

1 DEBRA W. YANG
United States Attorney
2 LEON W. WEIDMAN
Assistant United States Attorney
3 Chief, Civil Division
VINCE FARHAT
4 Assistant United States Attorney
California Bar Number 183794
5 Room 7516, Federal Building
300 North Los Angeles Street
6 Los Angeles, California 90012
Telephone: (213)894-2400
7 Facsimile: (213)894-7819

8 PETER D. KEISLER
Assistant Attorney General
9 Civil Division
RICHARD N. GOLDBERG
10 Trial Attorney
United States Department of Justice
11 1331 Pennsylvania Avenue, N.W.
Suite 950 North
12 Washington, D.C. 20004
Telephone: (202)307-2532
13 Facsimile: (202)514-8742

14 Attorneys for Plaintiff
United States of America

16 UNITED STATES DISTRICT COURT
17 FOR THE CENTRAL DISTRICT OF CALIFORNIA
18 WESTERN DIVISION

19 UNITED STATES OF AMERICA,
20 Plaintiff,
21 v.

22 LISA LEVEY, in her capacity as
23 personal representative of the
Estate of MICHAEL LEVEY;
24 GARY BALLEEN;
BENTLEY MYERS INTERNATIONAL
25 CO.;
26 PUBLISHER'S DATA SERVICES,
INC.; and
27 NUTRITIONAL LIFE, INC.,
Defendants.

No. CV 03-4670 GAF (AJWx)
CONSENT DECREE

1 WHEREAS plaintiff, the United States of America, has filed
2 the Amended Complaint herein; and the parties have agreed to
3 settlement of this action upon the following terms and
4 conditions, without adjudication of any issue of fact or law and
5 without defendants admitting liability for any of the matters
6 alleged in the Amended Complaint;

7 THEREFORE, upon stipulation of plaintiff and defendants, it
8 is hereby ORDERED, ADJUDGED, and DECREED as follows:

9 1. The Amended Complaint states a claim upon which relief
10 may be granted against defendants under Sections 5(a), 5(1), 12,
11 13(b), and 16(a) of the Federal Trade Commission Act, 15 U.S.C.
12 §§ 45(a), 45 (1), 52, 53(b), and 56(a).

13 2. This Court has jurisdiction over the subject matter and
14 the parties.

15 3. The activities of defendants were or are in or
16 affecting commerce, as defined in Section 4 of the FTC Act, 15
17 U.S.C. § 44.

18 4. Plaintiff and defendants hereby waive all rights to
19 appeal or otherwise challenge or contest the validity of this
20 Consent Decree.

21 5. Defendants have agreed that this Consent Decree does
22 not entitle defendants to seek or to obtain attorneys' fees as a
23 prevailing party under the Equal Access to Justice Act, 28 U.S.C.
24 § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64
25 (1996), and defendants further waive any rights to attorneys'
26 fees that may arise under said provision of law.

27 6. Each party to this Consent Decree hereby agrees to bear
28 its own costs and attorneys' fees incurred in connection with

1 this action.

2 7. Defendants have entered into this Consent Decree freely
3 and without coercion. Defendants further acknowledge that they
4 have read the provisions of this Consent Decree and are prepared
5 to abide by them.

6 8. Entry of this Consent Decree is in the public interest.

7 9. The following definitions apply to this Consent Decree.

8 **DEFINITIONS**

9 1. "And," as well as "or," shall be construed both
10 conjunctively and disjunctively.

11 2. "Clearly and prominently" means as follows:

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

1 a duration and in a location, sufficiently noticeable for an
2 ordinary consumer to read and comprehend it.

3 b. In a print advertisement, promotional material, or
4 instructional manual, the disclosure must be in a type size
5 and location sufficiently noticeable for an ordinary
6 consumer to read and comprehend it, in print that contrasts
7 with the background against which it appears.

8 c. On a product label, the disclosure must be in a
9 type size and location sufficiently noticeable for an
10 ordinary consumer to read and comprehend it and in print
11 that contrasts with the background against which it appears.
12 *Provided, however,* if a disclosure on a bottle label or
13 package label is made in a location other than the principal
14 display panel, the bottle label or package label must (i)
15 include the statement, "**See important safety warning(s) on**
16 **[insert disclosure location]**," in a type size and location
17 on the principal display panel sufficiently noticeable for
18 an ordinary consumer to read and comprehend it and in print
19 that contrasts with the background against which it appears;
20 and (ii) place the disclosure on the bottle label and, if
21 applicable, the package label, within a border that is a
22 color or shade that contrasts with the background against
23 which it appears. *Provided further,* that in a multi-page
24 insert, the disclosure must appear on the cover page or
25 first page.

