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13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 WINDOW ROCK ENTERPRISES, INC.,
20 also d/b/a WINDOW ROCK HEALTH
LABORATORIES, also d/b/a
21 CORTISLIM, INFINITY
ADVERTISING, INC., STEPHEN F.
22 CHENG, SHAWN M. TALBOTT, and
GREGORY S. CYNAUMON,
23 PINNACLE MARKETING CONCEPTS,
INC., also d/b/a PMC HEALTH
24 PRODUCTS, AND THOMAS F. CHENG

25 Defendants.

CIVIL NUMBER

CV-04-8190-DSF (JTLx)

**STIPULATED FINAL
AGREEMENT AND
ORDER FOR
PERMANENT
INJUNCTION AND
SETTLEMENT OF
CLAIMS FOR
MONETARY RELIEF
AS TO DEFENDANT
SHAWN M. TALBOTT**

1 The Federal Trade Commission (“Commission”) filed a complaint and
2 subsequently amended it to name additional defendants Pinnacle Marketing
3 Concepts, Inc. and Thomas F. Cheng (as amended, “Complaint”), pursuant to
4 Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C.
5 § 53(b), to secure permanent injunctive relief, restitution, disgorgement, and other
6 equitable relief against the Defendants for their alleged deceptive acts or practices
7 and false advertisements in connection with the advertising, promotion, and sale of
8 an alleged weight-loss product, “CortiSlim,” and an alleged stress-relief product,
9 “CortiStress,” in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§
10 45(a) and 52.

11 The Commission and Defendant Shawn M. Talbott (“Talbott”), without
12 Talbott admitting or denying liability for any of the conduct alleged in the
13 Complaint, have stipulated to entry of the following agreement for permanent
14 injunction and settlement of claims for monetary relief in settlement of the
15 Commission’s Complaint against Talbott.

16 The Court, having been presented with this Stipulated Final Agreement and
17 Order for Permanent Injunction and Settlement of Claims for Monetary Relief
18 (“Order”), finds as follows:

19 **FINDINGS**

20 1. This Court has jurisdiction over the subject matter of this case, and
21 jurisdiction over all parties. Venue in the Central District of California is proper.

22 2. The Complaint states a claim upon which relief can be granted, and
23 the Commission has the authority to seek the relief which is stipulated to in this
24 Order.

25 3. The acts and practices of Talbott were and are in or affecting
26 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

1 4. Talbott waives all rights to seek judicial review or otherwise
2 challenge or contest the validity of this Order. Talbott also waives any claim that
3 he may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412,
4 concerning the prosecution of this action to the date of this Order.

5 5. Talbott has entered into this Order freely and without coercion.

6 6. The Commission and Talbott stipulate and agree to this Order,
7 without trial or final adjudication of any issue of fact or law, to settle and resolve
8 all matters in dispute between them arising from the Complaint up to the date of
9 entry of this Order. By entering this stipulation, Talbott does not admit or deny
10 any of the allegations set forth in the Complaint, other than jurisdictional facts.

11 7. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of
12 this Order are binding upon Talbott and all other persons or entities in active
13 concert or participation with him who receive actual notice of this Order by
14 personal service or otherwise.

15 8. Nothing in this Order obviates the obligation of Talbott to comply
16 with Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C.
17 §§ 45 and 52.

18 9. This Order was drafted jointly by the Commission and Talbott and
19 reflects the negotiated agreement of these parties.

20 10. The paragraphs of this Order shall be read as the necessary
21 requirements for compliance and not as alternatives for compliance and no
22 paragraph serves to modify another paragraph unless expressly so stated.

23 11. Each party shall bear its own costs and attorneys' fees.

24 12. Entry of this Order is in the public interest.

1 **DEFINITIONS**

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

3 1. Unless otherwise specified, “Stipulating Defendant” shall mean
4 Defendant Shawn M. Talbott.

5 2. “Advertising” and “promotion” shall mean any written or verbal
6 statement, illustration or depiction designed to effect a sale or create interest in the
7 purchasing of goods, whether it appears in a brochure, newspaper, magazine,
8 pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter,
9 catalogue, poster, chart, billboard, public transit card, point of purchase display,
10 packaging, package insert, label, film, slide, radio, television or cable television,
11 audio program transmitted over a telephone system, program-length commercial
12 (“infomercial”), the Internet, email, press release, video news release, or in any
13 other medium.

