FBI Exhibit No. 30: Unlawful FDA-DHHS investigation of the FoodQuestTQ LLC matter.

FoodQuestTQ LLC alleges that Mr. Dale Berkley, lead counsel for the Office of General Counsel (OGC), Department of Health and Human Services (DHHS), knowingly, willfully and intentionally engaged in a direct and actual conflict of interest in the handling of the FoodQuestTQ LLC matter.

In **January 2013**, FoodQuestTQ LLC had its first contact with Ms. Elizabeth Dickenson, Chief Counsel of the FDA. FDA staff counsel, Ms. Ariel Seeley, was assigned to serve as the FDA legal point of contact for the handling of the FoodQuestTQ LLC matter. During this period, she was in direct contact with and coordinating FDA’s legal defense with Mr. Dale Berkley of the DHHS-OGC.

In **March 2013**, when it became clear that Ms. Seeley and the Office of Chief Counsel abandoned their duty of good faith and fair dealing to mediate a solution in favor of a legal defense of the FDA, FoodQuestTQ LLC filed a complaint with the National Ombudsman for Small Business (NOSB) of the Small Business Administration (SBA). A copy of the FoodQuestTQ LLC complaint to NOSB-SBA appears at [FBI Exhibit No. 30 a.](FBI%20Exhbit%20No.%2030%20a..pdf) The NOSB assured FoodQuestTQ of their policy, as it appears on the official U.S. Government website of the NOSB that there is a zero tolerance policy for retaliation as the result of filing a complaint against a Federal agency that applied in the case of FoodQuestTQ LLC. A copy of the NOSB-SBA zero tolerance policy appears at [FBI Exhibit No. 30 b.](FBI%20Exhibit%20No%2C%2030%20b..htm)

The NOSB informed FoodQuestTQ LLC that they would have the resolution of the matter elevated to the level of DHHS to assure that a fair and objective review of the entire FoodQuestTQ LLC matter was conducted. Instead, the matter was assigned to Mr. Berkley, who had already abandoned his duty of good faith and fair dealing in the FoodQuestTQ LLC matter in favor of a legal defense of the DHHS and the FDA.

Mr. Berkley’s involvement in the FoodQuestTQ LLC matter was further complicated by his close personal relationship with Ms. Seeley and his pre-disposed animus toward FoodQuestTQ LLC based on prior FoodQuestTQ LLC interactions with Ms. Seeley. Copies of two letters exchanged between Mr. Berkley and FoodQuestTQ LLC demonstrating this pre-disposed animus appears at FBI [Exhibit No. 30 c.](FBI%20Exhibit%20No.%2030%20c)

Mr. Berkley, as a U.S. Government attorney licensed to practice law by the American Bar Association, is required to be aware of his responsibilities to consider and assiduously avoid conflicts of interest. Mr. Berkley was also aware of his ethical obligations to report fraud waste and abuse. A copy of Mr. Berkley’s annual ethics training certificates appear at [FBI Exhibit No. 30 d.](FBI%20Exhbit%20No.%2030%20d..pdf) FoodQuestTQ LLC contends that Mr. Berkley knowingly, willfully and intentionally engaged in an actual and direct conflict of interest when he accepted the responsibility to serve as the lead DHHS Counsel in the matter of FoodQuestTQ LLC. See [FBI Exhibit No. 30 e.](FBI%20Exhbit%20No.%2030%20e)

This conflict of interest led Mr. Berkley to abandon his duty of good faith and fair dealing and mount a legal defense of the FDA in favor of mediating a possible solution to the dispute. As part of his legal defense of the FDA and DHHS, Mr. Berkley engaged in the following unethical conduct in the matter of FoodQuestTQ LLC.

