

1 WILLIAM E. KOVACIC
General Counsel
2
3 JAMES R. GOLDER
JUDITH A. SHEPHERD
THOMAS B. CARTER
4 Federal Trade Commission
1999 Bryan Street, Suite 2150
5 Dallas, TX 75201-6803
214-979-9376 (Golder)
6 214-979-9383 (Shepherd)
214-979-9372 (Carter)
7 214-953-3079 (facsimile)

8 Local Counsel:
JOHN K. VINCENT
9 United States Attorney
10 Edmund F. Brennan
Assistant United States Attorney
11 501 "I" Street, Suite 10-100
Sacramento, CA 95814-2322
12 916-554-2700
916-554-2900 (facsimile)

13 Attorneys for Plaintiff
14

15 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
16

17 FEDERAL TRADE COMMISSION,)
18)
Plaintiff,)

19)
20 v.)

21 WESTERN BOTANICALS, INC.,)
a corporation, and)
22)
23 RANDY C. GIBONEY and)
KYLE D. CHRISTENSEN,)
individually and as officers of the)
24 corporation,)

25 Defendants.)
26)

Civil Action No.

Stipulated Final Order for Permanent
Injunction and Settlement of Claims
for Monetary Relief

27 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed a Complaint
28 for permanent injunction and other relief against Western Botanicals, Inc., Randy C. Giboney,

1 and Kyle D. Christensen, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC
2 Act"), 15 U.S.C. § 53(b).

3 The Commission and Defendants, without Defendants admitting liability for any of the
4 violations alleged in the Complaint, have stipulated to the entry of the following Stipulated Final
5 Order for Permanent Injunction and Settlement of Claims for Monetary Relief ("Order") in
6 settlement of the Commission's complaint against Defendants. The Court, being advised in the
7 premises, finds:

8 **FINDINGS**

9 1. This Court has jurisdiction over the subject matter of this case and jurisdiction
10 over all parties. Venue in the Eastern District of California is proper.

11 2. The Complaint states a claim upon which relief can be granted, and the
12 Commission has authority to seek the relief it has requested.

13 3. The activities of Defendants are in or affecting commerce, as defined in 15
14 U.S.C. § 44.

15 4. Defendants waive all rights to seek judicial review or otherwise challenge or
16 contest the validity of this Order. Defendants also waive any claim that they may have held
17 under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this
18 action to the date of this Order.

19 5. This action and the relief awarded herein are in addition to, and not in lieu of,
20 other remedies as may be provided by law.

21 6. Each party shall bear its own costs and attorneys' fees.

22 7. Entry of this Order is in the public interest.

23 **DEFINITIONS**

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

25 1. "Competent and reliable scientific evidence" shall mean tests, analyses, research,
26 studies, or other evidence based on the expertise of professionals in the relevant area, that have
27 been conducted and evaluated in an objective manner by persons qualified to do so, using
28 procedures generally accepted in the profession to yield accurate and reliable results.

1 2. “Defendants” means Western Botanicals, Inc., Randy C. Giboney, and Kyle D.
2 Christensen, and their successors, assigns, officers, agents, directors, servants, employees, and
3 those persons in active concert or participation with them who receive actual notice of this Order
4 by personal service or otherwise, whether acting directly or through any corporation, subsidiary,
5 division, or other device.

6 3. “Distributor” shall mean any purchaser or other transferee of any product covered
7 by this Order who acquires such product directly or indirectly from Defendants with or without
8 valuable consideration, and who sells, or who has sold, such product to other sellers or to
9 consumers, including but not limited to individuals, retail stores, or catalogs.

10 4. “Food” and “drug” shall mean “food” and “drug” as defined in Section 15 of the
11 FTC Act, 15 U.S.C. § 55(b)-(c).

12 5. “Comfrey product” shall mean any product consisting of, containing, or including
13 as an ingredient any of the following plants, any part of the following plants, or any extract or
14 derivative of the following plants: *Symphytum officinale* (also known as common comfrey),
15 *Symphytum asperum* (also known as prickly comfrey), or *Symphytum x uplandicum* (also known
16 as Russian comfrey).

