UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Tampa Division

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
	)	
	)	CIVIL NO.
USA PHARMACAL SALES, INC.,	)	
	)	
JOHN PENCE, and ARTHUR SUSSMAN,	)	
	)	
Defendants.	)	
	)	

STIPULATED FINAL JUDGMENT AND ORDER FOR A PERMANENT INJUNCTION AND MONETARY RELIEF AGAINST USA PHARMACAL SALES, INC., JOHN PENCE, AND ARTHUR SUSSMAN

Plaintiff, the Federal Trade Commission ("FTC" or "Commission") filed a Complaint for permanent injunction and other relief against USA Pharmacal Sales, Inc., John Pence, and Arthur Sussman pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b).

The Commission and USA Pharmacal Sales, Inc., John Pence, and Arthur Sussman, defendants, have stipulated to the entry of the following Stipulated Final Judgment and Order for Permanent Injunction and Monetary Relief ("Order") against USA Pharmacal Sales, Inc., John Pence, and Arthur Sussman, in settlement of the Commission's Complaint for Permanent

Injunction and Other Equitable Relief ("Complaint") against defendants, without adjudication of any issue of fact or law, and without defendants admitting liability for any of the matters alleged in the Complaint. The Court, being advised in the premises, finds:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the Middle District of Florida is proper.
2. The Complaint states a claim upon which relief can be granted, and the Commission has the authority to seek the relief it has requested.
3. The acts and practices of defendants were and are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claim that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.
5. Each party shall bear its own costs and attorneys' fees.
6. Entry of this Order is in the public interest.
7. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding upon defendants, and their officers, agents, servants, representatives, employees, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise.
8. This Order resolves only claims against the named defendants and does not preclude the

Commission from initiating further action or seeking any remedy against any other persons or entities, including without limitation persons or entities who may be subject to portions of this Order by virtue of actions taken in concert or participation with defendants, and persons or entities in any type of indemnification or contractual relationship with defendants.

DEFINITIONS

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

1. Unless otherwise specified, "defendants" shall mean:
   A. USA Pharmacal Sales, Inc., ("Pharmacal"), a corporation, its divisions and subsidiaries, its successors and assigns, and its officers, agents, servants, representatives, and employees;
   B. John Pence ("Pence"), individually and in his capacity as a director or officer of Pharmacal; and
   C. Arthur Sussman ("Sussman"), individually and in his capacity as a director or officer of Pharmacal.
2. "Commerce" shall mean "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
3. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

4. "Clearly and Prominently" shall mean as follows:

A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. ***Provided***, ***however***, that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. ***Provided***, ***further***, that in any advertisement communicated through interactive media which is presented predominantly through visual or audio means, the disclosure may be made through the same means in which the ad is predominantly presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location, sufficiently noticeable for an ordinary consumer to read and comprehend it.

B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

C. On a product label, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it and in print that

contrasts with the background against which it appears. ***Provided, however,*** if a disclosure on a bottle label or package label is made in a location other than the principal display panel, the bottle label or package label shall (i) include the statement, "**See important safety warning(s) on [insert disclosure location]**," in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it and in print that contrasts with the background against which it appears; ***and*** (ii) place the disclosure on the bottle label and, if applicable, the package label, within a border that is a color or shade that contrasts with the background against which it appears. ***Provided further***, that in a multi-page insert, the disclosure shall appear on the cover page or first page.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

5. "Product label" shall mean any label or other written, printed or graphic matter upon any product or accompanying any product, including package labels, bottle labels, and package inserts.

6. "Food" and "drug" shall mean as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.

7. "Weight-loss product" shall mean any product or program designed or used to prevent weight gain or to produce weight loss, reduction or elimination of fat, slimming, or caloric deficit

in a user of the product or program.

8. “Covered product or program” shall mean any weight loss product, dietary supplement, food, or drug.

