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15 FEDERAL TRADE)
16 COMMISSION,)
17)
18 Petitioner,)
19 v.)
20 REDWOOD SCIENTIFIC)
21 TECHNOLOGIES, INC.,)
22 Respondent.)
23)

Case No2:17-cv-7921

FEDERAL TRADE COMMISSION'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION FOR AN ORDER
ENFORCING CIVIL
INVESTIGATIVE DEMAND

24
25 The Federal Trade Commission brought this proceeding to enforce a civil
26 investigative demand (CID) issued to Redwood Scientific Technologies, Inc.,
27 (Redwood) as part of an investigation into advertising and marketing practices
28

1 for a smoking cessation product and an appetite suppressant. Redwood
2 provided the materials the CID requires, in fact, has missed every deadline,
3 including deadlines that it set for itself. This refusal to cooperate has stymied the
4 investigation and impeded the Commission's staff from moving forward in the
5 investigation. The Commission respectfully asks this Court to grant the
6 Commission's enforcement petition and to enter its own order directing Redwood
7 provide the res

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Statement of Facts

The investigation seeks to determine whether several aspects of Redwood's

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On August 3, 2017, the Commission issued a CID to Redwood directing it to produce certain documents and to respond to interrogatories

1 Ex. 1, ¶ 14; Pet. Ex~~4~~ at 3536.

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1 Secretary, as provided by the FTC Act and the Commission's Rules 15 b6.C.
2 §§ 57b1(c)(7), (c)(8), (i); 16 C.F.R. §§ 2.7, 4(a)(3).

3 C. The evidence is relevant and material to the investigation.

4 The purpose of an FTC investigation is defined by the compulsory process
5 resolution that authorizes the CID. *FTC v. Invention Submission*, 965 F.2d
6 1086, 1088-1090 (D.C. Cir. 1992); *Texas*, 555 F.2d at 874. The purpose of the
7 investigation, as stated in the accompanying resolution, is to determine whether
8 Redwood has engaged, directly or indirectly, in misrepresentations about the
9 efficacy of its products TBXFREE and Eupepsin. Further, the Commission
10 described the "Subject of Investigation" in the CID itself. This statement reiterated
11 the nature of the Commission's investigation into the two products and also
12 informed Redwood that the FTC was investigating its compliance with ROSCA.
13 *Pet. Ex. 2* at 15, 20.

14 The CID seeks information and documents that are relevant to the purpose of
15 the investigation. The CID requires information related to Redwood's sales of the
16 products, its
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1 D. The information sought is not overbroad or unduly burdensome.

2 For the reasons stated above, the Commission is entitled to enforcement of its
 3 CID. As provided in *North Bay Plumbing* however, a court may elect not to
 4 enforce compulsory process if the party being investigated proves the inquiry is
 5 unreasonable because it is overbroad or unduly burdensome. *North Bay Plumbing*
 6 102 F.3d at 1007. There are two reasons Redwood cannot make this showing.

7 First, the CID contains 22 written interrogatory specifications and 16
 8 document production requests. Pet. 2 at 2028. As described above, these
 9 specifications relate directly to the stated purposes of the investigation and thus are
 10 not overbroad. Nor are these requests unduly burdensome; instead, these are
 11 tailored to provide staff the information it needs to evaluate Redwood's conduct
 12 thus go to the heart of the investigation. Pet. Ex. 91, ¶

13 Second, at no point has Redwood claimed the CID is overbroad or unduly
 14 burdensome. *Garner* 126 F.3d at 1144-46 (holding that the party claiming burden
 15 must establish the burden) (citing *United States v. Studdard* 489 U.S. 353, 360
 16 (1989)). Such a claim is properly made through the filing of an administrative
 17 petition to quash or limit the CID, but Redwood filed no such petition. 16 C.F.R.
 18 § 2.10. Indeed, Redwood's counsel disclaimed that it had any such objection. Pet.
 19 Ex. 1, ¶ 22. And, even if Redwood faced a burden in meeting the CID's initial
 20 deadline of September 6, 2017, Commission staff accommodated Redwood by
 21 agreeing to forbear from taking further enforcement action provided that Redwood
 22 met its self-imposed deadlines, a condition that Redwood failed to achieve. Pet.
 23 1, ¶ 17; Pet. Ex. 4 at 39-40.

24 Having failed to object to breadth or burden of the CID by filing an
 25 administrative motion to quash or limit, Redwood may not raise such a defense
 26 now. See *Casey v. FTC* 578 F.2d 793, 796 (9th Cir. 1978) ("[F]ailure to exhaust
 27 administrative remedies typically precludes judicial relief; see also *Amerco v.*
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1 NLRB, 458 F.3d 883, 888 (9th Cir. 2006) (citing Myers v. Bethlehem Shipbuilding
2 Corp., 303 U.S. 41, 51 (1938)).

3 Conclusion

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