

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FEDERAL TRADE COMMISSION, and
STATE OF CONNECTICUT,

Plaintiffs,

v.

LEANSPA, LLC, a Connecticut
limited liability company,

NUTRASLIM, LLC, a Connecticut
limited liability company,

NUTRASLIM U.K. LTD, also d/b/a
LEANSPA U.K. LTD., an United Kingdom
limited liability company, and

BORIS MIZHEN, individually and as an
officer of LEANSPA, LLC, NUTRASLIM,
LLC, and NUTRASLIM U.K. LTD,

Defendants.

Case No. 3:11-CV-1715 (VLB)

The Honorable Vanessa L. Bryant

STIPULATED PRELIMINARY INJUNCTION ORDER

WHEREAS, Plaintiffs, the Federal Trade Commission (“FTC” or the “Commission”) and the State of Connecticut (“State”), through its Attorney General, filed their Complaint for Permanent Injunction and Other Equitable Relief in this matter on November 7, 2011, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 42-110m of the

Connecticut Unfair Trade Practices Act (“CUTPA”), Conn. Gen. Stat. § 42-110b;

WHEREAS, Plaintiffs moved for a Temporary Restraining Order with Asset Freeze, the Appointment of a Receiver, and Other Equitable Relief, and an Order to Show Cause Why a Preliminary Injunction Should Not Issue pursuant to Rule 65 of the Federal Rules of Civil Procedure (“TRO”);

WHEREAS, the Court granted, in part, Plaintiffs’ motion for an *ex parte* Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure on November 14, 2011, ordering, *inter alia*, an asset freeze;

WHEREAS, Defendant LeanSpa, LLC (“LeanSpa”), has received service of the Complaint, Summons, and the papers filed in support of Plaintiffs’ motion for a TRO;

WHEREAS, Defendant NutraSlim, LLC (“NutraSlim”), has received service of the Complaint, Summons, and the papers filed in support of Plaintiffs’ motion for a TRO;

WHEREAS, Defendant NutraSlim U.K. Ltd., also doing business as LeanSpa U.K. Ltd. (“NutraSlim U.K.”), has received service of the Complaint, Summons, and the papers filed in support of Plaintiffs’ motion for a TRO;

WHEREAS, Defendant Boris Mizhen (“Mizhen”), has received service of the Complaint, Summons, and the papers filed in support of Plaintiffs’ motion for a TRO; and

WHEREAS, Defendants LeanSpa, NutraSlim, NutraSlim U.K., and Mizhen (collectively, the “Defendants”), acting by and through their counsel, are willing to agree to the entry of this Stipulated Preliminary Injunction Order.

It is hereby ORDERED, ADJUDGED, and DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over the parties hereto.

2. Venue lies properly with this Court.

3. The acts and practices of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and constitute trade or commerce as defined in CUTPA, Conn. Gen. Stat. § 42-110a(4).

4. The Complaint states a claim upon which relief can be granted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), and CUTPA, Conn. Gen. Stat. § 42-110m. Plaintiffs have the authority to seek the relief they have requested.

5. Plaintiffs assert that there is good cause to believe that Defendants have engaged in, and are likely to engage in, acts and practices that violate Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, the Electronic Funds Transfer Act (“EFTA”), 15 U.S.C. § 1693(e), and CUTPA, Conn. Gen. Stat. § 42-110(b), and further assert that the Commission and the State of Connecticut are therefore likely to prevail on the merits of this action.

6. Plaintiffs assert that there is thus good cause for an asset freeze, the appointment of a Temporary Receiver over the Receivership Defendants, as

defined herein, and immediate access to the Receivership Defendants' business premises.

7. Defendants stipulate to the entry of the following relief during the pendency of this action.

8. By stipulating to this preliminary injunction, Defendants do not admit or deny any of the allegations set forth in the Complaint, other than jurisdictional facts.

9. No security is required of any agency of the United States for issuance of a preliminary injunction. Fed. R. Civ. P. 65(c).

10. Entry of this Preliminary Injunction Order with an asset freeze, appointment of a Temporary Receiver, immediate access to the Receivership Defendants' business premises, and other equitable relief is in the public interest.

DEFINITIONS

For purposes of this Preliminary Injunction Order ("Order"), the following definitions shall apply:

1. "Assets" means any legal or equitable interest in, right to, or claim to, any and all real and personal property of Defendants, or held for the benefit of Defendants, including but not limited to chattel, goods, real estate, instruments, equipment, fixtures, general intangibles, effects, leaseholds, inventory, checks, notes, accounts, credits, receivables, shares of stock, contracts, and all cash and currency, or other assets, or any interest therein, wherever located.

2. "Defendants" means Defendants LeanSpa, LLC, NutraSlim, LLC, NutraSlim U.K. Ltd., and Boris Mizhen.

