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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
9  
10

WHA

11 FEDERAL TRADE COMMISSION,

C 02 3511

12 Plaintiff,

13 v.

14 BIOPULSE INTERNATIONAL, INC.,  
15 BIOPULSE, INC.,  
JONATHAN NEVILLE, and  
16 LORAN SWENSON,

17 Defendants.

STIPULATED FINAL  
JUDGMENT AND ORDER RE  
JONATHAN NEVILLE

Case No:

18  
19 On July 23, 2002, plaintiff, the Federal Trade Commission ("FTC" or "Commission"),  
20 filed a Complaint for permanent injunction and other relief ("Complaint"), pursuant to Section  
21 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), against BioPulse  
22 International, Inc., BioPulse, Inc., Jonathan Neville, and Loran Swenson.

23 The Commission and Defendant Jonathan Neville ("Defendant" or "Defendant Neville"),  
24 having been represented by their attorneys whose names appear hereafter, have stipulated to the  
25 entry of this Final Judgment and Order ("Order") in settlement of the Commission's Complaint  
26 against the Defendant. The Court, being advised in the premises, finds as follows:  
27

FINDINGS

1  
2           1.     In its Complaint, the Commission alleged that the Defendant violated Sections  
3 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52. The Commission sought permanent  
4 injunctive relief for alleged deceptive acts or practices by the Defendant in connection with the  
5 marketing and sale of health and medical services, including insulin-induced hypoglycemic sleep  
6 therapy, also known as induced hypoglycemic treatment or IHT (“IHT”), which involves  
7 injecting insulin into cancer patients, purportedly to “starve” tumors; and acoustic lightwave  
8 treatment (“ALW”), which involves having patients sit in front of a light source purportedly to  
9 receive treatment for a variety of diseases and conditions.

10           2.     The Commission has the authority under Section 13(b) of the FTC Act, 15 U.S.C.  
11 § 53(b), to seek the relief it has requested.

12           3.     This Court has jurisdiction over the subject matter of this case, and jurisdiction  
13 over the Defendant. Venue in the Northern District of California is proper, and the Complaint  
14 states a claim upon which relief may be granted against the Defendant.

15           4.     The activities of the Defendant as alleged in the Commission’s Complaint were or  
16 are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

17           5.     The Commission and the Defendant stipulate and agree to this Order, without trial  
18 or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising  
19 from the Complaint to the date of entry of this Order. By entering this stipulation, the Defendant  
20 does not admit or deny any of the allegations set forth in the Complaint, other than jurisdictional  
21 facts; *provided, however*, the Defendant agrees that the facts as alleged in the Complaint filed in  
22 this action shall be taken as true in any subsequent litigation filed by the Commission to enforce  
23 its rights pursuant to this Order, including but not limited to a nondischargeability complaint in  
24 any bankruptcy proceeding.

25           6.     The Defendant waives all rights to seek judicial review or otherwise challenge or  
26 contest the validity of this Order, and further waives and releases any claim he may have against  
27 the FTC or its employees, agents or representatives . The Defendant also waives any claim that

1 he may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended by*  
2 Pub.L. 104-121, 110 Stat. 847, 863-64 (1996) concerning the prosecution of this action to the  
3 date of entry of this Order. Each party to this Order shall bear its own costs and attorneys' fees  
4 incurred in connection with this action.

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

6 8. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are  
7 binding upon the Defendant, and his agents, servants, employees and attorneys, and all other  
8 persons or entities in active concert or participation with them, who receive actual notice of this  
9 Order by personal service or otherwise.

10 9. Any voluntary bankruptcy petition filed by the Defendant does not automatically  
11 stay this action, which the Court finds is the "commencement or continuation of any action or  
12 proceeding by a governmental unit to enforce such governmental unit's police or regulatory  
13 power," as set forth in 11 U.S.C. § 362(b)(4).

14 10. Any voluntary bankruptcy petition filed by the Defendant does not divest this  
15 Court of jurisdiction to enter this final judgment against the Defendant.

## 16 ORDER

### 17 I. DEFINITIONS

18 IT IS THEREFORE STIPULATED AND ORDERED, that, for the purposes of this  
19 Order, the following definitions shall apply:

20 A. "Defendant" shall mean Jonathan Neville, individually and as a former officer and  
21 director of BioPulse, Inc. and BioPulse International, Inc.