26 d. The disclosure must be in understandable language
27 and syntax. Nothing contrary to, inconsistent with, or in
28 mitigation of the disclosure can be used in any

1 advertisement or on any label.

2 e. In the case of advertisements disseminated by
3 means of an interactive electronic medium, such as software,
4 the Internet, or online services, "in close proximity"
5 means on the same Web page, online service page, or other
6 electronic page, and proximate to the triggering
7 representation, and does not include disclosures accessed or
8 displayed through hyperlinks, pop-ups, interstitials or
9 other means.

10 3. "Competent and reliable scientific evidence" means
11 tests, analyses, research, studies, or other evidence based on
12 the expertise of professionals in the relevant area, that has
13 been conducted and evaluated in an objective manner by persons
14 qualified to do so, using procedures generally accepted in the
15 profession to yield accurate and reliable results.

16 4. "Endorsement" has the meaning set forth in 16 C.F.R.
17 255.0(b).

18 5. "Ephedra, ephedra extract or ephedrine" means a source
19 of ephedrine alkaloid, including, but not limited to, ephedrine,
20 pseudoephedrine, norephedrine, norpseudoephedrine,
21 -methyephedrine, and N-methylpseudoephedrine, either derived from
22 natural sources such as the herb Ephedra sinica (also called Ma-
23 Huang or Chinese Ephedra) or synthetically produced.

24 6. "Ephedra product" means any product containing or
25 purporting to contain ephedra, ephedra extract, or ephedrine.

26 7. "FTC Order" means the Federal Trade Commission ("FTC"
27 or "Commission") Order in FTC Docket No. C-3459 (1993), a copy of
28 which is attached hereto as Exhibit A and made a part of this

1 Consent Decree.

2 8. "FTC Act" means the Federal Trade Commission Act, 15
3 U.S.C. §§ 41-58.

4 9. "Food," "drug," "cosmetic," and "device" mean "food,"
5 "drug," "cosmetic," and "device" as defined in Section 15 of the
6 FTC Act, 15 U.S.C. § 55.

7 10. "OTC drug" means any non-prescription over-the-counter
8 drug.

9 11. "Person" means a natural person, organization or other
10 legal entity, including a partnership, corporation,
11 proprietorship, association, cooperative, or any other group
12 acting together as an entity.

13 12. "Product label" means any label or other written,
14 printed or graphic matter upon any product or accompanying any
15 product, including package labels, bottle labels, and package
16 inserts.

17 I.

18 **MONETARY RELIEF**

19 **IT IS FURTHER ORDERED** that, within seven (7) business days
20 after the date of entry of this Consent Decree, defendants Lisa
21 Levey, in her capacity as personal representative of the Estate
22 of Michael Levey, Gary Ballen, and Bentley Myers International
23 Co., Publisher's Data Services, Inc., and Nutritional Life, Inc.,
24 and their successors and assigns, jointly and severally must pay
25 to the Federal Trade Commission the sum of Two Million Two
26 Hundred Thousand Dollars (\$2,200,000), under the following terms
27 and conditions:

28 A. The payment must be made by wire transfer or certified

1 or cashier's check made payable to the Federal Trade
2 Commission. In the event of any default in payment,
3 which default continues for ten (10) days beyond the
4 due date of payment, the amount due, together with
5 interest, as computed pursuant to 28 U.S.C. § 1961 from
6 the date of default to the date of payment, shall
7 immediately become due and payable.

8 B. All funds paid pursuant to this Part shall be deposited
9 into a fund administered by the Commission or its agent
10 to be used for equitable relief, including but not
11 limited to, consumer redress and to pay any attendant
12 costs for the administration of any redress fund. If
13 direct redress to consumers is wholly or partially
14 impracticable or funds remain after redress is
15 completed, the Commission may apply any remaining funds
16 for such other equitable relief (including consumer
17 information remedies) as it determines to be reasonably
18 related to the unlawful acts or practices alleged in
19 the Amended Complaint. Any funds not used for
20 equitable redress shall be deposited to the Treasury as
21 disgorgement. Defendants shall have no right to
22 challenge the Commission's choice of remedies under
23 this Part. No portion of the payment pursuant to this
24 Part shall be deemed a payment of any fine, penalty or
25 punitive assessment.