1. Mr. Berkley failed to recuse himself from any involvement in the FoodQuestTQ LLC matter fully aware of his prior involvement, his direct coordination with Ms. Seeley in the Office of Chief Counsel FDA, his close personal relationship with Ms. Seeley and his pre-existing feelings of personal animus towards FoodQuestTQ LLC.
2. Even after the matter had been elevated to the OGC-DHHS as the result of FoodQuestTQ LLC’s complaint to the Small Business Administration (SBA), Mr. Berkley continued to collude with the Office of the Chief Counsel of the FDA to intentionally steer the focus of the of the FoodQuestTQ LLC matter down the narrow legal pathway of protracted and expensive intellectual property law suit against the U.S. Government. Mr. Berkley was fully aware that FoodQuestTQ LLC did not have legal counsel and could not afford to pay for legal expenses. See [FBI Exhibit No. 30 e.](FBI%20Exhbit%20No.%2030%20e)
3. By choosing to mount a legal defense of the FDA’s alleged criminal conduct, Mr. Berkley intentionally abandoned his duty of good faith and fair dealing to place his personal career ambitions and loyalty to his agency, above his sworn oath as a U.S. Civil Servant to first and foremost defend the Constitution and the laws of the United States. See [FBI Exhibit No. 30 f.](FBI%20Exhibit%20No.%2030%20f.pdf)
4. Mr. Berkley, fully aware of serious allegations of felonious criminal conduct by FDA employees, failed to recuse himself and refer the FoodQuestTQ LLC matter to an independent and objective law enforcement entity such as the DHHS Office of Inspector General or the Federal Bureau of Investigation for a lawful investigation of alleged felonious federal crimes. See [FBI Exhibit No. 30 f.](FBI%20Exhibit%20No.%2030%20f.pdf)
5. By acting on his own authority as a government attorney and member of the Bar to initiate an unlawful investigation of the alleged felonious crimes brought to his direct attention by FoodQuestTQ LLC, Mr. Berkley intentionally attempted to befoul any future legitimate law enforcement investigation of the alleged crimes. See [FBI Exhibit No. 30 g.](FBI%20Exhbit%20No.%2030%20g.pdf)
6. Mr. Berkley by extending lawyer-client privilege to the FDA employees allegedly engaged in the wrongdoing in the first place acted to obstruct justice in the matter of FoodQuestTQ LLC by preventing the disclosure of otherwise releasable information under the Freedom of Information Act (5 U.S.C. §552). See [FBI Exhibit No. 30 h.](FBI%20Exhbit%2030%20h.pdf)
7. On April 26, 2013, Mr. Berkley signed an official DHHS legal brief that includes false statements that FoodQuestTQ LLC refused to cooperate with the DHHS. Copies of documents showing that it was Mr. Berkley himself who refused to accept evidence of wrongdoing by FDA employees for consideration as part of the DHHS investigation of the matter appear at [FBI Exhibit No. 30 e.](FBI%20Exhbit%20No.%2030%20e)

FoodQuestTQ LLC also alleges that Mr. Berkley, based on an unlawful investigation flawed by direct and actual conflict of interest, extended lawyer-client privilege to U.S. government employees alleged to have committed felonious crimes in order to obstruct justice by preventing the proper release of documents requested by FoodQuestTQ LLC pursuant to 5 U.S.C. §552 (Freedom of Information Act).

FoodQuestTQ LLC further alleges that the U.S. Government intentionally forced the focus of the matter down the narrow legal pathway of patent infringement to avoid an arbitrated solution and the investigation of criminal conduct by U.S. Government employees.

FoodQuestTQ LLC initially approached the Food and Drug Administration via a referral from Senator Barbara Mikulski (D/MD). The Food and Drug Administration, located in Silver Spring Maryland, is one of the single largest federal constituents in the State of Maryland. Senator Mikulski is a long standing ally of the FDA to provide jobs for her constituency and to promote government spending in Maryland. See for example: <http://www.mikulski.senate.gov/media/record.cfm?id=309413>

Senator Mikulski facilitated the initial communications between FoodQuestTQ LLC and the Office of Chief Counsel of the FDA to mediate the dispute and represented that she would help to assure that the FDA treated FoodQuestTQ LLC fairly and objectively. Senator Mikulski later abandoned her FoodQuestTQ LLC constituent stating that she could not assist in the FoodQuestTQ LLC matter because it was legal in nature and that she had a conflict of interest. These communications from Senator Mikulski are missing from FoodQuestTQ LLC files. All communications sent to and in response to Senator Mikulski appear at [FBI Exhibit 30 i.](FBI%20EXhbit%20No.%2030%20i)

The FoodQuestTQ LLC matter was subsequently referred to the Chief Counsel of the FDA Ms. Elizabeth Dickinson and her staff counsel Ms. Ariel Seeley. Initially, Ms. Seeley advised that the FDA would conduct a good faith review to look into the matter but later advised that they were not interested in reviewing the FoodQuestTQ LLC copyrighted research, patented ideas and trade secrets to determine if they were misappropriated by the FDA. Instead, Ms. Seeley now advised that FoodQuestTQ LLC needed to get an attorney to pursue legal action against the FDA and suggested that FoodQuestTQ LLC find pro-bono legal help since the company was destitute by that time. A copy of Ms. Seeley’s e-mail notification appears at [FBI Exhibit No. 30 e.](FBI%20Exhbit%20No.%2030%20e)

In March of 2013, facing an impasse with the FDA, FoodQuestTQ LLC filed a complaint with the National Ombudsman for Small Business (NOSB) of the Small Business Administration (SBA). A copy of the complaint appears at [FBI Exhibit No. 30 a.](FBI%20Exhbit%20No.%2030%20a..pdf) The matter was then elevated to the Office of General Counsel (OGC) of the Department of Health and Human Services (DHHS) for an independent review. The matter was assigned to lead DHHS Counsel Mr. Dale Berkeley.