14 3. “Assisting others” shall mean knowingly providing any of the
15 following services to any person or entity engaged in conduct related to the subject
16 matter of this Order, including the sale or marketing of a Target Product or a
17 Covered Product: (a) serving as an owner, partner, officer, director or manager of
18 a business entity selling or marketing a Target Product or a Covered Product; (b)
19 formulating or providing, or arranging for the formulation or provision of, any
20 product or any advertising or marketing materials regarding a Covered Product,
21 but excluding product development, research, testing, and similar services
22 performed for or on behalf of any entity or individual other than a Related Party;
23 or (c) appearing in any advertising or marketing material for a Covered Product.

24 4. “Commerce” shall mean as defined in Section 4 of the FTC Act, 15
25 U.S.C. § 44.

1 5. "Competent and reliable scientific evidence" shall mean tests,
2 analyses, research, studies, or other evidence based on the expertise of
3 professionals in the relevant area, that has been conducted and evaluated in an
4 objective manner by persons qualified to do so, using procedures generally
5 accepted in the professions to yield accurate and reliable results.

6 6. "CortiSlim" shall mean the dietary supplement CortiSlim and any
7 other product marketed by or on behalf of a Related Party that

8 a. contains one or more of the following ingredients present in
9 current or previous formulations of CortiSlim: magnolia bark
10 extract, beta-sitosterol, theanine, green tea leaf extract, bitter
11 orange peel extract, Panax ginseng, banaba leaf extract,
12 chromium, or vanadium; and

13 b. is marketed with claims that it has a weight effect or reduces or
14 manages stress.

15 7. "CortiSlim Study" shall mean the study conducted by Stipulating
16 Defendant Talbott and others as reported, at least in part, under the title "Effect of
17 a Stress/Cortisol-Control Dietary Supplement on Weight Loss," by Shawn Talbott,
18 Ann-Marie Christopulos, and Jill Whelan, as well as all underlying data for such
19 study.

20 8. "CortiStress" shall mean the dietary supplement CortiStress and any
21 other product marketed by or on behalf of a Related Party that

22 a. contains one or more of the following ingredients present in
23 current or previous formulations of CortiStress: magnolia bark
24 extract, beta-sitosterol, or theanine; and

25 b. is marketed with claims that it has a weight effect, or reduces or
26 manages stress, or prevents or treats any disease.

1 9. “Covered Product” shall mean any dietary supplement, food, drug,
2 cosmetic, or device.

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

4 11. “Food,” “drug,” “cosmetic,” and “device” shall mean as defined in
5 Section 15 of the FTC Act, 15 U.S.C. § 55.

6 12. “Commission” shall mean the Federal Trade Commission.

7 13. “Related Party” shall mean one or more of Window Rock Enterprises,
8 Inc., also d/b/a Window Rock Health Laboratories, also d/b/a Cortislim, Infinity
9 Advertising, Inc., Pinnacle Marketing Concepts, Inc., also d/b/a PMC Health
10 Products, Stephen F. Cheng, Gregory S. Cynaumon, and Thomas F. Cheng,
11 whether acting directly or through any corporation, partnership, subsidiary,
12 division, trade name, or other entity, and their officers, agents, servants,
13 employees, and all persons and entities in active concert or participation with
14 them.

15 14. “Target Product” shall mean CortiSlim and CortiStress.

16 15. “Weight effect” shall mean any weight-related effect attributed to a
17 food, drug, dietary supplement, product, device, or program and includes, but is
18 not limited to, preventing weight gain or producing weight loss, reducing or
19 eliminating fat, slimming, changing body composition, or causing a caloric deficit
20 in a user of such food, drug, dietary supplement, product, device, or program.

1 16. A requirement that Stipulating Defendant Talbott “notify,” “furnish,”
2 “provide,” or “submit” to the Commission shall mean that the defendant shall send
3 the necessary information via **overnight courier**, costs prepaid, to:

4 Associate Director for Advertising Practices
5 Federal Trade Commission
6 600 Pennsylvania Avenue, N.W.
7 Washington, DC 20580
8 Attn: *FTC v. Window Rock Enterprises, Inc., et al.*, (C.D. Cal.),
9 Civ. No. 04-8190-DSF (JTLx).