9. “Ephedra, ephedra extract, or ephedrine” shall mean a source of ephedrine alkaloid, including, but not limited to, ephedrine, pseudoephedrine, norephedrine, norpseudoephedrine, N–methyephedrine, and N-methylpseudoephedrine, either derived from natural sources such as the herb Ephedra sinica (also called Ma Huang or Chinese Ephedra) or synthetically produced.

10. "Androgen product" shall mean foods, drugs, dietary supplements, as "food" and "drugs" are defined in Section 15 of the Federal Trade Commission Act, or other products intended for internal or external use that lists as an active ingredient any androgen hormone, including but not limited to androstenedione, androstenediol, norandrostenedione, and norandrostenediol, which is either synthetically produced or derived from natural sources.

11. “Virile V” shall mean the VIRILE V product and any other product containing yohimbine, yohimbe bark extract, or yohimbe bark, from any source, that is promoted as a male performance stimulant or treatment for erectile dysfunction.

12. “Endorsement” shall mean as defined in 16 C.F.R. § 255.0(b).

13. A requirement that any defendant “notify the Commission” shall mean that the defendant shall send the necessary information via first-class mail, costs prepaid, to:

Associate Director for Advertising Practices
Federal Trade Commission
600 Pennsylvania Ave., NW, Washington, D.C. 20580
Attn: *FTC v. USA Pharmacal Sales, Inc., et al.*, (M.D. Fl.).

14. The term “including” in this Order shall mean “without limitation.”

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

ORDER

I. PROHIBITIONS ON FALSE CLAIMS FOR WEIGHT LOSS

IT IS HEREBY ORDERED that defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of META-BIOLOGICAL, FAT•SPONGE IN A PILL, or CALOTROL/MD, or any other substantially similar product that contains one or more of the same active ingredients in the named products, are hereby permanently restrained and enjoined from making any representation, in any manner, expressly or by implication, including through the use of endorsements, that such product:

A. Causes rapid and substantial weight loss.

B. Causes permanent weight loss.

C. Is clinically proven to cause rapid and substantial weight loss in humans.

D. Is medically proven to cause permanent weight loss in humans.

II. PROHIBITED UNSUBSTANTIATED CLAIMS FOR WEIGHT-LOSS PRODUCTS

IT IS FURTHER ORDERED that defendants, directly or through any corporation,

partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of META-BIOLOGICAL, FAT•SPONGE IN A PILL, CALOTROL/MD, or any other weight loss product, are hereby permanently restrained and enjoined from making any representation, in any manner, expressly or by implication, including through the use of endorsements, that such product:

A. Causes substantial, rapid, or permanent weight loss or fat loss;

B. Enables users to lose any specific amount of weight or fat;

C. Prevents weight gain or the "yo-yo" syndrome of repetitive weight loss and weight gain;

D. Affects human metabolism, food intake, or body fat; or

E. Is safe, not dangerous, or has no side effects,

unless the representation is true and, at the time the representation is made, defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III. PROHIBITED CLAIMS FOR VIRILE V

IT IS FURTHER ORDERED that defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of VIRILE V, are

hereby permanently restrained and enjoined from making any representation, in any manner, expressly or by implication, including through the use of endorsements, that such product:

A. Has no harmful side effects.

B. Has no adverse interactions with other medications.

C. Is safe, unless the representation is true and, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV. COVERED PRODUCT OR PROGRAM CLAIMS

IT IS FURTHER ORDERED that defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product or program, are hereby permanently restrained and enjoined from making any representation, in any manner, expressly or by implication, including through the use of endorsements, about the health benefits, performance, efficacy, or safety of such product or program, unless, at the time of making such representation, defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

V. MISREPRESENTATION OF TESTS OR STUDIES

IT IS FURTHER ORDERED that defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants,

representatives, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product or program, are hereby permanently restrained and enjoined from misrepresenting, in any manner, expressly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

VI. WARNING OF EPHEDRA HEALTH RISKS

IT IS FURTHER ORDERED that:

A. In any advertisement (other than a television or radio advertisement), promotional material, or product label for any covered product or program containing ephedra, ephedra extract, or ephedrine, and during any discussion relating to the use of such product or program communicated via electronic mail or any telephone line, defendants, their officers, agents, servants, representatives, and employees shall make clearly and prominently, the following disclosure:

> **WARNING:** This product contains ephedra or ephedrine alkaloids, which can have dangerous effects on the central nervous system and heart and can result in serious injury. Risk of injury can increase with dose, and may even include heart attack, stroke, seizure, or death. Consult a health care provider prior to use if you have high blood pressure, heart or thyroid disease, diabetes, difficulty urinating, prostate enlargement, or glaucoma, or are using any prescription drug. Do not use if you are taking a MAO inhibitor or any allergy, asthma, or cold medication containing ephedrine, pseudoephedrine, or phenylpropanolamine. Discontinue use if you experience rapid heart beat, chest pain, severe headache, shortness of breath, dizziness, sleeplessness, or nausea. This product is not recommended for use if you are or could be pregnant unless a qualified health care provider tells you to use it. The product may not be safe for your developing baby,

unless defendants possess competent and reliable scientific evidence that such product is safe and

produces no such adverse side effects.

B. In any television or radio advertisement for any covered product or program containing ephedra, ephedra extract, or ephedrine, defendants, their officers, agents, servants, representatives, and employees shall make, clearly and prominently, the following disclosure:

> **WARNING:** This product contains [insert name of ephedrine alkaloids contained in product, *e.g.*, Ma Huang] which can have dangerous effects on the central nervous system and heart and can result in serious injury. Risk of injury increases with increased dosage, unless defendants possess competent and reliable scientific evidence that such product is safe and produces no such adverse side effects.

Provided, ***however***, that in the event that the Food and Drug Administration issues a final rule requiring a warning on the labeling of products containing ephedrine alkaloids, defendants may substitute that warning for the disclosures required under Parts A and B above.

VII. WARNING OF YOHIMBE HEALTH RISKS

IT IS FURTHER ORDERED that, in any advertisement, promotional material, or product label for VIRILE V that contains any representation about the efficacy, benefits, performance, safety, or side effects of such product, and during any discussion relating to the use of such product communicated via electronic mail or any telephone line, defendants, their officers, agents, servants, representatives, and employees shall make clearly and prominently, the following disclosure:

> **WARNING:** This product can raise blood pressure and interfere with other drugs you may be taking. Talk to your doctor about this product.

VIII. WARNING OF ANDROGEN PRODUCTS' HEALTH RISKS

IT IS FURTHER ORDERED that, in any advertisement, promotional material, or product label for VIRILE V or any other androgen product that contains any representation about the efficacy, benefits, performance, safety, or side effects of such product, and during any discussion relating to the use of such product communicated via electronic mail or any telephone line, defendants, their officers, agents, servants, representatives, and employees shall make clearly and prominently, the following disclosure:

> **WARNING**: This product contains steroid hormones that may cause prostate and breast enlargement, testicle shrinkage, and infertility. Higher doses may increase these risks. Do not use this product if you are at risk for prostate cancer.

IX. FDA APPROVED CLAIMS

IT IS FURTHER ORDERED that:

A. Nothing in this order shall prohibit defendants from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and

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

X. MONETARY JUDGMENT AND CONSUMER REDRESS

IT IS FURTHER ORDERED that:

A. Judgment in the amount of $175,000 is hereby entered in favor of the Commission and against defendants, jointly and severally. Provided, that this judgment shall be subject to the conditions set forth in Paragraph D of this Part X below. The judgment shall be paid as follows:

1. Within twenty (20) days of the date of entry of this Order, defendants shall pay the sum of $100,000 to the Commission. No later than the date on which the Commission authorizes the filing of this Order, defendants shall pay $100,000 into an escrow account to be established and held by Sheldon S. Lustigman, The Lustigman Firm P.C., 149 Madison Avenue, Ste. 805, New York, NY 10016-6713, as escrow agent. Within twenty (20) days of the entry of this Order, the escrow agent shall transfer the escrowed amount to the Commission, or such agent as the Commission may direct.