26 C. Defendants must not make any claim to or demand for
27 return of the funds, directly or indirectly, through
28 counsel or otherwise; and in the event of bankruptcy of

1 any defendant, defendants acknowledge that the funds
2 are not part of the debtor's estate, nor does the
3 estate have any claim or interest therein.

4 D. In accordance with 31 U.S.C. § 7701, defendants are
5 hereby required, unless they have done so already, to
6 furnish to the FTC their taxpayer identifying numbers
7 and/or social security numbers, which shall be used for
8 purposes of collecting and reporting on any delinquent
9 amount arising out of defendants' relationship with the
10 government.

11 E. Within thirty (30) days of receipt of a written request
12 by a representative of the Commission, defendants Gary
13 Ballen, and Bentley Myers International Co.,
14 Publisher's Data Services, Inc., and Nutritional Life,
15 Inc., and their successors and assigns, must:

- 16 1. Compile a mailing list identifying each person who
17 purchased any products sold under the names Zymax,
18 MillinexES, Serotril, and CartazyneDS between
19 January 1, 2000, and the date of entry of this
20 Consent Decree, by name and last known address,
21 and, for each such purchaser, provide the
22 product(s) purchased, the quantity of product(s)
23 purchased, and the date(s) and total dollar amount
24 of any refund(s) paid by defendants to the
25 purchaser, to the extent known by defendants
26 through a diligent search of their records; and
- 27 2. Provide Commission staff with a copy of the
28 mailing list and information required by Subpart

1 E.1 of this Part, on a product by product basis,
2 in a computer readable form acceptable to
3 Commission staff.

4 **II.**

5 **PROHIBITION AGAINST VIOLATING FTC ORDER**

6 **IT IS FURTHER ORDERED** that:

- 7 A. Defendants Bentley Myers International Co., Publisher's
8 Data Services, Inc., and Nutritional Life, Inc., and
9 their successors and assigns, and their officers,
10 agents, servants, and employees, and all persons in
11 active concert or participation with them who receive
12 actual notice of this Consent Decree by personal
13 service or otherwise, whether acting directly or
14 through any corporation, subsidiary, division, or other
15 entity, are hereby permanently enjoined from violating
16 any provision of the FTC Order.
- 17 B. In the event that the FTC Order is hereafter modified,
18 defendants' compliance with the modified FTC Order
19 shall not be deemed a violation of this Consent Decree.

20 **III.**

21 **PROHIBITED REPRESENTATIONS**

22 **IT IS FURTHER ORDERED** that defendants Gary Ballen and
23 Bentley Myers International Co., Publisher's Data Services, Inc.,
24 and Nutritional Life, Inc., and their successors and assigns, and
25 their officers, agents, servants, and employees, and all persons
26 in active concert or participation with them who receive actual
27 notice of this Consent Decree by personal service or otherwise,
28 whether acting directly or through any corporation, subsidiary,

1 endorsements or before and after photographs:

2 A. That any such product, service, or program:

- 3 1. Is safe;
- 4 2. Has no side effects;
- 5 3. Causes substantial weight loss;
- 6 4. Causes substantial weight loss without the need to
- 7 increase exercise or reduce caloric intake;
- 8 5. Cures arthritis;
- 9 6. Rebuilds cartilage in consumers' joints;
- 10 7. Is an effective alternative to joint replacement
- 11 surgery;
- 12 8. Is effective in the mitigation, treatment,
- 13 prevention, or cure of any disease, illness or
- 14 health condition; or

15 B. About the health benefits, performance, safety, or

16 efficacy of any such product, service, or program;

17 **unless** the representation is true and, at the time the

18 representation is made, defendants possess and rely upon

19 competent and reliable scientific evidence that substantiates the

20 representation.