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

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

15 **IT IS STIPULATED, AGREED, AND ORDERED:**

16 **I.**

17 **PROHIBITED REPRESENTATIONS REGARDING
18 ANY TARGET PRODUCT**

19 A. That Stipulating Defendant Talbott, directly or through any
20 corporation, partnership, subsidiary, division, trade name, or other entity, and all
21 persons and entities in active concert or participation with him who receive actual
22 notice of this Order by personal service, facsimile, or otherwise, in connection
23 with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or
24 distribution of any Target Product, in or affecting commerce, are hereby
25 permanently restrained and enjoined from making, or assisting others in making,
26 directly or by implication, including through the use of endorsements or product
27 names, any representation that any Target Product:

- 1 1. Reduces the risk of or prevents serious health conditions,
2 including osteoporosis, obesity, diabetes, Alzheimer's disease,
3 cancer, and cardiovascular disease;
- 4 2. Causes weight loss of 10 to 50 pounds or more for virtually all
5 users;
- 6 3. Causes users to lose as much as 4 to 10 pounds per week over
7 multiple weeks;
- 8 4. Causes users to lose weight specifically from the abdomen,
9 stomach, and thighs;
- 10 5. Causes rapid and substantial weight loss;
- 11 6. Causes long-term or permanent weight loss;
- 12 7. Causes weight loss without the need for diet or exercise; or
- 13 8. Has been demonstrated effective, is supported by, or is
14 otherwise the product of over 15 years of scientific research.

15 B. That Stipulating Defendant Talbott, directly or through any
16 corporation, partnership, subsidiary, division, trade name, or other entity, and all
17 persons and entities in active concert or participation with him who receive actual
18 notice of this Order by personal service, facsimile, or otherwise, in connection
19 with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or
20 distribution of any Target Product, in or affecting commerce, are hereby
21 permanently restrained and enjoined from making, or from assisting others in
22 making, directly or by implication, including through the use of endorsements or
23 product names, any other representation about the performance or efficacy of any
24 Target Product unless the representation is true and non-misleading, and, at the
25 time it is made, Talbott possesses and relies upon competent and reliable scientific
26 evidence that substantiates the representation.

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II.

**PROHIBITED REPRESENTATIONS REGARDING
ANY COVERED PRODUCT**

That Stipulating Defendant Talbott, directly or through any corporation, partnership, subsidiary, division, trade name, or other entity, and all persons and entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile, or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, directly or by implication, including through the use of endorsements or product names, any representation about the weight effect, other health benefits, performance, or efficacy of any Covered Product unless the representation is true and non-misleading, and, at the time it is made, Talbott possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

**PROHIBITED REPRESENTATIONS REGARDING
TESTS AND STUDIES**

That Stipulating Defendant Talbott, directly or through any corporation, partnership, subsidiary, division, trade name, or other entity, and all persons and entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile, or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, are hereby permanently restrained and enjoined from making or assisting others in making, directly or by implication, including through the use of endorsements or product

1 names, any misrepresentation about the existence, contents, validity, results,
2 conclusions, or interpretations of any test or study including, but not limited to, the
3 CortiSlim Study.

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5 **IV.**

6 **FORMATTING AND DISCLOSURES FOR BROADCAST MEDIA**

7 That Stipulating Defendant Talbott, directly or through any corporation,
8 partnership, subsidiary, division, trade name, or other entity, and all persons and
9 entities in active concert or participation with him who receive actual notice of this
10 Order by personal service, facsimile, or otherwise, in connection with the labeling,
11 advertising, promotion, offering for sale, sale, or distribution of any product,
12 program, or service, in or affecting commerce, are hereby permanently restrained
13 and enjoined from creating, producing, or appearing in, or assisting others in
14 creating or producing:

15 A. Any advertisement that misrepresents, expressly or by implication,
16 that it is not a paid advertisement;

17 B. Any television commercial or other video advertisement fifteen (15)
18 minutes in length or longer or intended to fill a broadcasting or cablecasting time
19 slot of fifteen (15) minutes in length or longer that does not display visually in the
20 same language as the predominant language that is used in the advertisement, in a
21 clear and prominent manner, and for a length of time sufficient for an ordinary
22 consumer to read and comprehend it, within the first thirty (30) seconds of the
23 commercial and either immediately before each presentation of ordering
24 instructions for the product, program, or service or periodically through the
25 program, but no more than approximately seven (7) minutes apart, the following
26 disclosure:

1 “YOU ARE WATCHING A PAID ADVERTISEMENT FOR [THE
2 PRODUCT, PROGRAM, OR SERVICE].”