2. Within six (6) months after the date of entry of this Order, defendants shall pay the sum of $75,000 to the Commission.

B. All payments shall be made by attorneys' trust account check, certified check, or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with instructions provided by the Commission. By signing this Order, the defendants relinquish all dominion, control, and title to the monies transferred to the Commission, for use according to the terms of this Order. Defendants shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise.

C. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not

limited to consumer redress, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph. Defendants shall have no right to contest the manner of distribution chosen by the Commission.

D. The Commission's agreement to this Order, requiring that the defendants be liable for less than the full amount of consumer injury, is expressly premised upon the truthfulness, accuracy and completeness of their sworn financial statements and supporting documents submitted to the Commission, namely the 1999, 2000, and 2001 federal tax returns for USA Pharmacal Sales and John Pence, submitted on November 8 and December 13, 2002, respectively; the 2000 and 2001 federal tax returns for Arthur Sussman, submitted on November 8, 2002; the corporate financial form for USA Pharmacal and individual financial statement for Arthur Sussman, submitted on November 8, 2002; the individual financial statement for John Pence, submitted on December 13, 2002; the affidavit of John Pence regarding the Coyote Irrevocable Family Trust, submitted on January 29, 2003; and the additional corporate and individual financial information submitted on November 26, 2002;

December 13, 2002; January 14, 2003; January 29, 2003; and February 17, 2003. Such financial statements and supporting documents contain material information upon which the Commission relied in negotiating and agreeing to this Order. If, upon motion by the Commission, this Court finds that defendants have failed to disclose any material asset of USA Pharmacal, or materially misstated the value of any of Pharmacal's assets in the financial statements and related documents described above, or have made any other material misstatement or omission in the Pharmacal financial statements and related documents described above, the Court shall enter judgment against defendants, jointly and severally, in the amount of Nine Million Two Hundred Thousand Dollars ($9,200,000) in U.S. currency, representing the estimated loss to consumers, minus any payments previously made under Paragraph A of this Part X, which amount would be rendered immediately due and payable. Further, if upon motion by the Commission, this Court finds that any individual defendant has failed to disclose any of his material assets or materially misstated the value of any asset in his financial statements and related documents described above, the Court shall enter judgment against such individual defendant in the amount of Nine Million Two Hundred Thousand Dollars ($9,200,000) in U.S. currency, representing the estimated loss to consumers, minus any payments previously made under Paragraph A of this Part X, which amount would be rendered immediately due and payable. Additionally, if the defendants fail to make the payment required by Paragraph A.2 of this Part X in full and/or timely, the Commission will foreclose on its judgment lien filed upon entry of this Order against the real estate known as U.S. Alternative 19 Parcel #26-27-15-00000-430-0300, Palm Harbor, Florida, currently valued for purposes of liquidation sale at least $75,000.

E. In accordance with 31 U.S.C. § 7701, the defendants are hereby required, unless they have done so already, to furnish the Commission their respective taxpayer identifying numbers (social security numbers or employer identification numbers) which shall be used the purposed of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

F. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true for the purpose of a nondischargeability complaint in any bankruptcy case.

