

FILED - SOUTHERN DIVISION
CLERK, U.S. DISTRICT COURT
APR 26 2007
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

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16 ATTORNEY FOR DEFENDANTS LEI LU, *et al.*

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

19 FEDERAL TRADE COMMISSION,

20 Plaintiff,

21 v.

22 PACIFIC HERBAL SCIENCES, INC.,
23 *et al.*,

24 Defendants.

Case No. CV05-7247 CJC (RZx)

**STIPULATED FINAL
JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF AS TO LEI LU,
NATURAL HEALTH PRODUCT,
INC., AND NEW STAR
MARKETING GROUP, INC.;**

25 Plaintiff, Federal Trade Commission ("Commission" or "FTC"), filed a
26 Complaint for Injunctive and Other Equitable Relief on October 6, 2005, pursuant
27 to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"),
28

DOCKETED ON CM
APR 27 2007
BY _____

FEDERAL TRADE COMMISSION
915 Second Ave., Su. 2896
Seattle, Washington 98174
(206) 220-6350

LOGGED

1 15 U.S.C. §§ 53(b) and 57b, and Section 7(a) of the Controlling the Assault of
2 Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act”),
3 15 U.S.C. § 7706(a), against Defendants Pacific Herbal Sciences, Inc., John A.
4 Brackett, Jr., Lei Lu, Natural Health Product, Inc., and New Star Marketing Group,
5 Inc.

6 By and through their respective counsel, Plaintiff and Defendants Natural
7 Health Product, Inc. (NHP), New Star Marketing Group, Inc. (NSMG), and Lei Lu
8 (collectively, hereafter, “Defendants”), without any admission of wrongdoing or
9 violation of law, have consented to the entry of this Stipulated Final Judgment and
10 Order for Permanent Injunction and Other Equitable Relief (“Order”) without a
11 trial or adjudication of any issue of law or fact herein:

12 **THEREFORE**, on the joint motion of Defendants and Plaintiff, **IT IS**
13 **HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

14
15 **FINDINGS**

- 16 1. This Court has jurisdiction over the subject matter of this case and
17 Defendants pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, and 7706(a), and 28 U.S.C.
18 §§ 1331, 1337(a), and 1345.
- 19 2. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C.
20 §§ 1391(b) and (c).
- 21 3. The activities of Defendants are in or affecting commerce, as “commerce” is
22 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
- 23 4. The Complaint states a claim upon which relief may be granted against
24 Defendants under Sections 5(a), 12, 13(b), and 19 of the FTC Act, 15 U.S.C.
25 §§ 45(a), 52, 53(b), and 57b, and Section 5(a) of the CAN-SPAM Act, 15 U.S.C.
26 § 7704(a).

1 5. Defendants have entered into this Order freely and without coercion. They
2 further acknowledge that they have read the provisions of this Order and are
3 prepared to abide by them.

4 6. Defendants do not admit any of the allegations set forth in the Complaint
5 other than jurisdictional facts. No provision of this Order shall be construed as an
6 admission or denial that Defendants have engaged in violations of the FTC Act or
7 the CAN-SPAM Act, or any other law or regulation.

8 7. The undersigned, individually and by and through their counsel, have
9 agreed that entry of this Order resolves all matters of dispute between them arising
10 from the Complaint in this action, up to the date of entry of this Order.

11 8. Defendants waive all rights to seek appellate review or otherwise to contest
12 the validity of this Order. They further waive and release any claim they may have
13 against the Commission, its employees, representatives, or agents.

14 9. Defendants agree that this Order does not entitle them to seek or to obtain
15 attorneys' fees as prevailing parties under the Equal Access to Justice Act, 28
16 U.S.C. § 2412, as amended by Pub. L. 104-21, 110 Stat. 847, 863-64 (1996), and
17 they further waive any right to attorneys' fees that may arise under that provision.

18 10. This Order is in addition to, and not in lieu of, any other civil or criminal
19 remedies that may be provided by law.

20 11. Entry of this Order is in the public interest.

21 22 DEFINITIONS

23 1. **"Affiliate program"** means any arrangement whereby any person through
24 hyperlinks on the World Wide Web, hyperlinks in commercial email messages, or
25 any other Internet-based mechanism, provides Defendants with, or refers to
26 Defendants, potential or actual customers.