3 *Provided that*, for the purposes of this provision, the oral or visual presentation of
4 a telephone number or address through which viewers may obtain more
5 information or place an order for the product, program, or service shall be deemed
6 a presentation of ordering instructions so as to require the display of the disclosure
7 provided herein; and

8 C. Any radio commercial or other radio advertisement five (5) minutes
9 in length or longer or intended to fill a time slot of five (5) minutes in length or
10 longer that does not state in the same language as the predominant language that is
11 used in the advertisement, in a clear and prominent manner, and in a volume and
12 cadence sufficient for an ordinary consumer to hear and comprehend it, within the
13 first thirty (30) seconds of the commercial and immediately before each
14 presentation of ordering instructions for the product, program, or service, the
15 following disclosure:

16 “YOU ARE LISTENING TO A PAID ADVERTISEMENT FOR
17 [THE PRODUCT, PROGRAM, OR SERVICE].”

18 *Provided that*, for the purposes of this provision, the presentation of a telephone
19 number or address through which listeners may obtain more information or place
20 an order for the product, program, or service shall be deemed a presentation of
21 ordering instructions so as to require the stating of the disclosure provided herein.

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V.

FDA-APPROVED CLAIMS

That nothing in this Order shall prohibit Stipulating Defendant Talbott from making any representation:

A. 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; or

B. 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.

C. For any medical device that is permitted in labeling of such medical device under any medical device-specific regulation promulgated by the Food and Drug Administration, under any Federal Food, Drug and Cosmetic Act Section 510(k) premarket notification substantial equivalence determination by the Food and Drug Administration, or under any premarket approval application approved by the Food and Drug Administration.

VI.

MONETARY JUDGMENT AND CONSUMER REDRESS

A. That judgment for equitable monetary relief is hereby entered against Stipulating Defendant Talbott in the amount of \$1,120,000. The judgment for equitable monetary relief shall be satisfied as follows:

1. By transferring \$225,000 cash, which amount was placed in escrow by Talbott on or before the day this agreement was forwarded by the Bureau to the Commission for its review, and which amount is to be released by

1 the escrow agent to the Federal Trade Commission by wire transfer not later than
2 five (5) days after the date of entry of this Order and in accordance with directions
3 provided by the Commission;

4 2. By transferring \$350,000 from the real property in Centerville,
5 Massachusetts or by transferring title to the property to the Commission not later
6 than ninety (90) days after the date of entry of this Order and in accordance with
7 directions provided by the Commission;

8 3. By transferring cash from the real property in Lisbon, Ohio in
9 an amount equal to eighty (80) percent of the current independently appraised
10 value or by transferring title to the property to the Commission not later than
11 ninety (90) days after the date of entry of this Order and in accordance with
12 directions provided by the Commission; and

13 4. By transferring \$38,700 cash from the sale of the timeshare
14 property in Oahu, Hawaii or by transferring title to the property to the Commission
15 not later than ninety (90) days after the date of entry of this Order and in
16 accordance with directions provided by the Commission;

17 B. That Stipulating Defendant Talbott hereby assigns to the Federal
18 Trade Commission, without any encumbrances, all rights and claims to money or
19 other assets owed to him as of the date of entry of this Order by a Related Party,
20 and of the right to pursue any chose in action to recover any such money or assets
21 owed to him by a Related Party, under the terms of any agreement, oral or written,
22 including but not limited to the Joint Venture Agreement entered into on June 10,
23 2003 by and between Stipulating Defendant Talbott and Defendant Window Rock,
24 the Joint Venture Agreement entered into on June 21, 2003 by and between
25 Defendants Window Rock and Cynaumon, and the purported non-written
26 agreement by and between Defendants Window Rock and Pinnacle. This
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1 assignment includes, but is not limited to, Stipulating Defendant Talbott's claim to
2 royalties allegedly owed to him by Defendant Window Rock Enterprises, Inc. in
3 the amount of approximately \$1.4 million.