3. **“Dietary Supplement” means (a) any product labeled as a dietary supplement or otherwise represented as a dietary supplement; or (b) any pill, tablet, capsule, powder, softgel, gelcap, liquid, or other similar form containing one or more ingredients that are a vitamin, mineral, herb or other botanical, amino acid, probiotic, or other dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of any ingredient described above, that is intended to be ingested, and is not to be used as a conventional food or as a sole item of a meal or diet.**

4. **“Drug” means: (a) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (c) articles (other than Food) intended to affect the structure or any function of the body of man or other animals; and (d) articles intended for use as a component of any article specified in clause (a), (b), or (c); but does not include Devices or their components, parts, or accessories.**

5. **“Document” is synonymous in meaning and equal in scope to the terms “document” and “electronically stored information,” as described and used in Federal Rule of Civil Procedure 34(a)(1)(A), and includes writings, drawings, graphs, charts, Web pages, audio and video recordings, electronic correspondence, computer records, and other data compilations from which**

information can be obtained and translated, if necessary, into reasonably usable form through detection devices.

6. “Food” means: (a) articles used for food or drink for man or other animals; (b) chewing gum; and (c) articles used for components of any such article.

7. “Individual Defendant” means Boris Mizhen.

8. “Negative Option Feature” means, in an offer or agreement to sell or provide any product, program, or service, a provision under which the consumer’s silence or failure to take an affirmative action to reject products or services, or to cancel the agreement, is interpreted by the seller or provider as acceptance of the offer.

9. “Plaintiffs” means the Federal Trade Commission (“Commission” or “FTC”) and the State of Connecticut (“State”).

10. “Preauthorized Electronic Fund Transfer,” as defined by the Electronic Fund Transfer Act, 15 U.S.C. § 1693a(9), means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

11. “Receivership Defendants” means LeanSpa, LLC, NutraSlim, LLC, and NutraSlim U.K. Ltd., and their subsidiaries, affiliates, divisions, successors, and assigns, and includes fictitious names under which they do business.

12. “Temporary Receiver” means the Temporary Receiver appointed in Section X of this Order. The term “Temporary Receiver” also includes any deputy receivers or agents as may be named by the Temporary Receiver.

I.

PROHIBITION ON NEGATIVE OPTIONS

IT IS THEREFORE ORDERED that Defendants, whether acting directly or through any corporation, partnership, subsidiary, division, affiliate, or other entity or device, are hereby preliminarily restrained and enjoined from engaging in, or assisting others engaged in, the advertising, marketing, promoting, offering for sale, or sale of any product, program, or service with a Negative Option Feature.

II.

PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHERED ORDERED that, in connection with the advertising, marketing, promotion, offering for sale, or sale of any products or services, Defendants, whether acting directly or through any corporation, partnership, subsidiary, division, affiliate, or other entity or device, and their officers, agents, servants, employees, attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby preliminarily restrained and enjoined from:

A. Misrepresenting, or assisting others in misrepresenting, directly or by implication, any material fact, including, but not limited to, that:

- 1. There is no cost for a trial of Defendants' products or that the trial is free or risk-free and that Defendants will not charge consumers anything other than a nominal fee;**
- 2. Defendants will provide full refunds to all consumers who request them;**

3. Objective news reporters have performed independent tests demonstrating the effectiveness of Defendants' products; and
4. Consumers have endorsed Defendants' products.

B. Failing to disclose, or disclose adequately, material terms, contingencies, limitations, or conditions of any offer of product or service, including, but not limited to, that:

1. Consumers who sign up to receive a trial supply of one of Defendants' products are charged for the trial supply of the product if they do not return it to the Defendants within a certain time period;
2. Consumers who sign up for a trial supply of one of Defendants' products must obtain a return merchandise authorization number from Defendants before returning the products to Defendants; and
3. Consumers who sign up for a trial supply of one of Defendants' products will incur additional costs in returning the product, including, but not limited to, paying for cancellation fees or return shipping;

C. Charging, causing to be charged, or assisting others in charging any consumer's credit card, or debiting, causing to be debited, or assisting others in debiting any consumer's bank account without the consumer's express informed consent for such charge or debit;

D. Charging, causing to be charged, or assisting others in charging any consumer's credit card, or debiting, causing to be debited, or assisting others in debiting any consumer's bank account for any post trial offer fee or charge, prior to the expiration date of the trial offer;

E. Commencing any trial period before the date a consumer actually receives, or the Defendants reasonably expect, a consumer to receive a trial product;

F. Making, or assisting others in making, directly or by implication, including through the use of a product name, endorsement, depiction, or illustration about the health or fitness benefits of any Dietary Supplement, Food, or Drug, including, but not limited to, representations regarding weight loss or muscle gain; unless the representation is non-misleading, and, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this section, competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results; and

G. Misrepresenting, or assisting others in misrepresenting, directly or by implication, including through the use of a product name, endorsement,

depiction, or illustration, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research concerning any Dietary Supplement, Food, or Drug.

III.

**ACTIVITIES PROHIBITED PURSUANT TO
THE ELECTRONIC FUNDS TRANSFER ACT**

IT IS FURTHER ORDERED that Defendants, whether acting directly or through any corporation, partnership, subsidiary, division, affiliate, or other entity or device, and their officers, agents, servants, employees, attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby preliminarily restrained and enjoined from:

A. Failing to obtain written authorization for Preauthorized Electronic Fund Transfers from a consumer's account before initiating any Preauthorized Electronic Fund Transfer, as required by Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I; and

B. Failing to provide a copy of a valid written authorization to the consumer for Preauthorized Electronic Fund Transfers from a consumer's account, as required by Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), as more fully set out in Section

205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I.

IV.