27 2. **"Asset"** or **"Assets"** means any legal or equitable interest in, right to, or
28 claim to, any real and/or personal property including, but not limited to, chattels,

1 goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds,
2 mail or other deliveries, inventory, checks, notes, accounts, credits, contracts,
3 receivables, shares of stock, funds, monies, and all cash, wherever located,
4 including both within and outside the territorial United States.

5 3. **“Assisting others”** includes, but is not limited to, the following:

6 (1) performing customer service functions including, but not limited to, receiving
7 or responding to consumer complaints, receiving identifying and financial
8 information from consumers, and communicating with consumers; (2) developing,
9 providing, or arranging for the development or provision of marketing materials,
10 including, but not limited to, Web site and commercial electronic message content;
11 (3) providing, or arranging for the provision of, names or addresses, including
12 email addresses, of potential customers; (4) performing marketing services of any
13 kind, including but not limited to (a) registering for email accounts or domain
14 names, and (b) providing liaison between a sender of electronic messages, as
15 defined in 15 U.S.C. § 7702(16)(A), and a transmitter of electronic messages; or
16 (5) acting as an officer or director of a business entity.

17 4. **“Competent and reliable scientific evidence”** means tests, analyses,
18 research, studies, or other evidence based on the expertise of professionals in the
19 relevant area, that have been conducted in an objective manner by persons
20 qualified to do so, using procedures generally accepted in the profession to yield
21 accurate and reliable results.

22 5. **“Covered product or service”** means any dietary supplement, food, drug,
23 device, or service purporting to provide health-related benefits.

24 6. **“Customer”** means any person who has paid, or may be required to pay, for
25 goods or services offered for sale or sold by Defendants.

26 7. **“Document”** is synonymous in meaning and equal in scope to the usage of
27 the term as defined in Federal Rule of Civil Procedure 34(a), and includes
28 writings, drawings, graphs, charts, photographs, audio and video recordings,

1 computer records, and other data compilations from which information can be
2 obtained and translated, if necessary, through detection devices into reasonably
3 usable form. A draft or non-identical copy is a separate document within the
4 meaning of the term.

5 8. **“Domain name”** is defined in 15 U.S.C. § 7702(4), and means any
6 alphanumeric designation which is registered with or assigned by any domain
7 name registrar, domain name registry, or other domain name registration authority
8 as part of an electronic address on the Internet.

9 9. **“Endorsement”** is defined as stated in 16 C.F.R § 255.0(b).

10 10. **“Food,” “drug,” and “device”** are defined as stated in 15 U.S.C. § 55.

11 11. **“HGH-related product”** means any product or products advertised,
12 marketed, promoted, offered for sale, distributed, or sold with express or implied
13 representations that the product contains any form of human growth hormone,
14 causes an increase in a consumer’s growth hormone levels, or produces effects
15 similar in nature to those produced by any form of human growth hormone, and
16 includes, but is not limited to, “HGH Revolution,” “HGH-R,” and “Natural
17 Rejuvenator,” or any substantially similar products.

18 12. **“Person”** means a natural person, an organization or other legal entity,
19 including a corporation, partnership, sole proprietorship, limited liability
20 company, association, cooperative, or any other group or combination acting as an
21 entity.

22 ORDER

23 I. PROHIBITIONS AGAINST PRODUCT MISREPRESENTATIONS

24 **IT IS THEREFORE ORDERED** that Defendants and their officers,
25 agents, servants, employees, and all other persons or entities in active concert or
26 participation with them who receive actual notice of this Order by personal
27 service, facsimile, or otherwise, whether acting directly or through any trust,
28 corporation, subsidiary, division, or other device, or any of them, are hereby

1 restrained and enjoined from making, or assisting others in making, expressly or
2 by implication, including through the use of a trade name or endorsement, any
3 false or misleading statement or representation of any material fact in connection
4 with the manufacturing, labeling, marketing, advertising, promotion, offering for
5 sale, sale, or distribution of any HGH-related product or other covered product or
6 service, including, but not limited to:

7 A. Misrepresenting that the product contains human growth hormone
8 and/or increases a consumer's growth hormone levels;