4 C. That, if a Related Party later assigns to the Federal Trade Commission
5 rights of recovery and claims to money or other assets purportedly owed as of the
6 date of entry of this Order by Stipulating Defendant Talbott, the Commission shall
7 not exercise any such rights and claims in a manner that would allow it to recover
8 additional funds from Stipulating Defendant Talbott; *provided, however*, that this
9 paragraph shall cease to apply upon occurrence of any of the events described
10 under Part VII.

11 D. That all funds paid pursuant to this Order shall be deposited into an
12 account administered by the Commission or its agent to be used for equitable
13 relief, including but not limited to consumer redress for nationwide sales of
14 CortiSlim and CortiStress from the time those products were first advertised up to
15 and including September 30, 2004, and any attendant expenses for the
16 administration of such equitable relief. In the event that direct redress to
17 consumers is wholly or partially impracticable or funds remain after redress is
18 completed, the Commission may apply any remaining funds for such other
19 equitable relief (including consumer information remedies) as it determines to be
20 reasonably related to Stipulating Defendant Talbott's practices alleged in the
21 Complaint. Any funds not used for such equitable relief shall be deposited to the
22 United States Treasury as disgorgement. Talbott shall have no right to challenge
23 the Commission's choice of remedies under this Part. Talbott shall have no right
24 to contest the manner of distribution chosen by the Commission. No portion of
25 any payments under the judgment herein shall be deemed a payment of any fine,
26 penalty, or punitive assessment.

1 E. That Stipulating Defendant Talbott relinquishes all dominion, control
2 and title to the funds paid into the account established pursuant to this Order, and
3 all legal and equitable title to the funds shall vest in the Treasurer of the United
4 States unless and until such funds are disbursed to consumers. Talbott shall make
5 no claim to or demand for the return of the funds, directly or indirectly, through
6 counsel or otherwise; and in the event of bankruptcy, he acknowledges that the
7 funds are not part of the debtor's estate, nor does the estate have any claim or
8 interest therein.

9 F. That Stipulating Defendant Talbott shall provide to the Commission a
10 sworn statement setting forth i) the amount of 2003 and 2004 state and federal
11 taxes, if any, he paid on or before the day this agreement was signed; ii) the
12 amount of 2005 estimated state and federal tax payments, if any, he paid on or
13 before the day this agreement was signed; and iii) a statement of the date(s) on
14 which each tax payment to a state or federal tax authority was made. All 2003 or
15 2004 tax payments reported to the Commission as being owed to a state or federal
16 tax authority must be paid in full no later than sixty (60) days from the date of
17 entry of this Order. The financial information and documents referenced in this
18 paragraph F shall be designated as confidential.

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20 **VII.**

21 **RIGHT TO REOPEN**

22 A. That, by agreeing to this Order, Stipulating Defendant Talbott
23 reaffirms and attests to the truthfulness, accuracy, and completeness of the
24 financial information that he has previously submitted to the Commission. The
25 Commission's agreement to this Order is expressly premised upon the
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1 truthfulness, accuracy, and completeness of the financial statements and
2 supporting documents that Talbott submitted to the Commission, namely:

- 3 1. Federal Trade Commission Financial Statement of Individual
4 Defendant dated December 2, 2004, with accompanying United
5 States income tax returns for 2001, 2002, and 2003;
- 6 2. United States income tax return for 2004;
- 7 3. June 2, 2005 Ullman, Shapiro & Ullman memo with attached
8 Shawn M. Talbott Updated Financials as of 5/31/05 and
9 attached May 25, 2005 letter from Towne & Suburban Realty
10 regarding Lisbon, Ohio property;
- 11 4. Ullman, Shapiro & Ullman transmittal of financial spreadsheets
12 regarding Shawn Talbott and royalty checks received in
13 January 2005; and
- 14 5. Joint Venture Agreement dated June 10, 2003 by and between
15 Window Rock Enterprises, Inc. and Shawn Talbott.