17 6. “Clearly and prominently” shall mean as follows:

18 a. In an advertisement communicated through an electronic medium (such as
19 television, video, radio, and interactive media such as the Internet, online services, and
20 software), the disclosure shall be presented simultaneously in both the audio and visual
21 portions of the advertisement. Provided, however, that in any advertisement presented
22 solely through visual or audio means, the disclosure may be made through the same
23 means in which the ad is presented. Provided, further, that in any advertisement
24 communicated through interactive media which is presented predominantly through
25 visual or audio means, the disclosure may be made through the same means in which the
26 advertisement is predominantly presented. The audio disclosure shall be delivered in a
27 volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The
28 visual disclosure shall be of a size and shade, with a degree of contrast to the background

1 against which it appears, and shall appear on the screen for a duration and in a location
2 sufficiently noticeable for an ordinary consumer to read and comprehend it. In addition to
3 the foregoing, in interactive media, the disclosure shall also be unavoidable and shall be
4 presented prior to the consumer incurring any financial obligation.

5 b. In a print advertisement, promotional material, or instructional manual, the
6 disclosure shall be in a type size and location sufficiently noticeable for an ordinary
7 consumer to read and comprehend it, in print that contrasts with the background against
8 which it appears. In multi-page documents, the disclosure shall appear on the cover or
9 first page.

10 c. On a product label, the disclosure shall be in a type size and location
11 sufficiently noticeable for an ordinary consumer to read and comprehend it and in print
12 that contrasts with the background against which it appears. Provided, however, if a
13 disclosure on a bottle label or package label is made in a location other than the principal
14 display panel, the bottle label or package label shall include the statement, “See important
15 safety warning on [insert disclosure location]” as follows: (a) in a type size and location
16 on the principal display panel sufficiently noticeable for an ordinary consumer to read and
17 comprehend it; (b) in print that contrasts with the background against which it appears;
18 and (c) within a border that is a color or shade that contrasts with the background against
19 which it appears. Provided further, that in a multi-page insert, the disclosure shall appear
20 on the cover page or first page.

21 The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent
22 with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

23 7. A requirement that any Defendant communicate with the Commission shall mean
24 that the Defendant shall send the necessary information via first-class mail, costs prepaid, to the
25 Regional Director, Federal Trade Commission, Southwest Region, 1999 Bryan Street, Suite
26 2150, Dallas, TX 75201. Attn: FTC v. Western Botanicals, Inc., et al. (E.D. Cal.).

27 8. The term “including” in this Order shall mean “without limitation.”

28 9. The terms “and” and “or” in this Order shall be construed conjunctively or

1 disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than
2 exclusive.

3 I. CONDUCT PROHIBITIONS

4 A. **IT IS THEREFORE ORDERED** that, in connection with the manufacturing,
5 labeling, advertising, promotion, offering for sale, sale, or distribution of any comfrey product,
6 Defendants and their successors, assigns, officers, agents, directors, servants, employees, and
7 those persons in active concert or participation with them who receive actual notice of this Order
8 by personal service or otherwise, whether acting directly or through any corporation, subsidiary,
9 division, or other device, are permanently restrained and enjoined:

- 10 1. From marketing such product for ingestion, for use as a suppository, or for
11 external use on open wounds; and
- 12 2. From failing to make the following disclosure, clearly and prominently, in any
13 advertisement, promotional material, package label, and package insert for any
14 comfrey product marketed for other external use:

15 **WARNING: External Use Only.** Consuming this product can cause
16 serious liver damage. This product contains comfrey. Comfrey contains
17 pyrrolizidine alkaloids, which may cause serious illness or death. This
18 product should not be taken orally, used as a suppository, or applied to
19 broken skin. For further information contact the Food and Drug
20 Administration: <http://vm.cfsan.fda.gov>

21 unless Defendants possess competent and reliable scientific evidence conclusively demonstrating
22 that the product is free of pyrrolizidine alkaloids and safe for such uses. Provided, however, that
23 in the event the Food and Drug Administration issues a rule or regulation that requires a warning
24 or a disclosure on the labeling of products containing comfrey, Defendants may substitute that
25 warning for the disclosure required under this Section.