9 B. Misrepresenting that the product or service:

- 10 1. Will enable the consumer to lose weight, or replace fat with
11 muscle, without diet or exercise;
- 12 2. Will turn back or reverse the aging process, including, but not
13 limited to, that the product will (i) increase energy levels,
14 stamina, and muscle strength; (ii) restore the size of bodily
15 organs that shrink with age (*e.g.*, liver, pancreas and heart); or
16 (iii) improve memory; or
- 17 3. Will be effective in the cure, mitigation, treatment, or
18 prevention, of any disease or other medical condition,
19 including, but not limited to, representing that the product will
20 (i) strengthen or elevate the immune system; (ii) reduce the risk
21 of Alzheimer's disease; (iii) increase bone density; (iv) prevent
22 or act as a solution to osteoporosis; (v) eliminate joint pains;
23 (vi) lower cholesterol; (vii) lower or normalize blood pressure;
24 (viii) improve cardiovascular and respiratory functions and
25 reduce the occurrence of cardiovascular diseases; (ix) improve
26 vision; (x) stabilize mood swings and act as an antidepressant;
27 (xi) help heal wounds; and (xii) eliminate sleep disorders;

1 C. Misrepresenting the existence, contents, validity, results, conclusions,
2 or interpretations of any test, study, or research;

3 D. Making any representation about the health benefits, performance,
4 efficacy, or safety of any such product or service unless the representation is true
5 and not misleading, and unless, at the time it is made, Defendants possess and rely
6 upon competent and reliable scientific evidence that substantiates the
7 representation; and

8 E. Misrepresenting that the order pages on Web sites marketing any such
9 product are secured using SSL encryption technology and/or that credit card
10 numbers and other personal information entered by consumers on the order pages
11 cannot be seen by others when transmitted.

12 13 II. DISCLOSURE OF CUSTOMER LISTS

14 **IT IS FURTHER ORDERED** that Defendants and their officers, agents,
15 servants, employees, and all other persons or entities in active concert or
16 participation with them who receive actual notice of this Order by personal
17 service, facsimile or otherwise, are hereby permanently restrained and enjoined
18 from selling, renting, leasing, transferring, or otherwise disclosing the name,
19 address, telephone number, credit card number, bank account number, email
20 address, or other identifying information of any person who paid any money to any
21 Defendant at any time prior to entry of this Order, in connection with the
22 manufacturing, labeling, marketing, advertising, promotion, offering for sale, sale,
23 or distribution of any HGH-related product or other covered product or service.
24 *Provided, however,* that Defendants may disclose such identifying information to
25 a law enforcement agency or as required by any law, regulation, or court order.

1 **III. MONITORING BY DEFENDANTS FOR COMPLIANCE**

2 **IT IS FURTHER ORDERED** that, in connection with advertising,
3 marketing, promotion, offering for sale, distribution or sale of any product or
4 service covered by this Order, Defendants, whether acting directly or through any
5 corporation, partnership, subsidiary, division, trade name, or other device, shall:

6 A. Take reasonable steps sufficient to monitor and ensure that all of
7 Defendants' employees, agents, and affiliates who are engaged in advertising,
8 promotion, sales, or other customer service or policy functions comply with this
9 Order. Such steps shall include adequate monitoring of all advertisements,
10 promotions, and other written and oral communications with customers, including,
11 but not limited to, electronic communications. Defendants, at a minimum, shall:

- 12 1. Conduct periodic monitoring of representations concerning any
13 HGH-related product or other covered product or service, made
14 by persons engaged in sales or other customer service
15 functions, including any representations made orally or through
16 electronic communications;
- 17 2. Conduct periodic monitoring of representations made in
18 advertising for any HGH-related product or other covered
19 product or service;
- 20 3. Maintain a procedure for receiving, maintaining, and
21 responding to consumer complaints; and
- 22 4. Maintain a procedure for taking action against any employee,
23 agent, or affiliate who engages in any conduct prohibited by
24 this Order, including, but not limited to:
 - 25 a. Warning each such employee, agent or affiliate upon the
26 first instance of non-compliance; and
 - 27 b. Terminating the employment of any employee, agent, or
28 affiliate who engages in conduct prohibited by this Order

1 once Defendants know or should know that such person
2 is or has been engaged in such conduct after having been
3 warned of a previous instance of non-compliance.

- 4 5. Terminate any employee, agent, or affiliate who knowingly
5 engages in any conduct prohibited by this Order; provided
6 nothing herein shall limit the right of Defendants to take
7 disciplinary action against any of Defendants' employees,
8 agents or affiliates, including, but not limited to, termination
9 for other than knowing violations of conduct prohibited by this
10 Order.