CEASING COLLECTION ACTIVITY

IT IS FURTHER ORDERED that Defendants, whether acting directly or through any corporation, partnership, subsidiary, division, affiliate, or other entity or device, and their officers, agents, servants, employees, attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby preliminarily restrained and enjoined from:

A. Causing any withdrawal, assessment of a fee, or other payment to be made against any consumer account of the Receiver Defendants, or otherwise causing collection of, or attempts to collect, payment, directly or indirectly, from a consumer of the Receiver Defendants, for any product, program, or service offered or provided to consumers, where the purported authorization for such payment occurred prior to the effective date of this Order; and

B. Reporting or in any way communicating any delinquency or other derogatory or negative information relating to a consumer of the Receivership Defendants to any credit reporting agency.

V.

ASSET FREEZE

IT IS FURTHER ORDERED that Defendants, whether acting directly or through any corporation, partnership, subsidiary, division, affiliate, or other entity

or device, and their officers, agents, servants, employees, and attorneys, and those persons acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby preliminarily restrained and enjoined from directly or indirectly:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, gifting, conveying, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, consumer lists, or any other assets, or any interest therein, wherever located, including outside the United States, that are:

1. Owned or controlled, directly or indirectly, by any Defendant, in whole or in part, including, but not limited to, any assets held by, for, or in the name of any Defendant at any bank or savings or loan institution or credit or debit card processing agent, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, merchant account processor, or other financial institution, depository of any kind, or business entity;

2. Held for the benefit of any Defendant;

3. In the actual or constructive possession of any Defendant; or

4. Owned, controlled by, or in the actual or constructive possession of any corporation, partnership, limited liability company, or other entity directly or indirectly owned, managed, or controlled by any Defendant, or any other entity acting under a fictitious name owned by or controlled by any

Defendant, including, but not limited to, any assets held by, for, or subject to access by, any Defendant, at any bank or savings or loan institution or credit or debit card processing agent, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, merchant account processor, or other financial institution, or depository of any kind;

B. Opening or causing to be opened any safe deposit boxes titled, individually or jointly, in the name of any Defendant, or subject to access by any Defendant;

C. Cashing any checks or depositing any payments received from customers of the Receivership Defendants;

D. Incurring charges or cash advances on any credit card, debit card, or checking card issued in the name, singly or jointly, of any Defendant;

E. Obtaining a personal or secured loan encumbering the assets of any Defendant; and

F. Incurring liens or encumbrances on real property, personal property or other assets in the name, singly or jointly, of any Defendant.

The assets affected by this Section shall include both existing assets and assets acquired after the date this Order was entered.

HOWEVER, and not inconsistent with the foregoing, the Defendants, upon written notice to the Plaintiffs, may have up to \$15,000 released from the Wells Fargo Bank account ending in 4115 for the sole purpose of paying ordinary expenses in the regular course of business and reasonable living expenses. Upon written application by Defendants and good cause shown, the Court may

order the release of additional funds for reasonable living expenses.

This Section does not apply to the bank account at Wells Fargo Bank ending in 6276 in the name of Hi Life Interactive, LLC, based on Defendants' representation that the funds in the account do not relate to the operations at issue in this case. Defendants shall provide Plaintiffs' counsel monthly statements for this account. The Plaintiffs' agreement and the Court's approval of exempting this bank account from the asset freeze is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' representations that (1) the funds existing in this account and any funds subsequently deposited in this account are not derived from or otherwise relate to the Receivership Defendants' operations, and (2) that the funds deposited in this account are not derived from or otherwise relate to any business operation that violates the FTC Act, EFTA, and/or CUTPA. If, upon motion by the Plaintiffs, the Court finds evidence showing either representation is false, then the Court shall extend the asset freeze to this account.

Notwithstanding subsection (D) above, this Section also does not apply to the following credit cards: (1) American Express Centurion card (ending in XX3009); (2) American Express Platinum card (ending in XX1003); and (3) Bank of America Visa card (ending in XX2021). Provided, however, that any charges incurred on these credit cards may only be paid from funds or accounts not covered by the asset freeze set forth in this Section. Nothing herein shall be construed as an understanding or agreement that any funds or accounts covered by the asset freeze set forth in this Section will be used to pay for charges

incurred on these credit cards. Individual Defendant shall provide Plaintiffs' counsel monthly statements for these credit card accounts. The Plaintiffs' agreement and the Court's approval of exempting these credit cards from the asset freeze is expressly premised upon the truthfulness, accuracy, and completeness of Individual Defendant's representations that (1) these credit cards will not be used for charges relating to the operations at issue in this case or to the Receivership Defendants' operations, (2) that these credit cards will not be used for charges relating to any business operation that violates the FTC Act, EFTA, and/or CUTPA, and (3) that no proceeds from the Receivership Defendants' operations will be used to pay for the charges on these credit cards. If, upon motion by the Plaintiffs, the Court finds evidence showing either representation is false, then the Court shall extend the asset freeze to these credit cards.

This Section does not prohibit transfers to the Temporary Receiver, as specifically required in Section XIII (Delivery of Receivership Property), nor does it prohibit the repatriation of foreign assets, as specifically required in Section VIII (Repatriation of Foreign Assets) of this Order.

VI.

