Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Marc Ching, Docket No. 09394

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order with Marc Ching, individually and doing business as Whole Leaf Organics ("respondent").

The proposed consent order ("order") has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the order and the comments received, and will decide whether it should withdraw the order or make it final.

This matter involves the respondent's advertising for Thrive, CBD-EX, CBD-RX, and CBD-Max. The complaint alleges that respondent violated Sections 5(a) and 12 of the FTC Act by disseminating false and unsubstantiated advertisements claiming that: (1) Thrive treats, prevents, or reduces the risk of COVID-19; (2) CBD-EX, CBD, RX, and CBD-Max treat cancer; (3) Thrive is clinically or scientifically proven to treat, prevent, or reduce the risk of COVID-19; and (4) CBD-EX, CBD, RX, and CBD-Max are clinically or scientifically proven to treat cancer.

The order includes injunctive relief that prohibits these alleged violations and fences in similar and related conduct. The product coverage would apply to any dietary supplement, drug, or food the respondent sells, markets, promotes, or advertises.

Part I prohibits respondent from making any representation about the efficacy of any covered product, including that such product will: (1) treat, prevent or reduce the risk of COVID-19; (2) treat cancer; or (3) cure, mitigate or treat any disease in humans, unless the representation is non-misleading, including that, at the time such representation is made, he possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of this Provision, "competent and reliable scientific evidence" means human clinical testing of the covered product or of an essentially equivalent product that is sufficient in quality and quantity, based on standards generally accepted by experts in the relevant disease, condition, or function to which the representation relates, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

Part II prohibits respondent from making any representation, other than representations covered under the Provision titled Prohibited Disease Claims, expressly or by implication, about the health benefits, performance, or efficacy of any covered product, unless the representation is non-misleading, including that, at the time such representation is made, he possesses and relies upon competent and reliable scientific evidence that is sufficient in

quality and quantity based on standards generally accepted by experts in the relevant disease, condition, or function to which the representation relates, 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 Provision, "competent and reliable scientific evidence" means tests, analyses, research, or studies that (1) have been conducted and evaluated in an objective manner by experts in the relevant disease, condition, or function to which the representation relates; (2) that are generally accepted by such experts to yield accurate and reliable results; and (3) that are randomized, double-blind, and placebo-controlled human clinical testing of the covered product, or of an essentially equivalent product, when such experts would generally require such human clinical testing to substantiate that the representation is true.

Part III requires that with regard to any human clinical test or study ("test") upon which the respondent relies to substantiate any claim covered by the order, the respondent must secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of a test.

Part IV prohibits respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or other research or that any benefit of any covered product is scientifically or clinically proven.

Part V provides respondent a safe harbor for making claims approved by the Food and Drug Administration ("FDA").

Part VI requires respondent to send notices to consumers who purchased Thrive, CBD-EX, CBD-RX, and CBD-Max informing them about the settlement. **Part VII** requires respondent to send notices to resellers and retailers informing them about the settlement.

Parts VIII requires respondent to submit an acknowledgement of receipt of the order, to serve the order on certain individuals, including all officers or directors of any business respondent controls and employees having managerial responsibilities for conduct related to the subject matter of the order, and to obtain acknowledgements from each individual or entity to which respondent has delivered a copy of the order.

Part IX requires respondent to file compliance reports with the Commission, and to notify the Commission of bankruptcy filings or changes in corporate structure that might affect compliance obligations. **Part X** contains recordkeeping requirements for accounting records, personnel records, consumer correspondence, advertising and marketing materials, and claim substantiation, as well as all records necessary to demonstrate compliance or non-compliance with the order. **Part XI** contains other requirements related to the Commission's monitoring of the respondent's order compliance. **Part XII** provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the order, and it is not

intended to constitute an official interpretation of the complaint or order, or to modify the order's terms in any way.