11
12 **IV. MONETARY RELIEF**

13 IT IS FURTHER ORDERED that judgment for consumer redress is entered
14 against Defendants, jointly and severally, in the amount of \$2,218,261.00.
15 Judgment shall be suspended, subject to the conditions set forth in Section V
16 (Right to Reopen), upon prompt payment to the FTC or its designated agent of an
17 estimated \$172,500 (hereafter the "redress amount"), as set forth in Paragraph
18 IV.A. Payment shall be satisfied as follows:

19 A. Defendants and the third parties identified below are ordered to turn
20 over to the FTC or its designated agent the following assets:

- 21 1. Bank of America shall, within ten (10) business days of the
22 date of entry of this Order, transfer to the FTC or its designated
23 agent all frozen assets held in the name of Lei Lu, Natural
24 Health Product, Inc., New Star Marketing Group, Inc., or
25 Natural Health Processing;
26 2. Wells Fargo Bank shall, within ten (10) business days of the
27 date of entry of this Order, transfer to the FTC or its designated
28 agent all frozen assets held in the name of Lei Lu; and

1 3. Total Merchant Services, also known as Card Ready
2 International, shall, within ten (10) business days of the date of
3 entry of this Order, transfer to the FTC or its designated agent
4 all frozen assets held in the name of Natural Health Product,
5 Inc.

6 *Provided* that to the extent any identified third party cannot comply with this
7 subsection without the assistance of Defendants, such party must, within three (3)
8 business days of receiving this Order, notify Defendants and counsel for the FTC
9 of its inability to comply. Such notification shall specify the actions by
10 Defendant(s) that are necessary to comply within ten (10) business days of this
11 Order; and Defendants shall immediately complete any action necessary to
12 facilitate the identified third parties' ability to timely comply with subsections
13 IV.A.1 through IV.A.3 above. Failure to take such action within ten (10) business
14 days shall result in the entire \$2,218,261.00 judgment becoming immediately due
15 and payable and interest at the rate prescribed in 28 U.S.C. § 1961 shall
16 immediately begin to accrue.

17 B. All funds paid pursuant to this Section shall be deposited into a fund
18 administered by the FTC or its designated agent to be used for equitable relief,
19 including, but not limited to, consumer redress and any attendant expenses for the
20 administration of any redress fund. In the event that direct restitution to
21 consumers is wholly or partially impracticable or funds remain after restitution is
22 completed, the FTC may apply any remaining funds for such other equitable relief
23 (including consumer information remedies) as it determines to be reasonably
24 related to the Defendants' practices alleged in the Complaint. Any funds not used
25 for such equitable relief shall be deposited to the Treasury as disgorgement.

1 Defendants shall be notified as to how the funds are disbursed but shall have no
2 right to challenge the FTC's choice of remedies under this Section.

3 C. The FTC and Defendants acknowledge and agree as follows:

- 4 1. No portion of this judgment for equitable monetary relief shall
5 be deemed a fine, penalty, punitive assessment, or forfeiture;
- 6 2. The facts as alleged in the Complaint filed in this action shall
7 be taken as true for purposes of any subsequent proceedings to
8 enforce payments required by this Section, including, but not
9 limited to, a non-dischargeability complaint filed in a
10 bankruptcy proceeding; and
- 11 3. In accordance with 31 U.S.C. § 7701, Defendants shall, unless
12 they have done so already, furnish the FTC their tax
13 identification numbers, which shall be used for purposes of
14 collecting and reporting on any delinquent amounts arising out
15 of this Order.

17 V. RIGHT TO REOPEN

18 **IT IS FURTHER ORDERED** that suspension of the judgment against
19 Defendants is conditioned on the following:

20 A. By agreeing to this Order, Defendants reaffirm and attest to the
21 truthfulness, accuracy, and completeness of the financial statements, as amended
22 and as supplemented by bank documents and other financial documents and
23 information that Defendants prepared and transmitted to the FTC on October 12,
24 2005, November 12, 2005 (dated November 7), June 6, 2006, August 16, 2006,
25 September 11, 2006, October 19, 2006, and October 23, 2006 (hereafter, the
26 "Financial Statements"). Plaintiff's agreement to this Order is expressly premised
27 upon the truthfulness, accuracy, and completeness of Defendants' financial
28 condition as represented in the Financial Statements referenced above, which

1 contain material information upon which Plaintiff relied in negotiating and
2 agreeing to the terms of this Order.