FINANCIAL REPORTS

IT IS FURTHER ORDERED that the Individual Defendant shall, if he has not already done so, within five (5) business days after service of this Order, prepare and deliver to counsel for the Plaintiffs and the Temporary Receiver:

A. Completed financial statements on the forms attached to this Order as Attachment A ("Financial Statement for Individual Defendant") for himself

individually, and Attachment B (“Financial Statement for Corporate Defendant”) for each business entity (whether or not incorporated) under which the Individual Defendant conducts business or which the Individual Defendant is an owner, officer, or that he controls directly or indirectly. The financial statements shall be accurate as of the date of entry of this Order and signed under penalty of perjury; and

B. All federal income tax returns filed by each Defendant since January 1, 2010.

VII.

RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS AND THIRD PARTIES

IT IS FURTHER ORDERED that any financial or brokerage institution, merchant bank, credit or debit card processing company, payment processing company, escrow agent, trust, entity, or person that: (1) holds, controls, or maintains custody of any account or asset owned or controlled by any Defendant; (2) holds, controls, or maintains custody of any account or asset titled in the name of any Defendant, either individually or jointly, or held for the benefit or any Defendant; (3) holds, controls, or maintains custody of any account or asset associated with credit or debit card charges, electronic fund transfers, or remotely created checks made by, or on behalf of, any Defendant or any other entity owned or controlled by any Defendant; or (4) has held, controlled, or maintained any account or asset of, or on behalf of, any Defendant at any time since January 1, 2010, upon service with a copy of this Order, shall:

A. Prohibit Defendants or any other person or entity with control over such assets from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, gifting, or otherwise disposing of any such assets, funds, or other property, except:

- 1. As directed by further order of the Court; or**
- 2. As directed in writing by the Temporary Receiver (regarding assets held in the name or for the benefit of Receivership Defendants).**

B. Deny the Defendants access to any safe deposit box titled in the name of any Defendant, individually or jointly, or subject to access by any Defendant, whether directly or indirectly.

C. Provide counsel for the Plaintiffs and the Temporary Receiver, within five (5) business days after being served with a copy of this Order, if they have not already done so, a certified statement setting forth:

- 1. The identification number of each such account or asset titled:
(1) in the name, individually or jointly, of any Defendant; (2) held on behalf of, or for the benefit of, any Defendant; (3) owned or controlled by any Defendant; or (4) otherwise subject to access by any Defendant, directly or indirectly;**
- 2. The balance of each such account, or a description of the nature and value of such asset, as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or**

removed, the balance or value removed order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and

3. The identification of any safe deposit box that is either titled in the name of any Defendant, or is otherwise subject to access by any Defendant.

D. Provide counsel for the Plaintiffs and the Temporary Receiver, within five (5) business days after being served with a request, if they have not already done so, copies of all documents pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; provided that such institution or custodian may charge a reasonable fee.

VIII.

REPATRIATION OF FOREIGN ASSETS

IT IS FURTHER ORDERED that, within five (5) business days following the service of this Order, each Defendant, if not done so already, shall:

A. Provide counsel for the Plaintiffs and the Temporary Receiver with a full accounting of all funds and assets outside of the territory of the United States which are held either: (1) by Defendant(s); (2) for the benefit of any Defendant(s); or (3) under direct or indirect control, individually or jointly, of any Defendant(s);

B. Transfer to the territory of the United States all such funds and assets in foreign countries;

C. Sign and deliver to counsel for the Plaintiffs and the Temporary Receiver the Consent to Release of Financial Records attached to this Order as Attachment C; and

D. Hold and retain all repatriated funds and assets, and prevent any disposition, transfer, or dissipation whatsoever of any such assets or funds, except as required by this Order.

IX.

NON-INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendants, whether acting directly or through any corporation, partnership, subsidiary, division, affiliate, or other entity or device, and their officers, agents, servants, employees, and attorneys, and those persons acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby preliminarily restrained and enjoined from taking any action, directly or indirectly, that may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by Section VIII of this Order, including but not limited to:

A. Sending any statement, letter, fax, e-mail, or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a “duress” event has

occurred under the terms of a foreign trust agreement, until such time that all assets have been fully repatriated pursuant to Section VII of this Order; and

B. Notifying any trustee, protector, or other agent of any foreign trust or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a Court Order, until such time that all assets have been fully repatriated pursuant to Section VIII of this Order.

X.

APPOINTMENT OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Matthew K. Beatman, Esquire is appointed Temporary Receiver for the Receivership Defendants, and any affiliates or subsidiaries thereof controlled by any Receivership Defendant, with the full power of an equity Receiver. The Temporary Receiver shall be the agent of this Court and solely the agent of this Court in acting as Temporary Receiver under this Order. The Temporary Receiver shall be accountable directly to this Court. The Temporary Receiver shall comply with all local rules and laws governing federal equity receivers.

XI.