21 V.

22 **REQUIRED DISCLOSURES: EPHEDRA PRODUCT**

23 **IT IS FURTHER ORDERED** that defendants Gary Ballen and

24 Bentley Myers International Co., Publisher's Data Services, Inc.,

25 and Nutritional Life, Inc., and their successors and assigns, and

26 their officers, agents, servants, and employees, and all persons

27 in active concert or participation with them who receive actual

28 notice of this Consent Decree by personal service or otherwise,

1 whether acting directly or through any corporation, subsidiary,
2 division, or other entity:

3 A. In any advertisement (other than a television or radio
4 advertisement), promotional material, or product label
5 for any ephedra product, and during any discussion
6 relating to the use of such ephedra product
7 communicated electronically or via telephone, must make
8 clearly and prominently, the following disclosure:
9 **WARNING:** This product contains ephedra or ephedrine
10 alkaloids, which can have dangerous effects on the
11 central nervous system and heart and can result in
12 serious injury. Risk of injury can increase with dose,
13 and may even include heart attack, stroke, seizure or
14 death. Consult a health care provider prior to use if
15 you have high blood pressure, heart or thyroid disease,
16 diabetes, difficulty urinating, prostate enlargement,
17 or glaucoma, or are using any prescription drug. Do
18 not use if you are taking a MAO inhibitor or any
19 allergy, asthma, or cold medication containing
20 ephedrine, pseudoephedrine or phenylpropanolamine.
21 Discontinue use if you experience rapid heart beat,
22 chest pain, severe headache, shortness of breath,
23 dizziness, sleeplessness or nausea. This product is
24 not recommended for use if you are or could be pregnant
25 unless a qualified health care provider tells you to
26 use it. The product may not be safe for your
27 developing baby.

28 **unless** defendants possess competent and reliable scientific

1 evidence that such product is safe and produces no adverse
2 side effects.

3 B. In any television or radio advertisement for any
4 ephedra product, must make, clearly and prominently,
5 the following disclosure:

6 **WARNING:** This product contains [insert name of
7 ephedrine alkaloids contained in product, e.g.,
8 Mahuang] which can have dangerous effects on the
9 central nervous system and heart and can result in
10 serious injury. Risk of injury increases with
11 increased dosage.

12 **unless** defendants possess competent and reliable scientific
13 evidence that such product is safe and produces no adverse
14 side effects.

15 **Provided, however,** that in the event that the Food and Drug
16 Administration issues a final rule requiring a warning on the
17 labeling of products containing ephedrine alkaloids, defendants
18 may substitute that warning for the disclosures required under
19 Subparts A and B above.

20 **VI.**

21 **FOOD AND DRUG ADMINISTRATION**

22 **IT IS FURTHER ORDERED** that nothing in this Consent Decree
23 shall prohibit defendants Gary Ballen and Bentley Myers
24 International Co., Publisher's Data Services, Inc., Nutritional
25 Life, Inc., and their successors and assigns, from:

26 A. Making any representation for any drug that is
27 permitted in labeling for such product under any
28 tentative final or final standard promulgated by the

1 Food and Drug Administration; and

2 B. Making any representation for any product that is
3 specifically permitted in labeling for such product by
4 regulations promulgated by the Food and Drug
5 Administration pursuant to the Nutrition Labeling and
6 Education Act of 1990.

7 **VII.**

8 **PROHIBITED PRACTICES: ENDORSEMENTS**

9 **IT IS FURTHER ORDERED** that defendants Gary Ballen and
10 Bentley Myers International Co., Publisher's Data Services, Inc.,
11 and Nutritional Life, Inc., and their successors and assigns, and
12 their officers, agents, servants, and employees, and all persons
13 in active concert or participation with them who receive actual
14 notice of this Consent Decree by personal service or otherwise,
15 whether acting directly or through any corporation, subsidiary,
16 division, or other device, in connection with the manufacturing,
17 labeling, advertising, promotion, offering for sale, sale, or
18 distribution of any product, service, or program, are hereby
19 permanently enjoined from misrepresenting, in any manner,
20 expressly or by implication, the identity or qualifications of
21 any person providing an endorsement of such product, service, or
22 program.

23 **VIII.**

24 **PROHIBITED PRACTICES: DEMONSTRATIONS**

25 **IT IS FURTHER ORDERED** that defendants Gary Ballen and
26 Bentley Myers International Co., Publisher's Data Services, Inc.,
27 and Nutritional Life, Inc., and their successors and assigns, and
28 their officers, agents, servants, and employees, and all persons

1 in active concert or participation with them who receive actual
2 notice of this Consent Decree by personal service or otherwise,
3 whether acting directly or through any corporation, subsidiary,
4 division, or other entity, in connection with the manufacturing,
5 labeling, advertising, promotion, offering for sale, sale, or
6 distribution of any product, service, or program, are hereby
7 permanently enjoined from misrepresenting, in any manner,
8 expressly or by implication, that any demonstration, picture,
9 experiment, illustration or test proves, demonstrates or confirms
10 any material quality, feature or merit of such product, service,
11 or program, or the superiority or comparability of the product,
12 service, or program, in a material respect relative to any other
13 product, service, or program.