3 B. If, upon motion by Plaintiff, this Court finds that any Defendant
4 failed to disclose any material asset, or materially misrepresented the value of any
5 asset, or made any other material misrepresentation in or omission from the
6 Financial Statements, the Court shall terminate the suspension of the monetary
7 judgment as to the offending Defendants, and the entire amount of \$2,218,261.00,
8 less any amount already paid to the Commission, shall become immediately due
9 and payable. *Provided, however*, that in all other respects, this Order shall remain
10 in full force and effect unless otherwise ordered by this Court; and *provided*
11 *further* that proceedings instituted under this Section are in addition to, and not in
12 lieu of, any other civil or criminal remedies as may be provided by law, including
13 any other proceedings Plaintiff may initiate to enforce this Order.

14
15 **VI. DISSOLUTION OF PRIOR ORDERS, INCLUDING ASSET FREEZE**

16 **IT IS FURTHER ORDERED** that the freeze on Defendants' assets
17 pursuant to the Stipulated Preliminary Injunction entered by the Court on
18 October 20, 2005, shall be lifted to the extent necessary to turn over assets for
19 consumer redress as required by Section IV of this Order and, upon completion of
20 that transfer, shall be lifted permanently.

21
22 **VII. ACKNOWLEDGMENT OF RECEIPT OF ORDER**
23 **BY DEFENDANTS**

24 **IT IS FURTHER ORDERED** that each Defendant, within ten (10)
25 business days of receipt of this Order as entered by the Court, must submit to the
26 FTC a truthful sworn statement acknowledging receipt of this Order.

1 **VIII. DISTRIBUTION OF ORDER BY DEFENDANTS**

2 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the
3 date of entry of this Order, Defendants shall deliver copies of the Order as directed
4 below:

5 A. Defendants Natural Health Product, Inc., and New Star Marketing
6 Group, Inc., must deliver a copy of this Order to all of their principals, officers,
7 directors, and managers, and to all of their employees, agents, and representatives
8 who engage in conduct related to the subject matter of the Order. For current
9 personnel, delivery shall be within ten (10) days of service of this Order upon the
10 Defendants. For new personnel, delivery shall occur before they assume their
11 responsibilities.

12 B. Individual Defendant Lei Lu, as control person: For any business that
13 Defendant Lei Lu controls, directly or indirectly, or in which he has a majority
14 ownership interest, he must deliver a copy of this Order to all principals, officers,
15 directors, and managers of that business, and to all employees, agents, and
16 representatives of that business who engage in conduct related to the subject
17 matter of the Order. For current personnel, delivery shall be within ten (10) days
18 of service of this Order upon Defendant Lei Lu. For new personnel, delivery shall
19 occur before they assume their responsibilities.

20 C. Individual Defendant Lei Lu, as employee or non-control person: For
21 any business for which Defendant Lei Lu is not a controlling person but for which,
22 in the course of his employment, he engages in Internet advertising, marketing, or
23 sale of any covered product or service, Defendant Lei Lu must deliver a copy of
24 this Order to all principals and managers of such business before engaging in such
25 conduct.

26 D. The Defendants must secure a signed and dated statement
27 acknowledging receipt of the Order, within thirty days of delivery, from all
28 persons receiving a copy of the Order pursuant to this Section.

1 **IX. RECORDKEEPING**

2 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the
3 date of entry of this Order, Defendants and their officers, agents, servants,
4 employees, and all other persons or entities in active concert or participation with
5 them who receive actual notice of this Order by personal service, facsimile or
6 otherwise, are hereby restrained and enjoined from failing to create and retain the
7 following records, in connection with any business that any Defendant manages or
8 controls, directly or indirectly, or in which any Defendant holds a majority
9 ownership interest, if the business is engaged in, or assists others engaged in, the
10 manufacturing, labeling, marketing, advertising, promotion, offering for sale, sale,
11 or distribution of any HGH-related product or other covered product or service:

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

14 B. Personnel records accurately reflecting, for each person employed in
15 any capacity by such business, including as an independent contractor, the
16 person's name, address, telephone number, job title or position, date upon which
17 the person commenced work, and date and reason for the person's termination, if
18 applicable;