COOPERATION WITH THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Defendants shall fully cooperate with and assist the Temporary Receiver. Defendants' cooperation and assistance shall include, but not be limited to, providing any non-privileged information to the Temporary Receiver that the Temporary Receiver deems necessary to exercise the authority and discharge the responsibilities of the Temporary Receiver under

this Order; providing any login and password required to access any computer or electronic files or information in any medium; and advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the Temporary Receiver. Provided, however, that Defendants shall submit to the Temporary Receiver and Plaintiffs a privilege log in accord with Local Rule of Civil Procedure 26(e). Defendants are hereby preliminarily restrained and enjoined from directly or indirectly:

- A. Transacting any of the business of the Receivership Defendants;**
- B. Excusing debts owed to the Receivership Defendants;**
- C. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of the Receivership Defendants;**
- D. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendants, or the Temporary Receiver;**
- E. Failing to notify the Temporary Receiver of any asset, including accounts, of the Receivership Defendants held in any name other than the name of the Receivership Defendants, or by any person or entity other than the Receivership Defendants, or failing to provide any assistance or information requested by the Temporary Receiver in connection with obtaining possession, custody, or control of such assets; or**
- F. Doing any act or thing whatsoever to interfere with the Temporary Receiver's taking and keeping custody, control, possession, or managing of the**

assets or documents subject to this receivership; or to harass or interfere with the Temporary Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants; or to refuse to cooperate with the Temporary Receiver or the Temporary Receiver's duly authorized agents in the exercise of their duties or authority under any Order of this Court.

This Section does not prohibit transfers to the Temporary Receiver, as specifically required in Section XIII (Delivery of Receivership Property), nor does it prohibit the Repatriation of Foreign Assets, as specifically required in Section VIII (Repatriation of Foreign Assets) of this Order.

XII.

DUTIES AND AUTHORITY OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that the Temporary Receiver is directed and authorized to accomplish the following:

A. Assume full control of the Receivership Defendants by removing, as the Temporary Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of the Receivership Defendants, including Defendant Boris Mizhen, from control of, management of, or participation in, the affairs of the Receivership Defendants;

B. Take exclusive custody, control, and possession of all assets and documents of, or in the possession, custody, or under the control of, the Receivership Defendants, wherever situated. The Temporary Receiver shall have full power to collect, divert, and open mail and to sue for, collect, receive, take

possession of, hold, and manage all assets and documents of the Receivership Defendants and other persons or entities whose interests are now held by or under the direction, possession, custody, or control of the Receivership Defendants;

C. Take all steps necessary to secure the assets and business premises of the Receivership Defendants, which may include, but are not limited to, taking the following steps as the Temporary Receiver deems necessary or advisable: (1) serving and filing this Order; (2) completing a written inventory of all receivership assets; (3) obtaining pertinent information from all employees and other agents of the Receivership Defendants, including, but not limited to, the name, home address, social security number, job description, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) video-recording all portions of the location; (5) in cooperation with the Plaintiffs' forensic contractors, disconnecting any computer networks related to the Receivership Defendants or other means of access to electronically stored information or other non-privileged documents maintained at that location (provided, however, that the Receivership Defendants shall submit to the Temporary Receiver and Plaintiffs a privilege log in accord with Local Rule of Civil Procedure 26(e)); or (6) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Temporary Receiver with proof of identification, and/or to demonstrate to the satisfaction of the Temporary Receiver that such persons are not removing from the premises documents or assets of the Receivership Defendants. Such authority shall

include, but not be limited to, the authority to order any owner, director, or officer of any Receivership Defendants to leave the business premises. Law enforcement personnel, including, but not limited to, the local police may assist the Temporary Receiver in implementing this Order to keep the peace and maintain security to facilitate the implementation of this Order;

D. Conserve, hold, and manage all receivership assets, and perform all acts necessary or advisable to preserve the value of those assets, in order to prevent any irreparable loss, damage, or injury to consumers, including, but not limited to, obtaining an accounting of the assets and preventing the transfer, withdrawal, or misapplication of assets, and including the authority to liquidate or close out any open securities or commodity futures positions of the Receivership Defendants;

E. Enter into contracts and purchase insurance as advisable or necessary;

F. Prevent the inequitable distribution of assets and determine, adjust, and protect the interests of consumers and creditors who have transacted business with one or more Receivership Defendants;

G. Manage and administer the business of the Receivership Defendants until further order of this Court by performing all incidental acts that the Temporary Receiver deems to be advisable or necessary, which includes retaining, hiring, or dismissing any employees, independent contractors, or agents;

H. Choose, engage, and employ attorneys, accountants, appraisers, investigators, and other independent contractors and technical specialists, as the Temporary Receiver deems advisable or necessary in the performance of duties and responsibilities;

I. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Temporary Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendants prior to the date of entry of this Order, except payments that the Temporary Receiver deems necessary or advisable to secure assets of the Receivership Defendants, such as rental payments;

J. Collect any money due or owing to the Receivership Defendants. Provided, however, that the Temporary Receiver shall not attempt to collect any amount from a consumer or to allow any Receivership Defendant to continue to debit or otherwise charge a consumer's account, if the Temporary Receiver believes the consumer was a victim of the deceptive acts or practices alleged in the Complaint;

K. Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts that the Temporary Receiver deems necessary and advisable to preserve or recover the assets of the Receivership Defendants or to carry out the Temporary Receiver's mandate under this Order;

L. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted against the Receivership Defendants or the Temporary Receiver that the Temporary Receiver deems necessary and advisable to preserve the assets of the Receivership Defendants or to carry out the Temporary Receiver's mandate under this Order;

M. Continue and conduct the businesses of the Receivership Defendants in such manner, to such extent, and for such duration as the Temporary Receiver may in good faith deem to be necessary or appropriate to operate the businesses profitably, using the assets of the receivership estate, and lawfully, if at all;

N. Take depositions and issue subpoenas to obtain documents and records pertaining to the receivership and compliance with this Order. Subpoenas may be served by agents or attorneys of the Temporary Receiver and by agents of any process server retained by the Temporary Receiver;

O. Open one or more bank accounts as designated depositories for funds of the Receivership Defendants. The Temporary Receiver shall deposit all funds of the Receivership Defendants in such a designated account and shall make all payments and disbursements from the receivership estate from such an account;

P. Maintain accurate records of all receipts and expenditures made by the Temporary Receiver; and

Q. File reports with the Court on a timely and reasonable basis.

XIII.

DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that immediately upon service of this Order upon them, the Defendants, including the Receivership Defendants, shall forthwith or within such time as permitted by the Temporary Receiver in writing, deliver to the Temporary Receiver possession and custody of:

A. All funds, assets, and property of the Receivership Defendants, whether situated within or outside the territory of the United States, that are: (1) held by the Receivership Defendants, (2) held for the benefit of the Receivership Defendants, or (3) under the direct or indirect control, individually or jointly, of the Receivership Defendants;

B. All non-privileged documents of the Receivership Defendants, including but not limited to all books and records of assets including funds and property, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, records of ACH transactions, and check registers), corporate minutes, contracts, customer and consumer lists, title documents, and electronic records (provided, however, that the Receivership Defendants shall submit to the Temporary Receiver and Plaintiffs a privilege log in accord with Local Rule of Civil Procedure 26(e));

C. All funds and other assets belonging to members of the public now held by the Receivership Defendants;

D. All keys, computer and other passwords, entry codes, combinations to locks required to open or gain access to any of the property or effects of the Receivership Defendants, and all monies in any bank deposited to the credit of the Receivership Defendants, wherever situated; and

E. Information identifying the accounts, employees, properties, or other assets or obligations of the Receivership Defendants.

XIV.

TRANSFER OF FUNDS TO THE TEMPORARY RECEIVER BY FINANCIAL INSTITUTIONS AND OTHER THIRD PARTIES

IT IS FURTHER ORDERED that, upon service of a copy of this Order, any financial or brokerage institution or depository, escrow agent, title company, commodity trading company, payment processing company, or trust shall cooperate with all reasonable requests of counsel for the Plaintiffs and the Temporary Receiver relating to implementation of this Order, including transferring funds at the Temporary Receiver's direction and producing records related to the assets and sales of the Receivership Defendants.

XV.

TEMPORARY RECEIVER'S REPORTS

IT IS FURTHER ORDERED that the Temporary Receiver shall report to this Court sixty (60) days after entry of this Order, regarding: (1) the steps taken by the Temporary Receiver to implement the terms of this Order; (2) the value of all liquidated and unliquidated assets of the Receivership Defendants; (3) the sum of all liabilities of the Receivership Defendants; (4) the steps the Temporary Receiver intends to take in the future to: (a) prevent any diminution in the value of

assets of the Receivership Defendants; (b) pursue receivership assets from third parties; and (c) adjust the liabilities of the Receivership Defendants, if appropriate; and (5) any other matters which the Temporary Receiver believes should be brought to the Court's attention. *Provided*, however, if any of the required information would hinder the Temporary Receiver's ability to pursue receivership assets, the portions of the Temporary Receiver's report containing such information may be filed under seal and not served on the parties.

XVI.

TEMPORARY RECEIVER'S BOND

IT IS FURTHER ORDERED that the Temporary Receiver shall file with the Clerk of this Court a bond in the sum of \$10,000.00 with sureties to be approved by the Court, conditioned that the Temporary Receiver will truly perform the duties of the office and abide by and perform all acts the Court directs.

XVII.

COMPENSATION OF THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that the Temporary Receiver, and all persons or entities retained or hired by the Temporary Receiver as authorized under this Order, shall be entitled to reasonable compensation for the performance of duties undertaken pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them from the assets now held by or in the possession or control of, or which may be received by, the Receivership Defendants. The Temporary Receiver shall file with the Court and serve on the parties a request for the payment of reasonable compensation at the time of the filing of any report

required by Section XV. The Temporary Receiver shall not increase the fees or rates used as the bases for such fee applications without prior approval of the Court.

XVIII.

WITHDRAWAL OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that the Temporary Receiver and any professional retained by the Temporary Receiver, including, but not limited to, his or her attorneys and accountants, be and are hereby authorized to withdraw from their respective appointments or representations at any time after the date of this Order, for any reason in their sole and absolute discretion, by sending written notice seven (7) days prior to the date the Temporary Receiver intends to withdraw to the Court and to the parties; and such Temporary Receiver and professionals shall be relieved of all liabilities and responsibilities seven (7) days from the date of such notice or withdrawal. The written notice shall include an interim report indicating the Temporary Receiver's actions and reflect its knowledge gained. The report shall also contain the Temporary Receiver's recommendations, if any.

XIX.

ACCESS TO BUSINESS PREMISES AND RECORDS

IT IS FURTHER ORDERED that the Plaintiffs and the Temporary Receiver, and their representatives, agents, and assistants, shall have immediate access to all business premises and storage facilities, owned, controlled, or used by the Receivership Defendants, including, but not limited to, the offices and facilities of

the Receivership Defendants at 420 East Main Street, Branford, Connecticut, 06405 and any commercial mail boxes, used by the Receivership Defendants.