14 **IX.**

15 **PROHIBITED PRACTICES: TESTS, STUDIES AND RESEARCH**

16 **IT IS FURTHER ORDERED** that defendants Gary Ballen and
17 Bentley Myers International Co., Publisher's Data Services, Inc.,
18 and Nutritional Life, Inc., and their successors and assigns, and
19 their officers, agents, servants, and employees, and all persons
20 in active concert or participation with them who receive actual
21 notice of this Consent Decree by personal service or otherwise,
22 whether acting directly or through any corporation, subsidiary,
23 division, or other entity, in connection with the manufacturing,
24 labeling, advertising, promotion, offering for sale, sale, or
25 distribution of any product, service, or program, are hereby
26 permanently enjoined from misrepresenting, in any manner,
27 expressly or by implication, the existence, contents, validity,
28 results, conclusions, or interpretations of any test, study, or

1 research.

2 X.

3 DISTRIBUTION OF CONSENT DECREE

4 IT IS FURTHER ORDERED that, for a period of five (5) years
5 from the date of entry of this Consent Decree:

6 A. Defendants Bentley Myers International Co., Publisher's
7 Data Services, Inc., and Nutritional Life, Inc., and
8 their successors and assigns:

- 9 1. Must deliver a copy of this Consent Decree to all
10 principals, officers, directors, managers,
11 employees, agents, and representatives having
12 responsibilities with respect to the subject
13 matter of this Consent Decree, and must secure
14 from each such person a signed and dated statement
15 acknowledging receipt of the Consent Decree; and
16 2. Must deliver this Consent Decree to current
17 personnel within thirty (30) days after the date
18 of service of this Consent Decree, and to new
19 personnel within thirty (30) days after the person
20 assumes such position or responsibilities.

21 B. Defendant Gary Ballen must deliver a copy of this
22 Consent Decree to the principals, officers, directors,
23 managers and employees under his control for any
24 business that (a) hires him as an employee, consultant,
25 or independent contractor and (b) has responsibilities
26 with respect to the subject matter of this Consent
27 Decree; and must secure from each such person a signed
28 and dated statement acknowledging receipt of the

1 Consent Decree within thirty (30) days after the date
2 of service of the Consent Decree or the commencement of
3 the employment relationship.

4 **XI.**

5 **ACKNOWLEDGMENT OF RECEIPT OF CONSENT DECREE**

6 **IT IS FURTHER ORDERED** that defendants Lisa Levey, in her
7 capacity as personal representative of the Estate of Michael
8 Levey, Gary Ballen, and Bentley Myers International Co.,
9 Publisher's Data Services, Inc., and Nutritional Life, Inc., and
10 their successors and assigns, within five (5) business days of
11 receipt of this Consent Decree as entered by the Court, must
12 submit to the Commission a truthful sworn statement acknowledging
13 receipt of this Consent Decree.

14 **XII.**

15 **RECORD-KEEPING PROVISIONS**

16 **IT IS FURTHER ORDERED** that, for a period of seven (7) years
17 from the date of entry of this Consent Decree unless otherwise
18 specified, defendants Gary Ballen and Bentley Myers International
19 Co., Publisher's Data Services, Inc., and Nutritional Life, Inc.,
20 and their successors and assigns, and any business where
21 defendant Gary Ballen is the majority owner, an officer, or
22 director of the business, or directly or indirectly manages or
23 controls the business and where the business engages or assists
24 others engaged in the manufacturing, labeling, advertising,
25 promotion, offering for sale, sale or distribution of any
26 product, service, or program, must maintain, and upon request,
27 make available to the Commission, copies of all business records
28 demonstrating compliance with the terms and provisions of this