26 B. **IT IS FURTHER ORDERED** that, in connection with the manufacturing,
27 labeling, advertising, promotion, offering for sale, sale, or distribution of any comfrey product,
28 Defendants and their successors, assigns, officers, agents, directors, servants, employees, and
those persons in active concert or participation with them who receive actual notice of this Order
by personal service or otherwise, whether acting directly or through any corporation, subsidiary,

1 division or other device, are restrained and enjoined from representing in any manner, expressly
2 or by implication, that:

- 3 1. Such product is effective in the treatment of chronic bronchial diseases, gastric
4 and duodenal ulcers, colitis, rheumatism, or injuries or degenerative bone, muscle,
5 or nerve conditions, including osteoporosis, arthritis, multiple sclerosis, or
6 amyotrophic lateral sclerosis; or
- 7 2. Such product is effective in reducing pain, relieving inflammation, and repairing
8 tissues damaged by arthritis;

9 unless, at the time the representation is made, Defendants possess and rely upon competent and
10 reliable scientific evidence that substantiates the representation.

11 C. **IT IS FURTHER ORDERED** that, in connection with the manufacturing,
12 labeling, advertising, promotion, offering for sale, sale, or distribution of any food, drug, dietary
13 supplement, or other health-related product or service, Defendants Western Botanicals, Inc.,
14 Randy C. Giboney, and Kyle D. Christensen, and their successors, assigns, officers, agents,
15 directors, servants, employees, and those persons in active concert or participation with them
16 who receive actual notice of this Order by personal service or otherwise, whether acting directly
17 or through any corporation, subsidiary, division, or other device, are permanently restrained and
18 enjoined from making any representation in any manner, expressly or by implication, about the
19 safety, health benefits, performance, or efficacy of such product or service, unless, at the time
20 the representation is made, Defendants possess and rely upon competent and reliable scientific
21 evidence that substantiates the representation.

22 **II. FOOD AND DRUG REGULATIONS**

23 A. **IT IS FURTHER ORDERED** that nothing in this Order shall prohibit
24 Defendants from making any representation for any product that is specifically permitted in the
25 labeling for such product by regulations promulgated by the Food and Drug Administration
26 pursuant to the Nutrition Labeling and Education Act of 1990.

27 B. **IT IS FURTHER ORDERED** that nothing in this Order shall prohibit
28 Defendants from making any representation for any drug that is permitted in the labeling for such

1 drug under any tentative final or final standard promulgated by the Food and Drug
2 Administration or under any new drug application approved by the Food and Drug
3 Administration.

4 **III. IDENTIFICATION OF PURCHASERS**

5 **IT IS FURTHER ORDERED** that Defendants shall:

6 A. Within seven (7) days after entry of this Order, deliver to the Commission a list, in
7 the form of a sworn affidavit, of all distributors who purchased on or after January 1, 1998 a
8 comfrey product, directly from Defendants or indirectly through one of Defendants' other
9 distributors, to the extent that such distributor is known to Defendants through a diligent search
10 of Defendants' records, including but not limited to computer files, sales records, and inventory
11 lists. Such list shall include each distributor's name and address, and, if available, the
12 distributor's telephone number and email address, and the full purchase price, including
13 shipping, handling, and taxes, of the comfrey product(s) purchased from Defendants.

14 B. Within seven (7) days after entry of this Order, deliver to the Commission a list, in
15 the form of a sworn affidavit, of all consumers who purchased on or after January 1, 1998 a
16 comfrey product, directly from Defendants or indirectly through one of Defendants' distributors,
17 to the extent that such consumer is known to Defendants through a diligent search of Defendants'
18 records, including but not limited to computer files, sales records, and inventory lists. Such list
19 shall include each consumer's name and address, and, if available, the consumer's telephone
20 number and email address, and the full purchase price, including shipping, handling, and taxes,
21 of the comfrey product(s) purchased from Defendants.