22 B. "Participating associates" shall refer to Defendant's agents, servants, employees,  
23 attorneys and all persons or entities in active concert or participation with Defendant who receive  
24 actual notice of this Order by personal service or otherwise.

25 C. "Food," "drug," and "device" shall mean as "food," "drug," and "device" are  
26 defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

27 D. "Covered product or service" shall mean any dietary supplement, food, drug, or

1 device, or any health-related service or program.

2 E. "Substantially similar service" shall mean any service in which a person receives  
3 insulin injections for any purpose other than the treatment of diabetes.

4 F. "Competent and reliable scientific evidence" shall mean tests, analyses, research,  
5 studies, or other evidence based on the expertise of professionals in the relevant area, that has  
6 been conducted and evaluated in an objective manner by persons qualified to do so, using  
7 procedures generally accepted in the profession to yield accurate and reliable results.

8 G. "Document(s)" or "record(s)" shall refer to:

- 9 1. The original or a true copy of any written, typed, printed, electronically  
10 stored, transcribed, taped, recorded, filmed, punched, or graphic matter or  
11 other data compilations of any kind, including, but not limited to, letters,  
12 e-mail or other correspondence, messages, memoranda, interoffice  
13 communications, notes, reports, summaries, manuals, magnetic tapes or  
14 discs, tabulations, books, records, checks, invoices, workpapers, journals,  
15 ledgers, statements, returns, reports, schedules, or files; and
- 16 2. Any information stored on any desktop personal computer ("PC") and  
17 workstations, laptops, notebooks, or other portable computers, whether  
18 assigned to individuals or in pools of computers available for shared use;  
19 and home computers used for work-related purposes; backup disks and  
20 tapes, archive disks and tapes, and other forms of offline storage, whether  
21 stored onsite with the computer used to generate them, stored offsite in  
22 another company facility or stored offsite by a third-party, such as in a  
23 disaster recovery center; and computers and related offline storage used by  
24 Defendant's participating associates, which may include persons who are  
25 not employees of the company or who do not work on company premises.

26 H. The terms "and" and "or" in this Order shall be construed conjunctively or  
27 disjunctively as necessary, to make the applicable sentence or phrase inclusive rather than

1 exclusive.

2 I. The term "including" shall mean "without limitation."

3 J. Any requirement that the Defendant "notify" or "provide" any information or  
4 material to the Commission, shall mean that the Defendant shall send the necessary information  
5 or material via first-class mail, costs prepaid, to:

6 Director, Western Region  
7 Federal Trade Commission  
8 901 Market Street, Suite 570  
9 San Francisco, CA 94103  
Attn: FTC v. BioPulse International, Inc.  
Matter No. 0123057

## 10 II. PROHIBITED REPRESENTATIONS

11 A. IT IS FURTHER STIPULATED AND ORDERED that, in connection with the  
12 advertising, promotion, offering for sale, sale, or distribution of IHT or any substantially similar  
13 service, the Defendant and his participating associates are permanently enjoined from making  
14 any misrepresentation, or assisting others in making any misrepresentation, in any manner,  
15 expressly or by implication, about the safety of IHT or any such service.

16 B. IT IS FURTHER STIPULATED AND ORDERED that, in connection with the  
17 advertising, promotion, offering for sale, sale, manufacturing, labeling, or distribution of IHT,  
18 ALW, or any other covered product or service, the Defendant and his participating associates are  
19 permanently enjoined from making any representation, or assisting others in making any  
20 representation, in any manner, expressly or by implication:

- 21 (1) That such product or service is an effective treatment for cancer;
- 22 (2) That such product or service has any effect on cancer tumors;
- 23 (3) That such product or service is an effective treatment for any disease or  
24 health condition, including, but not limited to, arthritis, candida yeast  
25 infection, influenza, headaches, parasites, lyme disease, or pneumonia; or
- 26 (4) About the health benefits, performance, safety or efficacy of any such  
27 product or service;

1 unless, at the time the representation is made, they possess and rely upon competent and reliable  
2 scientific evidence that substantiates the representation.