19 C. Customer files containing the names, addresses, telephone numbers,
20 dollar amounts paid, quantity of items or services purchased, and description of
21 items or services purchased, to the extent such information is obtained in the
22 ordinary course of business;

23 D. Complaints and refund requests (whether received directly, indirectly,
24 or through any third party) and any responses to those complaints or requests;

25 E. Copies of all information obtained, pursuant to Section III of this
26 Order, from each person who participates in Defendants' affiliate programs; and

27 F. All other records and documents necessary to demonstrate full
28 compliance with each provision of this Order, including but not limited to, all

1 documents obtained, created, or generated, or which in any way relate to the
2 requirements, provisions or terms of this Order, copies of signed and dated
3 acknowledgments of receipt of this Order required by Section VIII of this Order,
4 and all reports submitted to the FTC pursuant to this Order.

5
6 **X. COMPLIANCE REPORTING BY DEFENDANTS**

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

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

10 1. Defendant Lei Lu shall notify the FTC of the following:

11 a. Any changes in residence, mailing addresses, and
12 telephone numbers, within ten (10) days of the date of
13 such change;

14 b. Any changes in employment status (including self-
15 employment) and any change of his ownership in any
16 business entity, within ten (10) days of the date of such
17 change. For any such change, notice shall include, the
18 name and address of each business that the Defendant is
19 thus employed by, performs services for, is affiliated
20 with, or has created or formed; a statement of the nature
21 of the business; and a statement of the Defendant's
22 duties and responsibilities in connection with the
23 business or employment; and

24 c. Any changes in the Defendant's name or use of any
25 aliases or fictitious names;

26 2. Defendants shall notify the FTC of any changes in the
27 corporate structure of NHP or NSMG or any business entity
28 that Defendant Lei Lu directly or indirectly controls or has an

1 ownership interest in, that may affect compliance obligations
2 arising under this Order, including but not limited to a
3 dissolution, assignment, sale, merger, or other action that
4 would result in the emergence of a successor entity; the
5 creation or dissolution of a subsidiary, parent, or affiliate that
6 engages in any acts or practices subject to this Order; the filing
7 of a bankruptcy petition; or a change in the corporate name or
8 address, at least thirty (30) days prior to such change; *provided*
9 that, with respect to any proposed change in the corporation
10 about which a Defendant learns less than thirty (30) days prior
11 to the date such action is to take place, the Defendant shall
12 notify the FTC as soon as is practicable after obtaining such
13 knowledge;

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

- 18 1. For Defendant Lei Lu:
 - 19 a. His then-current residence address, mailing addresses,
20 and telephone numbers;
 - 21 b. His then-current employment and business addresses and
22 telephone numbers, a description of the business
23 activities of each such employer or business, and the title
24 and responsibilities of the Defendant for each such
25 employer or business; and
 - 26 c. Any other changes required to be reported under
27 Paragraph A of this Section.

1 2. For each Defendant:

- 2 a. A copy of each acknowledgment of receipt of this Order,
3 obtained pursuant to Section VIII;
- 4 b. Any other changes required to be reported under
5 Paragraph A of this Section;
- 6 c. A list that identifies every person who is marketing or
7 promoting, through commercial email messages, any
8 goods or services of Defendants since entry of this
9 Order;
- 10 d. A list of all names under which Defendants did or
11 currently do business since entry of this Order; and
- 12 e. A list of all domain names and Web site addresses
13 Defendants have registered or used since entry of the
14 Order.

15 C. For the purposes of this Order, Defendants shall, unless otherwise
16 directed by the FTC's authorized representatives, mail all written notifications to
17 the FTC to:

18 Associate Director
19 Division of Enforcement
20 Federal Trade Commission
21 601 New Jersey Avenue, Room 2119
22 Washington, D.C. 20580
23 Re: *FTC v. Pacific Herbal Sciences, et al.*, No.CV05-7247 RSWL (RZx)

24 D. For purposes of the compliance reporting and monitoring required by
25 this Order, the FTC is authorized to communicate directly with Defendants.

