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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
WESTERN DIVISION

15 FEDERAL TRADE COMMISSION,) Hon.
16 Plaintiff,) Civil Action No.
17)
18 v.) [Proposed]
19 J. MICHAEL ERNEST,) **STIPULATED FINAL ORDER**
20 Defendant.) **FOR PERMANENT INJUNCTION**
AND SETTLEMENT OF CLAIMS
FOR MONETARY RELIEF

21 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”) filed a Complaint for
22 permanent injunction and other relief against J. Michael Ernest, pursuant to Section 13(b) of the
23 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). Defendant denies the allegations
24 in the Complaint, except jurisdictional facts, but is willing to agree to the entry of the following
25 Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief
26 (“Order”).

1 The Commission and Defendant have stipulated to the entry of the following Order in
2 settlement of the Commission's Complaint against Defendant. The Court, being advised in the
3 premises, finds:

4
5 **FINDINGS**

- 6 1. This Court has jurisdiction over the subject matter of this case and jurisdiction
7 over all parties. Venue in the Central District of California is proper.
- 8 2. The Complaint states a claim upon which relief can be granted, and the
9 Commission has the authority to seek the relief it has requested.
- 10 3. The activities of Defendant are in or affecting commerce, as defined in 15 U.S.C. §
11 44.
- 12 4. Defendant waives all rights to seek judicial review or otherwise challenge or
13 contest the validity of this Order. Defendant also waives any claims that he may
14 have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the
15 prosecution of this action to the date of this Order.
- 16 5. This action and the relief awarded herein are in addition to, and not in lieu of, other
17 remedies as may be provided by law.
- 18 6. Each party shall bear its own costs and attorneys' fees.
- 19 7. Entry of this Order is in the public interest.
- 20 8. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are
21 binding upon Defendant, and his officers, agents, servants, employees and all other
22 persons or entities in active concern or participation with him, who receive actual
23 notice of this Order by personal service or otherwise.

24
25 **DEFINITIONS**

26 For purposes of this Order, the following definitions shall apply:
27

1. Unless otherwise specified, “Defendant” shall mean J. Michael Ernest, individually.
2. “Isis product” shall mean the “Isis Breast Enhancement Herbal Supplement,” the
3. “Isis Breast Enhancement Herbal Cream,” and any substantially similar product
4. containing one or more of the ingredients in the current Isis products.
5. 3. “Competent and reliable scientific evidence” shall mean tests, analyses, research,
6. studies, or other evidence based on the expertise of professionals in the relevant
7. area, that has been conducted and evaluated in an objective manner by persons
8. qualified to do so, using procedures generally accepted in the profession to yield
9. accurate and reliable results.
10. 4. “Food,” “drug,” “device,” and “cosmetic,” shall have the meaning defined in
11. Section 15 of the FTC Act, 15 U.S.C. Section 55.
12. 5. “Covered product” means any dietary supplement, food, drug, cosmetic, or device.
13. 6. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission
14. Act, 15 U.S.C. Section 44.
15. 7. “Endorsement” shall mean as defined in 16 C.F.R. § 255.0(b).
16. 8. “Employment” shall mean any affiliation with any business, non-profit, or
17. government entity, including the performance of services as an officer, owner,
18. manager, supervisor, employee, consultant, or independent contractor; and
19. “Employer” shall mean any and all individuals or entities for whom any Defendant
20. performs services as an employee, consultant, or independent contractor.
21. 9. A requirement that any Defendant “notify the Commission” shall mean that the
22. Defendant shall send the necessary information via first-class mail, costs prepaid,
23. to the Associate Director for Advertising Practices, Federal Trade Commission,
24. 600 Pennsylvania Ave., N.W., Washington, D.C. 20580. Attn: FTC v. J.
25. Michael Ernest (C.D. Cal.).
26. 10. The term “including” in this Order shall mean “without limitation.”