The Plaintiffs and the Temporary Receiver are authorized to employ the assistance of law enforcement officers as they deem necessary to effect service and peacefully implement this Order. The Plaintiffs and the Temporary Receiver may exclude Defendants and Defendants' employees from the business premises during the immediate access. The purpose of the immediate access shall be to effect service and to secure, inspect and copy documents and electronic data, including but not limited to, correspondence, emails, financial data, and other documents concerning Receivership Defendants' business practices and assets.

A. The Plaintiffs and the Temporary Receiver and their representatives, agents, and assistants, shall have the right to remove non-privileged documents from the above-listed premises in order that they may be inspected, inventoried, and copied and/or secured.

B. The Plaintiffs shall return any removed documents to the Temporary Receiver within five (5) business days, or such time as is agreed upon by the Plaintiffs and the Temporary Receiver.

C. Defendants and all employees or agents of Receivership Defendants shall provide the Plaintiffs and the Temporary Receiver with any necessary means of access to documents and records, including, without limitation, the locations of Receivership Defendants' business premises, keys and combinations to locks, computer access codes, and storage area access information.

D. If any documents, records, property, computers or other electronic data storage devices containing information related to the business practices or finances of the Receivership Defendants are at a location other than those listed herein, including but not limited to, the personal residences of the Defendants, then immediately upon service of this Order upon them, Defendants shall produce to the Temporary Receiver within 24 hours all such documents, records, property, computers or other electronic data storage devices. In order to prevent the destruction of electronic data, upon service of this Order upon Defendants, any computers or other electronic data storage devices containing such information shall be powered down (turned off) in the normal course for the operating systems used on such devices and shall not be used until produced for copying and inspection, along with any codes needed for access.

E. Within forty-eight (48) hours of service of this Order, each Defendant shall produce to the Temporary Receiver a list of all agents, employees, officers, servants, accountants, financial advisors, and those persons in active concert and participation with them, who have been associated or done business with the Receivership Defendants. The list shall include name, address, email, and the most recent contact information.

XX.

DEFENDANTS' ACCESS TO BUSINESS PREMISES AND RECORDS

IT IS FURTHER ORDERED that the Temporary Receiver shall allow the Defendants and their representatives reasonable access to the premises of the Receivership Defendants. The purpose of this access shall be to inspect,

inventory, and copy any documents and other property owned by, or in the possession of, the Receivership Defendants, provided that those documents and property are not removed from the premises without the permission of the Temporary Receiver. The Temporary Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access, provided that the Temporary Receiver and his representatives shall not interfere with the Individual Defendant's business operations unrelated to the Receivership Defendants.

XXI.

PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants, whether acting directly or through any corporation, partnership, subsidiary, division, affiliate, or other entity or device, and their officers, agents, servants, employers, and attorneys, and those persons acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby preliminarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or finances of any Defendant, including, but not limited to, any contracts, accounting data, correspondence, advertisements, computer tapes, disks or other computerized records, books, written or printed records, handwritten notes, recordings, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements,

appointment books, and copies of federal, state, or local business or personal income or property tax returns.

XXII.

PROHIBITION ON USE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, whether acting directly or through any corporation, partnership, subsidiary, division, affiliate, or other entity or device, and their officers, agents, servants, employees, and attorneys, and those persons acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby preliminarily restrained and enjoined from using, benefitting from, selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, email address, social security number, credit card number, debit card number, bank account number, any financial account number, or any data that enables access to a customer's account, or other identifying information of any person which any Defendant obtained prior to entry of this Order in connection with the marketing or sale of any good or service, including those who were contacted or are on a list to be contacted by any of the Defendants; *provided* that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

XXIII.

CREDIT REPORTS

IT IS FURTHER ORDERED that the Plaintiffs and/or the Temporary Receiver may obtain credit reports concerning any of the Defendants pursuant to Section

604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit reporting agency from which such reports are requested shall provide them to Plaintiffs.

XXIV.

NOTIFICATION OF BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that the Individual Defendant is hereby preliminarily restrained and enjoined from directly or indirectly creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first serving on counsel for the Plaintiffs and Temporary Receiver a written statement disclosing the following:

- 1. The name of the business entity;**
- 2. The address and telephone number of the business entity;**
- 3. The names of the business entity's officers, directors, principals, managers and employees; and**
- 4. A detailed description of the business entity's intended or actual activities.**

XXV.

STAY OF ACTIONS AND BANKRUPTCY PETITIONS

IT IS FURTHER ORDERED that:

A. Except by leave of this Court, during the pendency of the Temporary Receivership ordered herein, the Receivership Defendants and all customers, principals, investors, creditors, stockholders, lessors, and other persons seeking

to establish or enforce any claim, right, or interest against or on behalf of the Receivership Defendants, and all others acting for or on behalf of such persons, including attorneys, trustees, agents, sheriffs, constables, marshals, and other officers and their deputies, and their respective attorneys, servants, agents, and employees, are hereby stayed from:

1. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;
2. Accelerating the due date of any obligation or claimed obligation; filing or enforcing any lien; taking or attempting to take possession, custody, or control of any asset; attempting to foreclose, forfeit, alter, or terminate any interest in any asset, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;
3. Executing, issuing, serving, or causing the execution, issuance or service of, any legal process, including, but not limited to, attachments, garnishments, subpoenas, writs of replevin, writs of execution, or any other form of process, whether specified in this Order or not; or
4. Doing any act or thing whatsoever to interfere with the Temporary Receiver's taking custody, control, possession, or management of the assets or documents subject to this receivership; or to harass or interfere with the Temporary

Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants.