22 **IV. NOTIFICATION TO DISTRIBUTORS**

23 **IT IS FURTHER ORDERED** that:

24 A. Defendants shall not disseminate to any distributor any material containing any
25 representation prohibited by this Order.

26 B. Defendants shall not, directly or indirectly, authorize any distributor to make any
27 representation prohibited by this Order.

28

1 C. Within thirty (30) days after entry of this Order, Defendants shall send by first
2 class mail a notice, in the form shown on Appendix A, to each distributor with whom Defendants
3 have done business since January 1, 1998, to the extent that such distributor is known to
4 Defendants through a diligent search of Defendants' records, including but not limited to
5 computer files, sales records, and inventory lists. The mailing shall not include any other
6 documents. Defendants shall require each distributor to execute and return the original of the
7 letter as a condition of remaining or once again becoming a distributor for Defendants.

8 D. For a period of five (5) years following entry of this Order, Defendants shall send
9 by first class mail a notice, in the form shown on Appendix A, to each distributor with whom
10 Defendants does business after the date of entry of this Order who has not previously received
11 the notice. Such notice shall be sent within one (1) week from the first shipment of Defendants'
12 product to said distributor. The mailing shall not include any other documents. Defendants shall
13 require each distributor to execute and return the original of the letter as a condition of remaining
14 or becoming a distributor for Defendants.

15 E. Defendants shall institute a reasonable program of surveillance adequate to reveal
16 whether any of Defendants' distributors are disseminating advertisements or promotional
17 materials or making any oral statement that contain any representation prohibited by this Order.

18 F. Defendants shall terminate all sales of any food, drug, device, service, or dietary
19 supplement to any distributor who is using or disseminating any advertisement or promotional
20 material or making any oral statement that contains any representation prohibited by this Order,
21 once Defendants know or should know that the distributor is or has been engaged in such
22 conduct. Defendants shall immediately provide, by certified mail, all relevant information,
23 including name, address, and telephone number of the distributor at issue, the nature of the
24 violation, and any relevant materials used or disseminated, to the Regional Director, Federal
25 Trade Commission, Southwest Region, 1999 Bryan Street, Suite 2150, Dallas, TX 75201. Attn:
26 FTC v. Western Botanicals, et al. (E.D. Cal.).

1 **V. MONETARY RELIEF**

2 **IT IS FURTHER ORDERED** that:

3 A. Judgment is hereby entered against Defendants in the amount of fifty thousand
4 eight hundred dollars (\$50,800.00). Provided however, that this judgment shall be suspended
5 until further order of the Court, and provided further that this judgment shall be subject to the
6 conditions set forth in Section VI of this Order.

7 B. All funds paid pursuant to this Order shall be deposited into a fund administered
8 by the Commission or its agent to be used for equitable relief, including but not limited to
9 consumer redress and any attendant expenses for the administration of any redress fund. In the
10 event that direct redress to consumers is wholly or partially impracticable or funds remain after
11 redress is completed, the Commission may apply any remaining funds for such other equitable
12 relief (including consumer information remedies) as it determines to be reasonably related to the
13 Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief
14 shall be deposited to the Treasury as disgorgement. Defendants shall have no right to challenge
15 the Commission's choice of remedies under this Section.

16 **VI. RIGHT TO REOPEN WITH SUM CERTAIN**

17 **IT IS FURTHER ORDERED** that the Commission's agreement to and the Court's
18 approval of this Order is expressly premised upon the truthfulness, accuracy, and completeness
19 of the financial statements and information provided for the Commission by Defendants Western
20 Botanicals, Inc. and Randy C. Giboney on or about May 29, 2001, and by Defendant Kyle D.
21 Christensen on or about June 4, 2001, which contain material information relied upon by the
22 Commission in negotiating and agreeing to the terms of this Order.