G. Proceedings under this Section are in addition to, and not in lieu of, any civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

(A) Within ten (10) days of receipt of written notice from a representative of the Commission, defendants each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such defendant's possession or direct or indirect control to inspect the business operation;

(B) In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

(1) obtaining discovery from any person, without further leave of court, using the

procedures proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

(2) posing as consumers and suppliers to: defendants, their employees, or any other entity managed or controlled in whole or in part by defendants, without the necessity of identification or prior notice;

Provided that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

(C) Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

XII. COMPLIANCE REPORTING

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

(A) For a period of five (5) years from the date of entry of this Order,

(1) Defendants Pence and Sussman shall notify the Commission of the following:

(a) Any changes in defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

(b) Any changes in defendant's employment status (including self-

employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of defendant's duties and responsibilities in connection with the business;

(c) Any changes in defendant's name or use of any aliases or fictitious names; and

(2) Defendants shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the defendant learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

(B) One hundred eighty (180) days after the date of entry of this Order, defendants each shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

(1) Any changes required to be reported pursuant to subparagraph (A) above;

(2) A copy of each acknowledgment of receipt of this Order obtained by defendant pursuant to Paragraph XIV*;*

(C) For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with defendant Sussman.

XIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, defendant Pharmacal and any business where (1) defendants Pence or Sussman is the majority owner or an officer or director of the business, or directly or indirectly manages or controls the business and where (2) the business engages, or assists others engaged in, the advertising, marketing, promotion, offering for sale, distribution or sale of any covered product or service, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

(A) Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

(B) Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if

applicable;

(C) Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

(D) Records identifying consumers who complained or made refund requests (whether received directly, indirectly or through any third party), their contact information, the reason for the complaint or refund request, the disposition of the complaint or refund request, and the reason for such disposition; and

(E) Copies of all sales scripts, training materials, advertisements, or other marketing materials.

XIV. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order,

(A) Defendant Pharmacal shall deliver a copy of this Order to all principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Pharmacal shall deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

(b) Defendants Pence and Sussman shall deliver a copy of this Order to the principals,

officers, directors, managers and employees under defendant Pence's and/or Sussman's control for any business that (a) employs or contracts for personal services from defendant Pence and/or Sussman and (b) has responsibilities with respect to the subject matter of this Order. Defendants Pence and Sussman shall secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship.

XV. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that each defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XVI. RETENTION OF JURISDICTION AND ENTRY OF JUDGMENT

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

There being no just cause for delay, this Stipulated Final Judgment and Order for a Permanent Injunction and Monetary Relief against defendants is hereby entered this ____ day of _____, 2003.

_____
United States District Judge

SO STIPULATED:

_____
THOMAS B. PAHL
MATTHEW DAYNARD
FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW
Washington, D.C. 20580
Tel.: (202) 326-2128, -3291
Fax: (202) 326-3259
Trial Attorneys for Plaintiff

_____
USA PHARMACAL SALES, INC.
by: John Pence, President

_____
JOHN PENCE, individually and as
an officer or director of the above company

_____
ARTHUR SUSSMAN, individually and as
an officer or director of the above company

_____
SHELDON S. LUSTIGMAN
The Lustigman Firm P.C.
149 Madison Avenue, Ste. 805
New York, NY 10016-6713
Tel: (212) 683-9180
Fax: (212) 683-9181
Attorney for the above Defendants

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Tampa Division

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	CIVIL NO.
USA PHARMACAL SALES, INC.,	)	
	)	
JOHN PENCE, and ARTHUR SUSSMAN,	)	
	)	
	)	
Defendants.	)	
	)	

AFFIDAVIT OF DEFENDANT _____

[*Name of defendant*], being duly sworn, hereby states and affirms as follows:

1. My name is_____. My current residence address is _____. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in FTC v. USA Pharmacal Sales, Inc., et al. (United States District Court for the Middle District of Florida).

3. On [*date*], I received a copy of the [*state full name of the Final Order as it appears on the Order itself*], which was signed by the Honorable [*name of U.S. District Judge*]

and entered by the Court on [*date of entry of Order*]. A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [*date*], at [*city and state*].

_____
[*Full name of defendant*]

State of _____, City of _____

Subscribed and sworn to before me
this _____ day of _____, 2003___.

_____
Notary Public
My Commission Expires:
_____