16 If, upon motion by the Commission, this Court finds that Talbott failed to disclose
17 any material asset, or materially misrepresented the value of any asset, or made
18 any other material misrepresentation in or omission from the Financial Statements
19 or other supporting documents listed in this Part, the Court shall enter judgment
20 against Talbott and for the Commission in the amount of \$3,500,000, less any
21 amount already paid by or on behalf of Talbott to the Commission; *provided,*
22 *however,* that in all other respects this Order shall remain in full force and effect
23 unless otherwise ordered by the Court; and *provided further,* that proceedings
24 instituted under this Part would be in addition to, and not in lieu of, any other civil
25 or criminal remedies as may be provided by law, including any other proceedings
26 that the Commission may initiate to enforce this Order. Solely for purposes of this
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1 Part, Talbott waives any right to contest any of the allegations in the
2 Commission's Complaint. Except for the amount of the judgment, the financial
3 information and documents referenced in this Part shall be designated as
4 confidential.

5 B. That, in agreeing to this Order, the Commission has specifically relied
6 on the representations that Stipulating Defendant Talbott has made regarding the
7 amount of federal and state taxes he has paid or will pay for tax years 2003 and
8 2004 and the amount of estimated federal and state taxes, if any, that he has paid
9 toward estimated taxes for tax year 2005, including but not limited to
10 representations in the sworn statements referenced in Part VI, above, and in the
11 documents listed in paragraph A of this Part. It shall be a violation of this Part for
12 Talbott to file any federal or state tax return seeking a cash refund of some or all
13 of the amounts previously reported to the Commission as taxes owed and paid for
14 tax years 2003 and 2004, or a cash refund of some or all of the amounts paid
15 toward estimated taxes for tax year 2005. *Provided however*, that seeking such a
16 cash refund shall not be deemed to be a violation of this Part if Talbott promptly
17 remits to the Commission the full amount of any such cash refund within ten (10)
18 days of receipt of the refund.

20 VIII.

21 ACKNOWLEDGMENT OF RECEIPT OF ORDER

22 That, within five (5) business days after receipt of this Order as entered by
23 the Court, Stipulating Defendant Talbott shall submit to the Commission a truthful
24 sworn statement acknowledging receipt of this Order, using the form shown at
25 Attachment A.

1 **IX.**

2 **DISTRIBUTION OF ORDER**

3 That, for a period of three (3) years from the date of entry of this Order,
4 Stipulating Defendant Talbott shall deliver copies of the Order as directed below:

5 A. Stipulating Defendant Talbott as Control Person: For each business
6 that is controlled, directly or indirectly, by Talbott, and for each business in which
7 Talbott has a majority ownership interest, he must deliver a copy of this Order to
8 all principals, officers, directors, and managers of each such business and also to
9 all supervisory employees, agents, and representatives of each such business who
10 engage in conduct related to the marketing of Target or Covered Products. For
11 current personnel, delivery shall be within ten (10) business days of entry of this
12 Order. For new personnel, delivery shall occur prior to their assuming their
13 position or responsibilities;

14 B. Stipulating Defendant Talbott not as Control Person: For each
15 business that is not controlled, directly or indirectly, by Talbott, he must deliver a
16 copy of this Order to all principals and managers of each such business before
17 engaging in conduct related to the marketing of Target or Covered Products.

18 1. *Provided however*, that Talbott must deliver a copy of this
19 Order to all principals and managers of each such business subject to this
20 paragraph B before engaging in any conduct relating directly or indirectly to any
21 Related Party.

22 2. *Provided further*, that this paragraph B shall not apply if the
23 conduct engaged in by Talbott consists solely of product development, research,
24 testing, or similar activities relating to a Covered Product, as long as the conduct is
25 not performed for or on behalf of any Related Party and as long as the conduct
26 does not include assisting others in marketing or advertising a Covered Product.

