DISSENTING STATEMENT OF COMMISSIONER ORSON SWINDLE
in *United States v. Michael Levey, et al.*, File No. X030070 and Docket No. C-3459

I dissent from acceptance of the settlement in this case because the amount of monetary relief is woefully inadequate. The settlement resolves allegations that Michael Levey, Gary Ballen, and their two companies made false and unsubstantiated claims about their dietary supplement products in violation of Section 5 of the Federal Trade Commission Act. The Commission also charged Levey with violating a 1993 FTC order that prohibited the same types of deceptive practices that are at issue in the present case. Because Michael Levey passed away last year, the settlement is with his wife as personal representative of Levey's estate, as well as with the corporations and Gary Ballen. The settlement contains appropriate injunctive relief and requires the defendants to pay $2.2 million.

Although $2.2 million is a sizeable amount of money, this payment is minuscule in comparison to the amount of the defendants' gross sales and consumer harm. In addition, the Levey family and Gary Ballen are both left with substantial assets. Although anyone can feel compassion for the Levey family given Michael Levey's death, this should not justify allowing the family to keep money that rightfully belongs to consumers who were deceived by the defendants' false health claims. Any settlement that leaves defendants or their families with substantial ill-gotten wealth not only sets a bad precedent but also shows, in a manner of speaking, that "crime does pay."