3 **III. SUSPENDED JUDGMENT AND RIGHT TO REOPEN**  
4 **AND TERMINATE SUSPENSION**

5 IT IS FURTHER STIPULATED AND ORDERED that:

6 A. Judgment is hereby entered against the Defendant in the amount of Four Million,  
7 Three Hundred Twenty Eight Thousand Dollars (\$4,328,000.00); *provided, however*, that this  
8 judgment shall be suspended subject to the conditions set forth in subsection D of this Paragraph;  
9 *and provided further* that the suspension of this judgment may only be revoked by further order  
10 of the Court entered pursuant to subsection D of this Paragraph.

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

20 C. Proceedings instituted under this Paragraph are in addition to, and not in lieu of,  
21 any other civil or criminal remedies that may be provided by law, including any other  
22 proceedings the Commission may initiate to enforce this Order.

23 D. The Commission's agreement to this Order is expressly premised upon the  
24 truthfulness, accuracy and completeness of the sworn financial statements of Defendant Neville,  
25 executed on March 9, 2002, and supplied to the Commission. Said financial statements contain  
26 material information upon which the FTC has relied in negotiating and agreeing to the terms of  
27 this Order. If, upon motion by the Commission to the Court, the Court finds that the Defendant

1 failed to disclose, in such sworn financial statements, any material asset with a value exceeding  
2 One Thousand Dollars (\$1,000), or materially misrepresented the value of any asset, or made any  
3 other material misrepresentation in or omission from his financial statement, the suspension of  
4 the monetary judgment will be terminated and the entire judgment amount of \$4,328,000.00 will  
5 be immediately due and payable. For purposes of this Section, and any subsequent proceedings  
6 to enforce payment – including, but not limited to, a non-dischargeability complaint filed in a  
7 bankruptcy proceeding – the Defendant stipulates to all of the allegations in the Commission’s  
8 complaint.

9 **IV. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

10 IT IS FURTHER STIPULATED AND ORDERED that, within five (5) business days  
11 after receipt by the Defendant of this Order as entered by the Court, Defendant Neville shall  
12 execute and submit to the Commission a truthful sworn statement, in the form shown on  
13 Appendix A, that shall acknowledge receipt of this Order.

14 **V. DISTRIBUTION OF ORDER**

15 IT IS FURTHER STIPULATED AND ORDERED that, for a period of five (5) years  
16 from the date of entry of this Order, Defendant shall:

17 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of  
18 receipt of same from, each officer or director, each individual serving in a management capacity,  
19 all personnel involved in responding to consumer complaints or inquiries, all medical or health  
20 care personnel, and all sales personnel, whether designated as employees, consultants,  
21 independent contractors or otherwise, immediately upon employing or retaining any such  
22 persons, or, if such persons are currently employed or retained, within five (5) days of the date of  
23 entry of this order, of any business directly or indirectly owned, operated or controlled by  
24 Defendant Neville, where the business is engaged in the advertising, promotion, offering for sale,  
25 sale, manufacturing, labeling or distribution of any covered product or service; and

26 B. Maintain for a period of three (3) years after creation, and upon reasonable notice,  
27 make available to representatives of the Commission, the original signed and dated

1 acknowledgments of the receipt of copies of this Order, as required in Subsection A of this  
2 Paragraph.

### 3 **VI. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

4 IT IS FURTHER STIPULATED AND ORDERED that the Commission is authorized to  
5 monitor Defendant's compliance with this Order by all lawful means, including but not limited to  
6 the following:

7 A. The Commission is authorized, without further leave of court, to obtain discovery  
8 from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure,  
9 Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45,  
10 for the purpose of monitoring and investigating the Defendant's compliance with any provision  
11 of this Order;

12 B. The Commission is authorized to use representatives posing as consumers and  
13 suppliers to Defendant, Defendant's employees, or any other entity managed or controlled in  
14 whole or in part by Defendant, without the necessity of identification or prior notice;

15 C. 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 Defendant has violated any provision of this Order or Sections 5 or 12 of the FTC Act,  
18 15 U.S.C. §§ 45 and 52.