Interactions between Mr. Berkley of DHHS and Dr. Hnatio of FoodQuestTQ LLC were immediately marred by a conflict of interest involving Mr. Berkley’s personal friendship with Ms. Seeley. Mr. Berkley was extremely upset that Dr. Hnatio criticized Ms. Seeley for placing her first allegiance to the legal defense of possible FDA wrongdoing instead of her sworn oath to uphold the Constitution of the United States and the conduct of a fair and objective review of the matter. A copy of the letter in which Mr. Berkley expresses his animus towards Dr. Hnatio and FoodQuestTQ LLC because of their concerns regarding Ms. Seeley’s unethical conduct appear at [FBI Exhibit No. 30 c.](FBI%20Exhibit%20No.%2030%20c)

Mr. Berkeley and Ms. Seeley then refused to negotiate a mutually agreeable non-disclosure agreement and rejected FoodQuestTQ LLC’s offer to openly compare the plaintiff’s computer software tools with the ones allegedly duplicated by the FDA in order to demonstrate the theft of FoodQuestTQ LLC’s copyrighted research, patented ideas and trade secrets. See [FBI Exhibit No. 30 e.](FBI%20Exhbit%20No.%2030%20e)

After Mr. Berkley was informed of the serious allegations of criminal misconduct by FDA employees, he knowingly, willfully and intentionally entered into a direct and actual conflict of interest, rising to the level of obstruction of justice, by conducting his own prejudicial and flawed “investigation” of the FoodQuestTQ LLC matter for the purpose of mounting a legal defense of the FDA in lieu of conducting a fair and impartial review. Copies of documents demonstrating that Mr. Berkley was fully aware of criminal allegations of wrongdoing appear at [FBI Exhibit No. 30 e.](FBI%20Exhbit%20No.%2030%20e)

In conducting his investigation, Mr. Berkley improperly extended lawyer-client privilege to the FDA employees implicated of wrongdoing in the FoodQuestTQ LLC matter. A copy of the FDA document indicating that Mr. Berkley extended lawyer client privilege to the FDA employees implicated in the FoodQuestTQ LLC matter appears at [FBI Exhibit No. 30 h.](FBI%20Exhibit%20No.%20h.pdf) FoodQuestTQ LLC alleges that these actions by Mr. Berkley were intentional and intended to befoul any lawful criminal investigation of the FoodQuestTQ LLC matter.

In his investigative report of April 26, 2013, Mr. Berkley contends that FoodQuestTQ LLC was uncooperative in assisting the Department of Health and Human Services in the conduct of the agency’s “investigation” of the FoodQuestTQ LLC matter. A copy of Mr. Berkley’s legal defense brief appears at [FBI Exhibit No. 30 j.](FBI%20Exhibit%2030%20j..pdf) Quite to the contrary, FoodQuestTQ LLC alleges that both the FDA and DHHS including Mr. Berkley and Ms. Seeley, respectively, rebuffed repeated offers by FoodQuestTQ LLC to mediate the dispute in order to force FoodQuestTQ LLC to pursue protracted and expensive intellectual property litigation. Copies of documents in which FoodQuestTQ LLC offered to assist in the investigation appear at [FBI Exhibit No. 30 e.](FBI%20Exhbit%20No.%2030%20e)

FoodQuestTQ LLC further alleges that the above actions by the U.S. Government were intended to force the issue down the narrow pathway of intellectual property litigation as part of a systematic and contrived effort designed to deny FoodQuestTQ LLC of their rights under Article I (patent and copyright clause) and Amendment V (takings clause) of the U.S. Constitution. Both the FDA and DHHS were well aware that FoodQuestTQ LLC was destitute as the result of the earlier FDA actions taken to duplicate their commercial products. The FDA and DHHS also knew that the small company was in no position to pay for protracted and expensive litigation. See [FBI Exhibit No. 30 e.](FBI%20Exhbit%20No.%2030%20e)