26 **XI. COMPLIANCE MONITORING**

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

1 A. Within ten (10) days of receipt of written notice from a representative
2 of the FTC, Defendants Lei Lu, NHP, and NSMG shall submit additional written
3 reports, sworn to under penalty of perjury; produce documents for inspection and
4 copying; appear for deposition; and/or provide entry during normal business hours
5 to any business location in such Defendant's possession or direct or indirect
6 control to inspect the business operation;

7 B. The FTC is authorized to monitor compliance with this Order by all
8 other lawful means, including but not limited to the following:

- 9 1. Obtaining discovery from any person, without further leave of
10 court, using the procedures prescribed by Fed. R. Civ. P. 30,
11 31, 33, 34, 36, and 45;
- 12 2. Posing as consumers to Defendants, Defendants' employees, or
13 any other entity managed or controlled in whole or in part by
14 Defendants, without the necessity of identification or prior
15 notice; and
- 16 3. Interviewing, with respect to matters relating in any way to any
17 conduct subject to this Order, and without interference by
18 Defendants, any employer, consultant, independent contractor,
19 representative, agent, or employee of Defendants who agrees to
20 such an interview, *provided* that the person interviewed is
21 allowed to have counsel present;

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

1 **XII. COOPERATION WITH FTC COUNSEL**

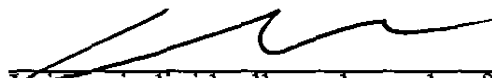
2 **IT IS FURTHER ORDERED** that Defendants shall, in connection with
3 this action or any subsequent investigations related to or associated with the
4 transactions or the occurrences that are the subject of the FTC's Complaint,
5 cooperate in good faith with the FTC and appear, or, in the case of NHP or
6 NSMG, cause its officers, employees, representatives, or agents to appear, at such
7 places and times as the FTC shall reasonably request, after written notice, for
8 interviews, conferences, pretrial discovery, review of documents, and for such
9 other matters as may be reasonably requested by the FTC. If requested in writing
10 by the FTC, Defendants shall appear, or, in the case of NHP or NSMG, cause its
11 officers, employees, representatives, or agents to appear, and provide truthful
12 testimony in any trial, deposition, or other proceeding related to or associated with
13 the transactions or the occurrences that are the subject of the Complaint, without
14 service of a subpoena.

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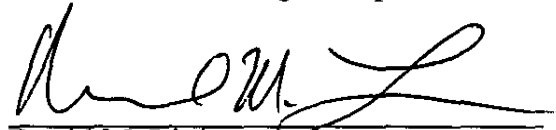
1 **XIII. RETENTION OF JURISDICTION**

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

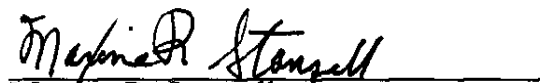
5
6 The Commission and Defendants, as represented by the undersigned
7 counsel, hereby stipulate and agree to entry of the foregoing Order, which shall
8 constitute a final judgment in this action.

9
10 
11 Lei Lu, individually and as sole officer
12 of Natural Health Product, Inc., and
New Star Marketing Group, Inc.

Dated 02-26-, 2007

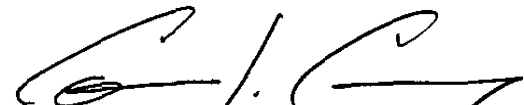
13 
14 David M. Livingston
15 Livingston - Bakhtiar
16 Attorneys for Defendants
Lei Lu, Natural Health Product, Inc., and New Star Marketing Group, Inc.

Dated 2/26/07, 2007

17 
18 Maxime R. Stansell
19 Mary T. Benfield
20 Attorneys for Plaintiff, Federal Trade Commission

Dated April 24, 2007

21 **IT IS SO ORDERED.**

22 
23 THE HONORABLE CORMAC J. CARNEY
24 UNITED STATES DISTRICT JUDGE

Dated April 26, 2007

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be served on all defendants on the date set forth below by providing a full, true, and correct copy thereof by mail, in a sealed, first-class postage-prepaid envelope, deposited with the United States Postal Service at Seattle, Washington, addressed as follows:

counsel for defendants Pacific Herbal Sciences, Inc., and John A. Brackett, Jr.:

Jeffrey A. Lipow, Lipow & Harris, 9952 Santa Monica Boulevard,
First Floor, Beverly Hills, California 90212; and

to counsel for defendants Lei Lu, Natural Health Product, Inc., and New Star Marketing Group, Inc.:

David M. Livingston, Livingston - Bakhtiar, Equitable Plaza, 3435
Wilshire Boulevard, Suite 770, Los Angeles, California 90010.

Dated April 24, 2007.


Gerald Fondow