Rule 3.31A of the Federal Trade Commission's Rules of Practice for Adjudicatory Proceedings and Paragraph 16 of the Scheduling Order, respondents hereby designate the following expert witnesses:¹

1. **Arthur L. Burnett, II, M.D., M.B.A.**: Doctor Burnett's qualifications and publications are set forth in the attached Exhibit 1. He has testified in the following matters in the past four years (no transcripts available):

- a. *Prince Pierce v. Barlow Lynch*, Washington DC (deposition, trial).
- b. *[Unknown] v. Lynch*, Washington DC (deposition, trial).
- c. *Powell v. Batipps*, Washington DC (deposition).

¹ Please note that respondents have pending before the Court a motion to enlarge to eight the number of expert witnesses that respondents may call at the hearing. To avoid any prejudice to Complaint Counsel in the event respondents' motion is granted, respondents are listing now all eight of their proposed expert witnesses. If the Court denies respondents' motion, respondents will amend this expert witness list to identify only the number of experts the Court allows respondents to call at the hearing. Additionally, while it may appear that some of the designated experts have overlapping areas of expertise, in fact some experts will be testifying as to the underlying science while others will be testifying as to the appropriate level of scientific substantiation.

- d. *Hickey v. Detjer*, Washington DC (deposition).
- e. *Sinclair Davis v. Washington Brain & Spine Institute*, Washington DC (deposition).
- f. *Harris v. Mouldsdale*, Baltimore MD (deposition).
- g. *Swink v. Angermeier*, Covington KY (deposition).
- h. *Brown v. Scipio*, Baltimore MD (deposition).
- i. *Peresetskiy v. Kumar*, Washington DC (deposition).
- j. *Murphy v. Polis*, Washington DC (deposition).
- k. *Tipton v. Adkins*, Lexington KY (deposition).
- l. *White v. Everett*, Edmond OK (deposition).
- m. *Williams v. Washington Hosp. Center*, Washington DC (deposition).
- n. *Scott v. Bayfront Medical Center*, St. Petersburg FL (deposition).

2. **Ronald R. Butters, Ph.D:** Doctor Butters's qualifications, publications, and a list of matters in which he has offered testimony in the past four years are set forth in the attached Exhibit 2. Doctor Butters's deposition testimony may be governed by protective orders in the matters in which the testimony was given. Respondents have sought leave from the parties to those actions to produce the deposition transcripts in this action and, subject to the resolution of those protective order issues, will provide copies of the transcripts to Complaint Counsel under separate cover (in part due to the voluminous nature of the transcripts, and in part to protect the confidential testimony against public disclosure in this matter).

3. **Jean B. deKernion, M.D.:** Doctor DeKernion's qualifications and publications are set forth in the attached Exhibit 3. He has not been deposed or testified at trial in the past four years.

4. **Irwin Goldstein, M.D.:** Doctor Goldstein's qualifications and publications are set forth in the attached Exhibit 4. He has testified in the following matters in the past four years (no transcripts available):

- a. *Allen v. University of Maryland Medical System* (deposition).
- b. *Matthew Hartley* (criminal court) (deposition).
- c. *Dundon v. State of Iowa* (deposition).
- d. *Kamen v. Lipkin et al.* (deposition).
- e. *Eishoo v. Xposed* (deposition and trial).
- f. *Leonard v. Holmes and Standard Parking* (deposition).

5. **David Heber, M.D., Ph.D.:** Doctor Heber's qualifications and publications are set forth in the attached Exhibit 5. He has testified in the following matters in the past four years:

- a. *POM Wonderful LLC v. Welch Foods, Inc.* (C.D. Cal.) (deposition only; transcript previously produced as RESP003632-3812).
- b. *POM Wonderful LLC v. Tropicana Products, Inc.* (C.D. Cal.) (trial only; transcript previously produced by Complaint Counsel as FTC0000218-243, FTC0000247-292).
- c. *POM Wonderful LLC v. Purely Juice, Inc., et al.* (C.D. Cal.) (no deposition transcript; transcript of trial testimony attached hereto as part of Exhibit 5).

6. **Denis R. Miller, M.D.**: Doctor Miller's qualifications, publications, and list of cases in which he has offered testimony in the past four years (no transcripts are available) are set forth in the attached Exhibit 6.

7. **Dean Ornish, M.D.**: Doctor Ornish's qualifications and publications are set forth in the attached Exhibit 7. His only testimony in the past four years is the deposition he gave to Complaint Counsel in this matter.

8. **David J. Reibstein, Ph.D.**: Doctor Reibstein's qualifications and publications are set forth in the attached Exhibit 8. His only testimony in the past four years is the deposition he gave in *Aerus LLC v. ProTeam, Inc.* (S.D. Cal.) (no transcript available).

Respectfully Submitted,

/Kristina M. Diaz

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Attorneys for Respondents

February 1, 2011

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

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

CERTIFICATE OF SERVICE

I hereby certify that this is a true and correct copy of Respondents' Expert Witness List, and that on this 1st day of February, 2011, I caused the foregoing to be served by hand delivery and e-mail on the following:

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

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

I hereby certify that this is a true and correct copy of Respondents' Expert Witness List, and that on this 1st day of February, 2011, I caused the foregoing to be served by e-mail on the following:

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Counsel for Respondents

Dated: February 1, 2011