1 C. Stipulating Defendant Talbott shall create, maintain, and update as
2 necessary a declaration identifying the dates, names, titles, addresses, and
3 telephone numbers of the persons and entities that he has provided with a copy of
4 this Order as required by this Part; and

5 D. Stipulating Defendant Talbott shall maintain, for a period of three (3)
6 years, and upon reasonable notice make available to the Commission, a signed
7 declaration regarding distribution of copies of this Order as required by this Part.
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9 **X.**

10 **COMPLIANCE MONITORING**

11 That, for the purpose of monitoring and investigating compliance with any
12 provision of this Order:

13 A. Within thirty (30) days of receipt of written notice from a
14 representative of the Commission, Stipulating Defendant Talbott shall submit
15 additional written reports, sworn to under penalty of perjury; produce documents
16 for inspection and copying; appear for deposition; and/or provide entry during
17 normal business hours to any business location in his possession or under his
18 direct or indirect control to inspect the business operation. Copies of any such
19 notice shall also be provided by the Commission to undersigned counsel for
20 Talbott or to any other counsel whose identity has been furnished to the
21 Commission;

22 B. In addition, the Commission is authorized to monitor Stipulating
23 Defendant Talbott's compliance with this Order by all other lawful means,
24 including but not limited to the following:

- 25 1. obtaining discovery from any person, without further leave of
26 court, using the procedures prescribed by Federal Rules of
27 Civil Procedure 30, 31, 33, 34, 36, and 45; and
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1 2. posing as consumers, marketers, manufacturers, or other
2 product-related entities to Talbott or to any entity managed or
3 controlled in whole or in part by him, without the necessity of
4 identification or prior notice; and

5 C. Stipulating Defendant Talbott, upon fourteen (14) days notice, shall
6 permit representatives of the Commission to interview any officer, director,
7 employee, employer, consultant, independent contractor, representative, or agent
8 of any entity managed or controlled in whole or in part by him, who has agreed to
9 such an interview, relating in any way to any conduct subject to this Order. The
10 person interviewed may have counsel present.

11 *Provided,* however, that nothing in this Order shall limit the Commission’s
12 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act,
13 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things,
14 testimony, or information relevant to unfair or deceptive acts or practices in or
15 affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

16
17 **XI.**

18 **COMPLIANCE REPORTING**

19 That, in order that compliance with the provisions of this Order may be
20 monitored:

21 A. Stipulating Defendant Talbott, within ten (10) business days of
22 service of this Order, shall notify the Commission, in writing, with
23 the following information:

- 24 1. his residence address and mailing address;
25 2. his home telephone number;
26 3. the name, address, and telephone number of his employer(s);
27 4. if applicable, the names of his supervisor(s);

1 5. a description of each employer's activities; and

2 6. a description of his duties and responsibilities for each
3 employer;

4 B. For a period of three (3) years from the date of entry of this Order,
5 Stipulating Defendant Talbott shall notify the Commission of the
6 following:

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

9 2. Any changes in his employment status (including self-
10 employment), any change in his ownership in any business
11 entity, and any change in the corporate structure of any
12 business entity in which he has an ownership interest in that
13 may affect compliance obligations arising under this Order,
14 within ten (10) days of the date of such change. Such notice
15 shall include the name and address of each business that he is
16 affiliated with, employed by, creates or forms, or performs
17 services for; a statement of the nature of the business; and a
18 statement of his duties and responsibilities in connection with
19 the business; and

20 3. Any changes in his name or use of any aliases or fictitious
21 names.

22 C. Ninety (90) days after the date of entry of this Order, Stipulating
23 Defendant Talbott shall provide a written report to the Commission, sworn to
24 under penalty of perjury, setting forth in detail the manner and form in which he
25 has complied and is complying with this Order. This report shall include, but not
26 be limited to any changes required to be reported pursuant to paragraph (B) of this
27 Part; a copy of the signed declaration regarding distribution of copies of this Order
28

1 as required by Part IX.D; and, to the extent that he is involved in advertising or
2 marketing any Covered Product, a copy of all advertising and promotional
3 materials in use at any point from the date of entry of the Order until submission
4 of the written report required by this paragraph;

5 D. Stipulating Defendant Talbott shall provide to the Commission, no
6 more than 10 days after submitting it to a state or federal tax authority, a complete
7 copy of any submission seeking a cash refund of some or all of the taxes reported
8 under Part VI as owed in tax years 2003 and 2004 or as paid toward estimated
9 2005 tax;

10 E. For purposes of the compliance reporting and monitoring required by
11 this Order, the Commission is authorized to communicate directly with Stipulating
12 Defendant Talbott, with contemporaneous notice to undersigned counsel or to any
13 other counsel whose identity has been furnished to the Commission; and

14 F. The information and documents referenced in paragraphs A, B, and D
15 of this Part shall be designated as confidential information.