### 19 **VII. COMPLIANCE REPORTING**

20 IT IS FURTHER STIPULATED AND ORDERED that, in order that compliance with the  
21 provisions of this Order may be monitored:

22 A. For a period of five (5) years from the date of entry of this Order, Defendant  
23 Neville shall notify the Commission of the following:

- 24 1. Any changes in his residence, mailing address, and telephone number(s),  
25 within ten (10) days of the date of such change;
- 26 2. Any changes in his employment status (including self-employment) within  
27 ten (10) days of such change. Such notice shall include the name and address of



1 each business that Defendant is affiliated with or employed by, a statement of the  
2 nature of the business, and a statement of Defendant's duties and responsibilities  
3 in connection with the business or employment;

4 3. Any proposed change in the structure of any business entity owned or  
5 controlled by him, such as creation, incorporation, dissolution, assignment, sale,  
6 creation or dissolution of subsidiaries, the proposed filing of a bankruptcy  
7 petition, or any other changes that may affect compliance obligations arising out  
8 of this Order, within thirty (30) days prior to the effective date of any proposed  
9 change; *provided, however*, that with respect to any proposed change in structure  
10 of such business about which Defendant learns, less than thirty (30) days prior to  
11 the date such action is to take place, he shall notify the Commission as soon as  
12 practicable after learning of such proposed change; and

13 B. Sixty (60) days after the date of entry of this Order, Defendant shall provide a  
14 written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner  
15 and form in which he has complied and is complying with this Order. This report shall include  
16 but not be limited to:

- 17 1. Defendant Neville's then current residence address and telephone  
18 number(s);
- 19 2. Defendant Neville's then current employment, business address(es), and  
20 telephone number(s), a description of the business activities of each such  
21 employer, and Defendant's title and responsibilities for each employer;
- 22 3. A copy of each acknowledgment of receipt of this Order obtained by  
23 Defendant pursuant to Paragraph V;
- 24 4. A statement describing the manner in which the Defendant has complied  
25 and is complying with Paragraph II; and

26 C. Upon written request by a representative of the Commission, Defendant Neville  
27 shall submit additional written reports (under oath, if requested) and produce documents on

1 fifteen (15) days' notice with respect to any conduct subject to this Order.

2 D. For the purposes of this Paragraph, "employment" includes the performance of  
3 services as an employee, consultant, or independent contractor; and "employers" include any  
4 individual or entity for whom Defendant Neville performs services as an employee, consultant,  
5 or independent contractor.

6 E. For purposes of the compliance reporting required by this Paragraph, the  
7 Commission is authorized to communicate directly with Defendant Neville.

### 8 VIII. ACCESS TO BUSINESS PREMISES

9 IT IS FURTHER STIPULATED AND ORDERED that, for a period of five (5) years  
10 from the date of entry of this Order, for the purpose of further determining compliance with this  
11 Order, Defendant shall permit representatives of the Commission, within three (3) business days  
12 of receipt of written notice from the Commission:

13 A. Access during normal business hours to any office, or facility storing documents,  
14 of any business directly or indirectly owned, operated or controlled by Defendant Neville, where  
15 the business is engaged in the advertising, promotion, offering for sale, sale, manufacturing,  
16 labeling, or distribution of any covered product or service. In providing such access, Defendant  
17 shall permit representatives of the Commission to inspect and copy all documents relevant to any  
18 matter contained in this Order; and shall permit Commission representatives to remove  
19 documents relevant to any matter contained in this Order for a period not to exceed five (5)  
20 business days so that the documents may be inspected, inventoried, and copied; and

21 B. To interview the officers, directors, and employees, including all personnel  
22 involved in responding to consumer complaints or inquiries, and all sales personnel, whether  
23 designated as employees, consultants, independent contractors or otherwise, of any business to  
24 which Subsection (A) of this Paragraph applies, concerning matters relating to compliance with  
25 the terms of this Order. The person interviewed may have counsel present.

26 *Provided* that, upon application of the Commission and for good cause shown, the Court  
27 may enter an *ex parte* order granting immediate access to Defendant's business premises for the

1 purposes of inspecting and copying all documents relevant to any matter contained in this Order.

2 **IX. RECORD KEEPING PROVISIONS**

3 IT IS FURTHER STIPULATED AND ORDERED that, for a period of eight (8) years  
4 from the date of entry of this Order, in connection with any business directly or indirectly owned,  
5 operated or controlled by Defendant Neville, where the business is engaged in the advertising,  
6 promotion, offering for sale, sale, manufacturing, labeling or distribution of any covered product  
7 or service, Defendant is hereby restrained and enjoined from failing to create, or have such  
8 business create, and from failing to retain, unless otherwise specified:

