



United States of America  
FEDERAL TRADE COMMISSION  
Washington, DC 20580

Division of Advertising Practices  
Michelle Rusk  
202-326-3148  
mrusk@ftc.gov

November 16, 2020

**ECF & Electronic Mail**

Hon. Jonathan Goodman, U.S.M.J.  
United States District Court  
Southern District of Florida  
99 N.E. 4<sup>th</sup> Street  
Miami, FL 33132  
goodman@flsd.uscourts.gov

RE: *Collins v. Quincy Bioscience, LLC*, Case No. 1:19-cv-22864-MGC  
Proposed Class Action Settlement

Dear Judge Goodman:

The Federal Trade Commission (FTC) and the People of the State of New York by the New York State Attorney General (NYAG) submit this letter to correct the record with respect to certain assumptions made by both Plaintiffs and Defendant in recent briefs regarding the agencies' position on the proposed class action settlement in the above-referenced matter. Specifically, the FTC and the NYAG seek to clarify that the absence of a formal brief from the two agencies on the proposed settlement should not be interpreted as acquiescence to, or approval of, the settlement terms.

On November 9, 2020, Plaintiffs in the *Collins* Class Action and Defendant Quincy Bioscience, LLC submitted briefs (ECF Nos. 172 and 174) in response to an amicus brief filed by Truth in Advertising, Inc. (TINA) opposing the proposed class action settlement (ECF No. 168). Both Plaintiffs and Defendant appear to draw unwarranted inferences that the FTC and NYAG's silence as to the proposed settlement amounts to tacit approval. *See, e.g.*, Plaintiffs' Response at 1 and 8-9 (ECF No. 172); Defendant's Response at 8-9 (ECF No. 174). As the parties acknowledge, the FTC and NYAG are actively pursuing a joint enforcement action against Quincy Bioscience and related parties in the Southern District of New York. *FTC et al. v. Quincy Bioscience Holding Co., Inc. et al.*, No. 1:17-cv-00124-LLS (Complaint filed Jan. 9, 2017 S.D.N.Y.). Inaction by the FTC and NYAG should not be construed here, or in any other case, as approval or disapproval of settlement terms.

The parties' reliance on a letter by the FTC and NYAG regarding earlier settlement discussions in other class actions as evidence that silence on this settlement constitutes approval is also misplaced. Plaintiffs' Response at 8-9 (ECF No. 172); Defendant's Response at 8-9 (ECF

The Honorable Jonathan Goodman  
Page 2

November 16, 2020

No. 174). The FTC and NYAG submitted a letter to Judge Stanton and Judge Abrams in the Southern District of New York on December 4, 2019 in connection with the *Vanderwerff, Spath, and Karathanos* class actions against Quincy Bioscience.<sup>1</sup> The agencies filed that letter to respond to Quincy's request for a consolidated status conference and to correct Quincy's misrepresentations to the Court about the status of consent negotiations with the agencies. There was no formal settlement pending at that time, and the sole purpose of the FTC/NYAG letter was to set the record straight.

The FTC and NYAG continue to believe that Quincy has not proffered competent and reliable scientific evidence to substantiate memory or other cognitive claims for Prevagen. For that reason, the FTC and NYAG intend to proceed with their law enforcement action and will seek both broad injunctive relief and related equitable relief including restitution in the form of consumer refunds.

Respectfully,

*/s/ Michelle K. Rusk*

Michelle K. Rusk  
Attorney  
Federal Trade Commission

cc: All counsel of record (via ECF)

---

<sup>1</sup> Letter to the Hon. Louis L. Stanton and the Hon. Ronnie Abrams from Michelle Rusk, Case No. 1:17-cv-00124-LLS (Dec. 4, 2019 S.D.N.Y.) (also filed by Plaintiffs in the *Collins* class action as ECF No. 95-5).