1 11. The terms “and” and “or” in this Order shall be construed conjunctively or
2 disjunctively as necessary, to make the applicable phrase or sentence inclusive
3 rather than exclusive.
4

5 **I. PROHIBITED BUSINESS ACTIVITIES**

6 IT IS HEREBY ORDERED that Defendant Ernest, directly or through any corporation,
7 subsidiary, division, trade name, or other device, and his officers, agents, servants, employees and
8 all persons or entities in active concert or participation with him who receive actual notice of this
9 Order, by personal service or otherwise, in connection with the manufacturing, labeling,
10 advertising, promotion, offering for sale, sale, or distribution of any covered product is hereby
11 permanently restrained and enjoined from making any representation, in any manner, expressly or
12 by implication, about the benefits, performance, efficacy, safety, or side effects, of an Isis product
13 or any other covered product unless, at the time the representation is made, he possesses and
14 relies upon competent and reliable scientific evidence that substantiates the representation.

15 *Provided*, that for any representation made by Defendant Ernest as an expert endorser, he must
16 possess and rely upon competent and reliable scientific evidence, and an actual exercise of his
17 represented expertise, in the form of an examination or testing of the product at least as extensive
18 as an expert in that field would normally conduct in order to support the conclusions presented in
19 the representation.
20

21 **II. FDA APPROVED CLAIMS**

22 IT IS FURTHER ORDERED that:

- 23 1. Nothing in this order shall prohibit Defendant from making any representation for any
24 drug that is permitted in labeling for such drug under any tentative final or final standard
25 promulgated by the Food and Drug Administration, or under any new drug application
26 approved by the Food and Drug Administration; and
27

1 2. Nothing in this order shall prohibit Defendant from making any representation for any
2 product that is specifically permitted in labeling for such product by regulations
3 promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and
4 Education Act of 1990.

5
6 **III. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

7 IT IS FURTHER STIPULATED AND ORDERED that, within five (5) business days
8 after receipt by Defendant of this Order as entered by the Court, the Defendant shall execute and
9 submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that
10 shall acknowledge receipt of this Order.

11
12 **IV. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

13 IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendant's
14 compliance with this Order by all lawful means, including but not limited to the following:

- 15 A. The Commission is authorized, without further leave of court, to obtain discovery
16 from any person in the manner provided by Chapter V of the Federal Rules of Civil
17 Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process
18 pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating
19 Defendant's compliance with any provision of this Order;
- 20 B. The Commission is authorized to use representatives posing as consumers and
21 suppliers to Defendant, Defendant's employees, or any other entity managed or
22 controlled in whole or in part by Defendant, without the necessity of identification
23 or prior notice;
- 24 A. Nothing in this Order shall limit the Commission's lawful use of compulsory
25 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to
26 investigate whether Defendant has violated any provision of this Order or Section
27

1 5 or 12 of the FTC Act, 15 U.S.C. §§ 45, 52.
2

3 **V. COMPLIANCE REPORTING**

4 IT IS FURTHER ORDERED that, in order that compliance with the provisions of this
5 Order may be monitored:

6 A. For a period of three (3) years from the date of entry of this Order, for Defendant
7 shall notify the Commission of the following:

8 1. Any changes in his residence, mailing addresses, and telephone numbers,
9 within ten (10) days of the date of such change; and

10 2. Any changes in his employment status (including self-employment) within
11 ten (10) days of such change. Such notice shall include the name and address of
12 each business that Defendant is affiliated with or employed by, a statement of the
13 nature of the business, and a statement of Defendant's duties and responsibilities in
14 connection with the business or employment; and

15 B. Sixty (60) days after the date of entry of this Order, Defendant shall provide a
16 written report to the FTC, sworn to under penalty of perjury, setting forth in detail
17 the manner and form in which he has complied and are complying with this Order.
18 This report shall include but not be limited to:

19 1. His then current residence addresses and telephone numbers;

20 2. His then current employment, business addresses, and telephone numbers, a
21 description of the business activities of each such employer, and the Defendant's
22 title and responsibilities for each employer;

23 3. A statement describing the manner in which Defendant has complied and
24 are complying with Paragraph I; and

25 C. Upon written request by a representative of the Commission, Defendant shall
26 submit additional written reports (under oath, if requested) and produce
27

1 documents on twenty (20) days' notice with respect to any conduct subject to this
2 Order.