1 Consent Decree, including, but not limited to the following:

- 2 A. Accounting records that reflect the cost of products,
3 services, or programs sold, revenues generated and the
4 disbursement of such revenues;
- 5 B. Personnel records accurately reflecting: the name,
6 address, and telephone number of each person employed
7 in any capacity by such business, including as an
8 independent contractor; that person's job title or
9 position; the date upon which the person commenced
10 work; and the date and reason for the person's
11 termination, if applicable;
- 12 C. Customer files containing the names, addresses, phone
13 numbers, dollar amounts paid, quantity of products,
14 services, or programs purchased, and description of
15 products, services, or programs purchased, to the
16 extent such information is obtained in the ordinary
17 course of business;
- 18 D. Complaints and refund requests (whether received
19 directly, indirectly, or through any third party) and
20 any responses to those complaints or requests;
- 21 E. Copies of all advertisements, promotional materials,
22 sales scripts, training materials, or other materials
23 utilized in the advertising, labeling, promotion,
24 offering for sale, distribution, or sale of any
25 product, service, or program;
- 26 F. All materials that were relied upon in making any
27 representations contained in the materials identified
28 in Subpart E of this Part, and all other documents

1 evidencing or referring to the accuracy of any claim
2 therein or to the safety or efficacy of any product,
3 service, or program, including, but not limited to, all
4 tests, reports, studies, demonstrations, or other
5 evidence that confirm, contradict, qualify, or call
6 into question the safety of efficacy of any such
7 product, service, or program;

8 G. Records accurately reflecting the name, address, and
9 telephone number of each manufacturer or laboratory
10 engaged in the development or creation of any testing
11 obtained for the purpose of advertising, labeling,
12 promoting, offering for sale, distributing, or selling
13 any product, service, or program;

14 H. For each credit card merchant processing accounts held
15 by or on behalf of any of the defendants:

- 16 1. A copy of the contract providing the account;
- 17 2. Records that accurately reflect the name, address
18 and telephone number of the acquirer bank, and its
19 credit card processor(s);
- 20 3. Copies of correspondence from VISA, MasterCard,
21 any similar entity, and any acquirer bank or
22 credit card processor describing a finding by such
23 entity that any of the defendants have incurred
24 excessive chargebacks on such account, or that any
25 of the defendants have engaged in any other fraud,
26 abuse or questionable activity with respect to
27 such account;

28 I. Copies of any contracts providing any of the defendants

1 with access to a billing and collection system, such as
2 a credit card, checking, savings, share or similar
3 account, utility bill, telephone bill, mortgage loan
4 account, or debit card; and.

5 J. For a period of five (5) years from the date of entry
6 of this Consent Decree:

- 7 1. Records that accurately reflect the information
8 described in Subpart I.E above; and
- 9 2. All complaints and refund requests, and responses
10 thereto, relating to any purchaser described in
11 Subpart I.E above.

12 **XIII.**

13 **COMPLIANCE REPORTING**

14 **IT IS FURTHER ORDERED** that, in order that compliance with
15 the provisions of this Consent Decree may be monitored:

16 A. For a period of four (4) years from the date of entry
17 of this Consent Decree:

18 1. Defendant Gary Ballen must notify the Commission
19 of the following:

- 20 a. Any changes in his residence, mailing
21 addresses, telephone numbers and email
22 addresses, within ten (10) days of the date
23 of such change;
- 24 b. Any changes in his employment status
25 (including self-employment) within ten (10)
26 days of such change. Such notice must
27 include the name and address of the business
28 with which he is, in any manner, affiliated

1 or employed, a statement of the nature of the
2 business, and a statement of his duties and
3 responsibilities in connection with the
4 business;

5 c. Any changes in his name or use of any aliases
6 or fictitious names; and

7 d. Any proposed change in the structure of any
8 business entity owned or controlled, directly
9 or indirectly, by him, at least thirty (30)
10 days prior to the effective date of any
11 proposed change; *provided* that, with respect
12 to any proposed change in the business entity
13 about which he learns less than thirty (30)
14 days prior to the date such action is to take
15 place, he must notify the Commission as soon
16 as is practicable after obtaining such
17 knowledge;

18 2. Defendants Bentley Myers International Co.,
19 Publisher's Data Services, Inc., and Nutritional
20 Life, Inc., and their successors and assigns,
21 must notify the Commission of any changes in
22 corporate structure that may affect compliance
23 obligations arising out of this Consent Decree,
24 including but not limited to, dissolution,
25 assignment, sale, merger, or other action that
26 would result in the emergence of a successor
27 corporation, the creation or dissolution of a
28 subsidiary, parent or affiliate that engages in