23 **IT IS FURTHER ORDERED** that if the Commission should have evidence that the
24 above-referenced financial statements and information failed to disclose any material asset the
25 value of which exceeds one thousand dollars (\$1,000), materially misrepresented the value of any
26 asset, or made any other material misrepresentation or omission, the Commission may move that
27 the Court reopen this Order for the sole purpose of allowing the Commission to modify the
28 monetary liability of Defendants. If the Court finds that Defendants failed to disclose any

1 material asset, materially misrepresented the value of any asset, or made any other material
2 misrepresentation or omission in the above-referenced financial statements and information, the
3 Court shall enter judgment against Defendants, in favor of the Commission, in the amount of
4 fifty thousand eight hundred dollars (\$50,800.00), which Defendants and the Commission
5 stipulate is the amount of consumer injury caused by the Defendants. Should this judgment be
6 modified as to the monetary liability of Defendants, this Order, in all other respects, shall remain
7 in full force. Any proceedings instituted under this Section shall be in addition to and not in lieu
8 of any other proceedings the Commission may initiate to enforce this Order. Solely for the
9 purposes of reopening or enforcing this Section, Defendants waive any right to contest any of the
10 allegations set forth in the Complaint filed in this matter.

11 **VII. RECORD KEEPING**

12 **IT IS FURTHER ORDERED** that Defendants, for a period of five (5) years after the
13 last date of dissemination of any representation covered by this Order, shall maintain and upon
14 request make available to the Commission for inspection and copying:

- 15 A. All advertisements and promotional materials containing the representation;
- 16 B. All materials that were relied upon in disseminating the representation; and
- 17 C. All tests, reports, studies, surveys, demonstrations, or other evidence in their
18 possession, custody, or control that contradict, qualify, or call into question the representation, or
19 the basis relied upon for the representation, including complaints and other communications with
20 consumers or with governmental or consumer protection organizations.

21 **VII. DISTRIBUTION OF ORDER BY DEFENDANTS**

22 **IT IS FURTHER ORDERED** that Defendants, for a period of five (5) years after the
23 date of entry of this Order, shall deliver a copy of this Order to all current and future principals,
24 officers, directors, and managers, and to all current and future employees, agents, and
25 representatives having responsibilities with respect to the subject matter of this Order, and shall
26 secure from each such person a signed and dated statement acknowledging receipt of the Order.
27 Defendants shall deliver this Order to current personnel within thirty (30) days after the date of
28 service of this Order and to future personnel within thirty (30) days after the person assumes such

1 position or responsibilities. Defendants shall maintain and, upon request, make available to the
2 Commission for inspection and copying each such signed and dated statement for a period of five
3 (5) years.

4 **IX. NOTIFICATION**

5 A. **IT IS FURTHER ORDERED** that corporate Defendant Western Botanicals, Inc.
6 shall notify the Commission at least thirty (30) days prior to any change in the corporation that
7 may affect compliance obligations arising under this Order, including but not limited to a
8 dissolution, assignment, sale, merger, or other action that would result in the emergence of a
9 successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages
10 in any acts or practices subject to this Order; the proposed filing of a bankruptcy petition; or a
11 change in the corporate name or address. Provided, however, that with respect to any proposed
12 change in the corporation about which Defendants learn less than thirty (30) days prior to the
13 date such action is to take place, Defendants shall notify the Commission as soon as is
14 practicable after obtaining such knowledge.

15 B. **IT IS FURTHER ORDERED** that individual Defendants Randy C. Giboney and
16 Kyle D. Christensen, within five (5) days of entry of this Order, shall notify the Commission of
17 (1) their residence address and mailing address; (2) their telephone number(s); (3) the name,
18 address, and telephone number of their employers; (4) the full names of their employers'
19 principals; (5) if applicable, the names of their supervisors; and (6) a description of their
20 employers' activities and the Defendants' duties and responsibilities.

21 C. **IT IS FURTHER ORDERED** that individual Defendants Randy C. Giboney and
22 Kyle D. Christensen, for a period of five (5) years after the date of entry of this Order, shall
23 notify the Commission of any changes in their residence, mailing address, or employment status.
24 Notice of changes in employment status shall include: (1) the new employer's name, address,
25 and telephone number; (2) the full names of the employer's principals; (3) if applicable, the
26 names of Defendant's supervisors; and (4) a description of the employer's activities and
27 Defendant's duties and responsibilities.