9 A. All documents evidencing or referring to the health benefits, performance, safety,  
10 or efficacy of any covered product or service advertised, promoted, offered for sale, sold,  
11 manufactured, labeled, or distributed by Defendant, including, but not limited to, all tests,  
12 reports, studies, demonstrations, or other evidence that confirm, contradict, qualify, or call into  
13 question the health benefits, performance, safety, or efficacy of such product or service;

14 B. Books, records and accounts that, in reasonable detail, accurately and fairly reflect  
15 the cost of any covered product or service sold and revenues generated;

16 C. Records accurately reflecting the name, address, and telephone number of each  
17 manufacturer or laboratory engaged in the development or creation of any covered product or  
18 service obtained by Defendant for the purpose of advertising, marketing, promoting, offering for  
19 sale, selling, or distributing such product or service;

20 D. Records accurately reflecting the name, address, and telephone number of each  
21 person employed by Defendant, including as an independent contractor, who is engaged in the  
22 advertising, promotion, offering for sale, sale, manufacturing, labeling, distribution, or provision  
23 of any covered product or service; that person's job title or position; the date upon which the  
24 person commenced work; and the date and reason for the person's termination, if applicable;

25 E. Records containing the names, addresses, telephone numbers, dollar amounts  
26 paid, quantity of items or services purchased, and description of items or services purchased or  
27 provided, for all persons or entities to whom Defendant has sold, invoiced or shipped any

1 covered product or service;

2 F. Records that reflect, for every customer complaint or refund request relating to  
3 any covered product or service, whether received directly or indirectly or through any third party:  
4 (1) the customer's name, address, telephone number and the dollar amount paid by the customer;  
5 (2) the written complaint or refund request, if any, and the date of the complaint or refund  
6 request; (3) the basis of the complaint, including the name of any Defendant or participating  
7 associate complained against, and the nature and result of any investigation conducted  
8 concerning any complaint; (4) each response and the date of the response; (5) any final resolution  
9 and the date of the resolution; and (6) in the event of a denial of a refund request, the reason for  
10 the denial; and

11 G. Copies of all advertisements, promotional materials, sales scripts, training  
12 materials, or other marketing materials utilized relating to any covered product or service.

13 **X. INDEPENDENCE OF OBLIGATIONS**

14 IT IS FURTHER STIPULATED AND ORDERED that the expiration of any  
15 requirements imposed by this Order shall not affect any other obligation arising under this Order.

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XI. RETENTION OF JURISDICTION

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

SO STIPULATED:

*Laura Fremont*

LAURA FREMONT  
DAVID M. NEWMAN  
Attorneys for Plaintiff  
FEDERAL TRADE COMMISSION  
901 Market Street, Suite 570  
San Francisco, CA 94115  
(415) 848-5100 (voice)  
(415) 848-5184 (facsimile)

*Jonathan Neville*

JONATHAN NEVILLE

*Scott C. Walker*

SCOTT C. WALKER  
Attorney for Defendant Jonathan Neville  
Abbott & Walker  
3651 North 100 East, Suite 300  
Provo, UT 84604  
(801) 373-1112 (voice)  
(801) 852-1961 (facsimile)

IT IS SO ORDERED, this \_\_\_\_\_ day of AUG 16 2007, 2002.

WILLIAM H. ALSUP  
UNITED STATES DISTRICT COURT

APPENDIX A

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BIOPULSE INTERNATIONAL, INC.,  
BIOPULSE, INC.,  
JONATHAN NEVILLE, and  
LORAN SWENSON,

Defendants.

**AFFIDAVIT OF  
JONATHAN NEVILLE**

**Case No:**

Jonathan Neville, being duly sworn, hereby states and affirms as follows:

1. My name is Jonathan Neville. I am a Defendant in the above-captioned civil action. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit, and if called as a witness, I could and would competently testify as to the matter stated herein.

2. My current business address is [insert address]. My current business telephone number is [insert number]. My current residential address is [insert address]. My current residential telephone number is [insert number].

3. On [insert date] I received a copy of the Stipulated Final Judgment and Order, which was signed by the Honorable [insert judge's name] and entered by the Court on [insert date]. A true and correct copy of the Order that I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [insert date], at [insert city and state].

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\_\_\_\_\_  
Jonathan Neville

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

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by Jonathan Neville. He is personally known to me or has presented [*state type of identification*] as identification.

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
SIGNATURE

NOTARY PUBLIC,  
STATE OF \_\_\_\_\_

Commission Number: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_