1 the acts or practices subject to this Consent
2 Decree, the filing of a bankruptcy petition, or
3 change in the corporate name or address, at least
4 thirty (30) days prior to the effective date of
5 any proposed change; *provided* that, with respect
6 to any proposed change in a corporation about
7 which defendants learn less than thirty (30) days
8 prior to the date such action is to take place,
9 defendants must notify the Commission as soon as
10 is practicable after obtaining such knowledge;

11 B. Ninety (90) days after the date of entry of this
12 Consent Decree, defendants Gary Ballen and Bentley
13 Myers International Co., Publisher's Data Services,
14 Inc., and Nutritional Life, Inc., and their successors
15 and assigns, each must provide a written report to the
16 Commission, sworn to under penalty of perjury, setting
17 forth in detail the manner and form in which they have
18 complied and are complying with this Consent Decree.
19 This report must include, but not be limited to:

- 20 1. Any changes required to be reported pursuant to
21 Subpart A above;
- 22 2. A copy of each acknowledgment of receipt of this
23 Consent Decree obtained by the defendants pursuant
24 to Part X of this Consent Decree;
- 25 3. Defendants' current address(es) and telephone
26 number(s), fax number(s), and email address(es);
27 and
- 28 4. A statement describing the manner in which the

1 defendants have complied and are complying with
2 Parts II through XII of this Consent Decree.

3 C. For the purposes of the compliance reporting required
4 by this Part, the Commission and its representatives
5 are authorized to communicate directly with any of the
6 defendants.

7 **XIV.**

8 **COMPLIANCE MONITORING**

9 **IT IS FURTHER ORDERED** that, for the purposes of monitoring
10 and investigating compliance with any provision of this Consent
11 Decree:

12 A. Within ten (10) days of receipt of a written request by
13 a representative of the Commission, defendants Gary
14 Ballen and Bentley Myers International Co., Publisher's
15 Data Services, Inc., and Nutritional Life, Inc., and
16 their successors and assigns, must submit additional
17 written reports, sworn to under penalty of perjury;
18 produce documents for inspection and copying; appear
19 for deposition; and provide entry during normal
20 business hours to any business location in such
21 defendant's possession or direct or indirect control to
22 inspect the business operation;

23 B. In addition, the Commission is authorized to monitor
24 compliance with this Consent Decree by all other lawful
25 means, including, but not limited to, the following:

26 1. Obtaining discovery from any person, without
27 further leave of court, using the procedures
28 prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36,

1 and Nutritional Life, Inc., and their successors and assigns,
2 must, unless otherwise directed by the Commission or its
3 representatives, mail all written notifications to the Commission
4 or the Commission's Associate Director for Enforcement to:

5 Associate Director for Enforcement
6 Federal Trade Commission
7 600 Pennsylvania Avenue, N.W.
8 Washington D.C. 20580
9 Re: US v. Levey, et al.

8 **XVI.**

9 **RETENTION OF JURISDICTION**

10 **IT IS FURTHER ORDERED** that this Court shall retain
11 jurisdiction of this matter for purposes of construction,
12 modification and enforcement of this Consent Decree.

13 **XVII.**

14 **SCOPE OF CONSENT DECREE**

15 **IT IS FURTHER ORDERED** that this Consent Decree resolves only
16 claims against the named defendants and does not preclude the
17 Commission from initiating further action or seeking any remedy
18 against any other persons or entities, including without
19 limitation persons or entities who may be subject to portions of
20 this Consent Decree by virtue of actions taken in concert or
21 participation with defendants, and persons or entities in any
22 type of indemnification or contractual relationship with
23 defendants.

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LOUISE R. JUNG

ROBIN M. RICHARDSON
Attorneys
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
(202)326-2798

FOR THE DEFENDANTS:

LISA LEVEY, *in her capacity
as personal representative
of the Estate of
MICHAEL LEVEY*

HARVEY I. SAFERSTEIN
*Attorney for defendant Lisa
Levey, in her capacity
as personal representative
of the Estate of Michael Levey*

GARY BALLEEN, *individually*

BENTLEY MYERS INTERNATIONAL CO.,
PUBLISHER'S DATA SERVICES, INC.,
AND NUTRITIONAL LIFE, INC.
by: Gary Ballen, President

LEWIS ROSE
*Attorney for defendants Gary Ballen,
Bentley Myers International Co.,
Publisher's Data Services, Inc.,
and Nutritional Life, Inc.*