17 XII.

18 RECORD-KEEPING PROVISIONS

19 That, for a period of five (5) years from the date of entry of this Order,
20 Stipulating Defendant Talbott and those persons in active concert or participation
21 with him who receive actual notice of this Order by personal service or otherwise,
22 if engaging or assisting others engaged in the advertising, marketing, promotion,
23 offering for sale, distribution or sale of any Covered Product, in or affecting
24 commerce, and any business where (1) he is a majority owner or an officer or
25 director of the business, or directly or indirectly manages or controls the business
26 and where (2) the business is engaged, participating, or assisting in any manner
27 whatsoever, directly or indirectly, in the advertising, marketing, promotion,
28

1 offering for sale, distribution or sale of any Covered Product, in or affecting
2 commerce, are hereby permanently restrained and enjoined from failing to create
3 and retain the following records:

4 A. Accounting records that reflect the cost of goods or services sold,
5 revenues generated, and the disbursement of such revenues;

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

11 C. Customer files containing the names, addresses, telephone numbers,
12 dollar amounts paid, quantity of items purchased, and description of items
13 purchased, to the extent such information is obtained in the ordinary course of
14 business;

15 D. Complaints and refund requests (whether received directly, indirectly
16 or through any third party), and any response to those complaints or requests;

17 E. Copies of all advertisements, promotional materials, sales scripts,
18 training materials, or other marketing materials utilized in the advertising,
19 marketing, promotion, offering for sale, distribution or sale of any Covered
20 Product, to the extent such information is prepared in the ordinary course of
21 business;

22 F. All documents evidencing or referring to the accuracy of any claim or
23 representation contained in the materials identified in Paragraph E of this Part, or
24 to the efficacy of any Covered Product, including, but not limited to, all tests,
25 reports, studies, and demonstrations, as well as all evidence that confirms,
26 contradicts, qualifies, was relied upon in making, or calls into question the
27 accuracy of such claims;

28

1 G. Records accurately reflecting the name, address, and telephone
2 number of each manufacturer or laboratory engaged in the development or
3 creation of any testing obtained for the purpose of advertising, marketing,
4 promoting, offering for sale, distributing, or selling any Covered Product; and

5 H. All records and documents necessary to demonstrate full compliance
6 with each provision of this Order, including but not limited to copies of
7 acknowledgments of receipt of this Order, required by Part VIII, and all reports
8 submitted to the Commission pursuant to Part X.

9
10 **XIII.**

11 **COOPERATION WITH COMMISSION COUNSEL**

12 That Stipulating Defendant Talbott must in connection with the property-
13 related transactions identified in Part VI.A, and in cooperation with the
14 Commission: remain current on all mortgage, tax, and other property-related
15 payment obligations until payment is made or title is transferred to the
16 Commission; refrain from encumbering, alienating, transferring, or otherwise
17 affecting existing rights in the property identified in Part VI.A, except to the
18 narrowest extent necessary to accomplish the transactions in Part VI.A; initiate
19 and cooperate fully in all activities necessary to accomplish the property-related
20 transactions identified in Part VI.A; cooperate in good faith with the
21 Commission's reasonable requests for documents and writings and testimony in
22 connection with the property-related transactions identified in Part VI.A; and, if
23 necessary, appear in person or through a representative at such places and times or
24 execute such documents as the Commission shall reasonably request with regard
25 to the transactions identified in Part VI.A, upon written notice to Stipulating
26 Defendant Talbott and his counsel of record.

1 **XIV.**

2 **RETENTION OF JURISDICTION**

3 That this Court shall retain jurisdiction over Stipulating Defendant Talbott
4 for purposes of construction, modification, and enforcement of this Order and for
5 issues relating to the Complaint and to non-settling Defendants.

6
7 **IT IS SO ORDERED**, this ___ day of _____, 2005.

8
9
10 **UNITED STATES DISTRICT JUDGE**

11 **SO STIPULATED:**

12 WILLIAM BLUMENTHAL
13 General Counsel

14
15 _____
16 SHAWN M. TALBOTT

17 PETER B. MILLER
18 KIAL YOUNG
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45 ATTORNEYS FOR
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47 TALBOTT

48 ATTORNEYS FOR PLAINTIFF