B. This Section does not stay:

1. The commencement or continuation of a criminal action or proceeding;
2. The commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;
3. The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; or
4. The issuance to the Receivership Defendant of a notice of tax deficiency.

C. Plaintiffs are authorized to file the "Notice of Stay" attached to this Order as Attachment D in all currently pending actions, including (1) *First Bank of Delaware v. LeanSpa, LLC, et al.*, No. 1:11-cv-00675-UNA (D. Del.), and (2) *LeadClick Media, Inc. v. LeanSpa, LLC et al.*, 4:11-cv-04423-DMR (N.D. Ca.), and in all actions that have been filed or may be filed in the future.

IT IS FURTHER ORDERED, that, in light of the appointment of the Temporary Receiver, the Receivership Defendants are hereby prohibited from

filing petitions for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., without prior permission from this Court.

XXVI.

SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission or email, by employees or agents of the Plaintiffs or the Temporary Receiver, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of Defendants, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

XXVII.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to their agents, servants, employees, consultants, and any affiliated businesses, and other persons and entities subject in any part to their direct or indirect control. Within five (5) business days of receipt of this Order, Defendants must submit to counsel for the Plaintiffs and Temporary Receiver a truthful sworn statement identifying those persons and entities to whom this Order has been distributed.

XXVIII.

CORRESPONDENCE

IT IS FURTHER ORDERED that, for the purposes of this Order, all correspondence and service of pleadings on the Plaintiffs shall be addressed to:

**David W. Dulabon
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, NY 10004
Phone: (212) 607-2829
Facsimile: (212) 607-2832
Email: ddulabon@ftc.gov**

**Matthew Fitzsimmons
Office of the Attorney General
110 Sherman Street
Hartford CT 06105
Phone: (860)808-5400
Facsimile (860) 808-5593
Email: Matthew.Fitzsimmons@ct.gov**

XXIX.

EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that, notwithstanding the provisions of Federal Rules of Civil Procedure 26(d) and (f) and 30(a)(2)(C), and pursuant to Federal Rules of Civil Procedure 30(a), 34, and 45, the Plaintiffs are granted leave, at any time after service of this Order, to conduct limited discovery for the purpose of discovering the (1) nature, location, status, and extent of Defendants' assets; (2) nature and location of documents reflecting the business transactions of Defendants; and (3) Defendants' compliance with this Order. Counsel for the Plaintiffs may proceed as follows:

A. Take the deposition of any person or entity, on at least three (3) calendar days notice. Depositions may be taken Monday through Saturday and may be taken by telephone or other electronic means;

B. Serve upon any Defendant requests for production of documents or inspection that require production or inspection within five (5) business days of service; and may serve subpoenas upon non-parties that direct production or inspection within five (5) business days of service; and

C. Any discovery taken pursuant to this Order is in addition to, and is not subject to, the presumptive limits on discovery set forth in the Federal Rules of Civil Procedure and Local Rules of this Court. If a Defendant fails to appear for a properly noticed deposition or fails to comply with a request for production or inspection, the Defendants may be prohibited from introducing evidence at the hearing on the Plaintiffs' request for a preliminary injunction. Deposition transcripts that have not been signed may be used for the purpose of the hearing on the Order to Show Cause Why a Preliminary Injunction Should Not Issue.

XXX.

DURATION OF THE PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED that, the Preliminary Injunction granted herein shall continue until a final judgment and order is issued in this matter.

XXXI.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that, within five (5) business days of receipt of this Order as entered by the Court, Defendants or their attorney must submit to

counsel for Plaintiffs a truthful sworn statement acknowledging receipt of this order.

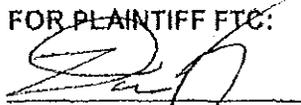
XXXIII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that the Court shall continue to retain jurisdiction of this matter for all purposes.

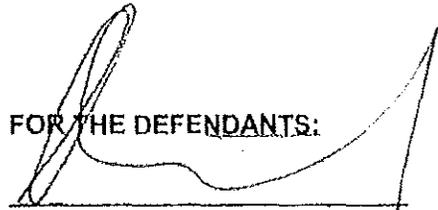
STIPULATED AND AGREED TO BY:

FOR PLAINTIFF FTC:



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David W. Dulabon, Esq.
Federal Trade Commission
One Bowling Green, Suite 318
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Tel (212) 607-2829
Fax (212) 607-2822
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ddulabon@ftc.gov

FOR THE DEFENDANTS:



Boris Mizhen
individually and as an officer
of LeanSpa, LLC,
NutraSlim, LLC, and
NutraSlim U.K. Ltd., also d/b/a
LeanSpa U.K. Ltd.

FOR PLAINTIFF STATE OF CONNECTICUT:



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