1 **X. COMPLIANCE REPORT**

2 **IT IS FURTHER ORDERED** that Defendants shall, within sixty (60) days after the
3 date of entry of this Order, and at such other times as the Commission may require, file with the
4 Commission a report, in writing, setting forth in detail the manner and form in which they have
5 complied with this Order.

6 **XI. MONITORING COMPLIANCE**

7 **IT IS FURTHER ORDERED** that the Commission is authorized to monitor the
8 compliance of Defendants with this Order by all lawful means, including but not limited to the
9 following means:

10 A. The Commission is authorized, without further leave of Court, to obtain discovery
11 from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure,
12 Fed. R. Civ. P. 26-37, including but not limited to the use of compulsory process pursuant to Fed.
13 R. Civ. P. 45, for the purpose of monitoring and investigating the compliance of Defendants with
14 this Order.

15 B. Nothing in this Order shall limit the Commission's lawful use of compulsory
16 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate
17 whether Defendants have violated any provision of this Order or Sections 5 or 12 of the FTC
18 Act, 15 U.S.C. §§ 45 or 55.

19 C. For the purposes of the compliance reporting required by this Order and the
20 monitoring of compliance authorized by this Order, the Commission is authorized to
21 communicate directly with each of the Defendants.

22 **XII. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

23 **IT IS FURTHER ORDERED** that within five (5) business days from the date of entry
24 of this Order, Defendants shall submit to the Commission a truthful sworn statement, in the form
25 shown on Appendix B, that shall acknowledge receipt of this Order.

26 **XIII. RETENTION OF JURISDICTION**

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

1 **SO STIPULATED:**

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JAMES R. GOLDER
JUDITH A. SHEPHERD
THOMAS B. CARTER
Federal Trade Commission
1999 Bryan St., Suite 2150
Dallas, TX 75201
214-979-9376 (Golder)
214-979-9383 (Shepherd)
214-979-9372 (Carter)
214-953-3079 (facsimile)

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

JOHN K. VINCENT
United States Attorney

EDMUND F. BRENNAN
Assistant United States Attorney

RANDY C. GIBONEY
Defendant

KYLE D. CHRISTENSEN
Defendant

WESTERN BOTANICALS, INC.
Defendant
By Randy C. Giboney, President

SO ORDERED

DATED: _____

UNITED STATES DISTRICT JUDGE

1 **APPENDIX A**

2 **FIRST CLASS MAIL**

3 [To be printed on Defendant's letterhead]

[date]

4 Dear [distributor's name]:

5
6 This letter is to inform you that our company recently settled a civil dispute with the
7 Federal Trade Commission regarding our advertising for certain products containing the herb
8 comfrey, which the company has sold both directly to consumers and through resellers. As a part
9 of the settlement, we must make sure that you comply with the settlement order, which was
10 entered by the United States District Court for the Eastern District of California on _____
11 _____ (date). Among other things, the settlement requires us to notify all purchasers of serious
12 hazards that may attend use of comfrey if it is taken internally by oral ingestion, used as a
suppository, or applied to broken skin, and to instruct resellers to stop using advertising or
promotional materials that promote such uses of any product containing comfrey or that make
any other representation prohibited by the settlement. Importantly, the settlement requires us to
monitor our resellers and terminate all sales to any reseller who disseminates advertising or
promotional materials that, expressly or by implication, make any claims about our comfrey
products that we may not make pursuant to the order.

13 The FTC complaint alleged that the company engaged in deceptive advertising of its
14 comfrey products, and the settlement imposes various requirements in connection with its past
15 and future advertising of these and other products. According to the FTC complaint, our
16 advertising materials claimed, expressly or by implication, that comfrey products may safely be
17 used as oral preparations and may be applied to open wounds. The complaint challenges these
18 claims as false and unsubstantiated. In particular, the FTC notes that comfrey contains
19 pyrrolizidine alkaloids which have been linked to serious illness, occasionally leading to death.
20 In addition, the complaint charged that the company made unsubstantiated claims that comfrey
21 products are effective in preventing, treating, relieving, and curing certain illnesses and medical
22 conditions.