3 D. For purposes of the compliance reporting required by this Paragraph, the
4 Commission is authorized to communicate with the Defendant directly.

5
6 **VI. RECORD KEEPING PROVISIONS**

7 IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of
8 this Order, Defendant Ernest is enjoined from failing to retain, unless otherwise specified:

- 9 A. Copies of all advertisements, promotional materials, sales scripts, training
10 materials, or other marketing materials, utilized in the advertising, marketing,
11 promotion, offering for sale, distribution or sale of any covered product, which he
12 prepares, approves, or disseminates, or in which he makes an endorsement;
- 13 B. All materials that were relied upon in making any representation in any materials
14 identified in Subparagraph (A);
- 15 C. All other documents evidencing or referring to the accuracy of any claim made in
16 any materials identified in Subparagraph (A), including, but not limited to, all tests,
17 reports, studies, demonstrations, or other evidence that confirm, contradict,
18 qualify, or call into question the accuracy or efficacy of such covered product.

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26 **VII. RETENTION OF JURISDICTION**

1 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for
2 purposes of construction, modification, and enforcement of this Order.

3
4 **SO STIPULATED:**

5 _____
6 JANET M. EVANS
7 Federal Trade Commission
8 601 Pennsylvania Ave., N.W., Rm. S-4002
9 Washington, D.C. 20580
10 (202) 326-2125/2263
11 (202) 326-3259 (facsimile)
12 Attorneys for Plaintiff
13 FEDERAL TRADE COMMISSION

_____ J. MICHAEL ERNEST, individually

_____ STEVEN ZWICK
Law Office of Seven Zwick
25909 Pala, #380
Mission Viejo, CA 92671
(949) 699-4444

Attorney for Defendant

14
15 **SO ORDERED**

16 DATED: _____

17 UNITED STATES DISTRICT JUDGE
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1 **APPENDIX A**

2 UNITED STATES DISTRICT COURT
3 FOR THE CENTRAL DISTRICT OF CALIFORNIA
4 WESTERN DIVISION

5	FEDERAL TRADE COMMISSION,)	
6)	
7	Plaintiff,)	Hon.
8	v.)	Civil Action No.
9	J. MICHAEL ERNEST,)	AFFIDAVIT OF DEFENDANT
10	Defendant.)	[NAME]

11 [Defendant], being duly sworn, hereby states and affirms:

12 1. My name is _____. I am a citizen of the United States and am
13 over the age of eighteen. I have personal knowledge of the matters discussed in this declaration,
14 and if called as a witness, I could and would competently testify as to the matters stated herein. I
15 am a Defendant in the above captioned action.

16 2. My current business address is _____. My current business
17 telephone number is _____. My current residential address is _____.
18 My current residential telephone number is _____.

19 3. On (date) _____, I received a copy of the Stipulated Final Order and
20 Settlement of Claims for Monetary Relief, which was signed by the Honorable _____,
21 United States District Court Judge for the Central District of California. A true and correct copy
22 of the Order that I received is appended to this Affidavit.

23 4. I reaffirm and attest to the truthfulness, accuracy and completeness of the financial
24 statements that I submitted to the Federal Trade Commission on or about _____.

25 I hereby declare under penalty of perjury under the laws of the United States of America that the
26

1 foregoing is true and correct. Executed on (date) _____, at (city, state) _____,
2 _____.

3 _____
4 (Name of Defendant)

5
6 STATE OF _____
7 COUNTY OF _____

8 BEFORE ME this day personally appeared _____, who being first
9 duly sworn, deposes and says that s/he has read and understands the foregoing statement and that
10 s/he has executed the same for the purposes contained therein.

11
12 SUBSCRIBED AND SWORN TO before me this ____ day of _____, 2001 by
13 _____ . S/he is personally known to me or has
14 presented (state identification) _____ as identification.

15
16 _____
17 Print Name

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19
20 NOTARY PUBLIC,
21 STATE OF _____

22
23
24 Commission Number

25 Affix Seal

26
27
28