23 The settlement prohibits us from making any of the challenged claims unless we have
24 competent and reliable scientific evidence to support them. In addition, it prohibits us from
25 marketing comfrey products for use internally, by ingestion, as a suppository, or applied to
26 broken skin, and it requires us to make the following safety disclosure, clearly and prominently,
27 in connection with the promotion and marketing of comfrey products:

28 **WARNING: External Use Only.** Consuming this product can cause serious
liver damage. This product contains comfrey. Comfrey contains pyrrolizidine
alkaloids, which may cause serious illness or death. This product should not be
taken orally, used as a suppository, or applied to broken skin. For further
information contact the Food and Drug Administration: <http://vm.cfsan.fda.gov>

29 The settlement with the FTC prohibits us from making unsubstantiated claims for any
30 food, drug, dietary supplement, or health-related product or service. In addition, we are required
31 to provide the FTC with purchaser information and to monitor and terminate all sales to resellers
32 making prohibited claims for our comfrey products.

33 We request your assistance by asking you NOT to use, rely on, or distribute any
34 advertising or promotional materials containing unsubstantiated claims and NOT to make
35 unsubstantiated oral representations. If you have customers who buy the products for distribution
36 or resale, please also notify them to do the same. If you or your customers continue to use
37 prohibited materials or make false or unsubstantiated representations, we are required by the
38

1 settlement to stop doing business with you and to inform the FTC of your activities.

2 Although we do not admit that the FTC's allegations are true, we have agreed to send this
3 letter as a part of our settlement with the FTC.

4 Please sign, date, and return this letter to [Defendant] at the above address,
5 acknowledging your agreement to the terms set forth herein.

6 Thank you very much for your assistance,
7
8

9 [Defendant's signature]
10
11
12
13

14 **ACKNOWLEDGMENT AND AGREEMENT**

15 The undersigned acknowledges receipt of this letter and hereby agrees to its terms and
16 conditions.

17 _____
18 Date

17 _____
18 Signature
19
20
21
22
23
24
25
26
27
28

1 **APPENDIX B**

2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA

4
5 FEDERAL TRADE COMMISSION,)

6 Plaintiff,)

Civil Action No.

7 v.)

8 WESTERN BOTANICALS, INC.,)

9 RANDY C. GIBONEY, and)

10 KYLE D. CHRISTENSEN,)

11 Defendants.)
12

13 :

14 **AFFIDAVIT OF [DEFENDANT]**

15 [Defendant], being duly sworn, hereby states and affirms:

16 1. My name is _____. I am a citizen of the United States and am
17 over the age of eighteen. I have personal knowledge of the matters discussed in this declaration,
18 and if called as a witness, I could and would competently testify as to the matters stated herein. I
19 am a defendant in the above captioned action.

20 2. On (date) _____, I received a copy of the Stipulated Final Order for
21 Permanent Injunction and Settlement of Claims for Monetary Relief, which was signed by the
22 Honorable _____, United States District Court Judge for the Eastern District of
23 California. A true and correct copy of the Order that I received is appended to this Affidavit.

24 I hereby declare under penalty of perjury under the laws of the United States of America
25 that the foregoing is true and correct. Executed on (date) _____, at (city, state) _____,

26 _____.

27
28 _____
(Name of Defendant)

1 STATE OF _____

2 COUNTY OF _____

3 BEFORE ME this day personally appeared _____, who being first
4 duly sworn, deposes and says that s/he has read and understands the foregoing statement and that
s/he has executed the same for the purposes contained therein.

5 SUBSCRIBED AND SWORN TO before me this _____ day of _____, 200_,
6 by _____. S/he is personally known to me or has presented (state
identification) _____ as identification.

7 _____
Print Name

8 NOTARY PUBLIC,
9 STATE OF _____

10 Commission Number
11 Affix Seal

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28