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23 UNITED STATES DISTRICT COURT
24 DISTRICT OF NEVADA

25 FEDERAL TRADE COMMISSION,
26 Plaintiff,
27 v.
28 SEASILVER USA, INC.,
29 AMERICALOE, INC., BELA BERKES,
30 JASON BERKES, BRETT
31 RADEMACHER, individually, and d/b/a
32 Netmark International and NetmarkPro,
33 and DAVID R. FRIEDMAN, D.C.,
34 Defendants.

CV-S-03-0676-RLH-(LRL)

35 STIPULATED FINAL
36 JUDGMENT AND ORDER
37 FOR PERMANENT
38 INJUNCTION AND OTHER
39 EQUITABLE RELIEF re
40 SEASILVER USA, INC.;
41 AMERICALOE, INC.; JASON
42 BERKES AND BELA BERKES

43 Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), commenced
44 this action on June 12, 2003, by filing its Complaint for Injunctive and Other Equitable
45 Relief ("Complaint") pursuant to Section 13(b) of the Federal Trade Commission Act

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COUNSEL/PARTIES OF RECORD
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CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: MJS DEPUTY

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1 (“FTC Act”), 15 U.S.C. § 53(b), charging Defendants Seasilver USA, Inc., Americaloe,
2 Inc., Bela Berkes, Jason Berkes, Brett Rademacher also doing business as Netmark
3 International and NetmarkPro, and David R. Friedman, D.C., with violating Sections 5
4 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52.

5 The Commission, by and through its counsel, and Defendants Seasilver USA, Inc.,
6 Americaloe, Inc., Jason Berkes and Bela Berkes (“Defendants”), by and through their
7 counsel, have agreed to the entry of this Stipulated Final Judgment and Order for
8 Permanent Injunction and Other Equitable Relief (“Final Judgment”) by this Court in
9 order to resolve all matters arising out of the facts alleged in the Complaint and in dispute
10 in this action. The Commission and Defendants have consented to entry of this Final
11 Judgment without trial or adjudication of any issue of law or fact herein, and without
12 Defendants admitting liability or wrongdoing for the offenses alleged in the Complaint.

13 **NOW THEREFORE**, the Commission and Defendants having requested this
14 Court to enter this Final Judgment, **IT IS HEREBY ORDERED, ADJUDGED, AND**
15 **DECREED** as follows:

16 **FINDINGS**

17 1. This is an action instituted by the Commission under Sections 5 and 12 of
18 the FTC Act, 15 U.S.C. §§ 45 and 52, and the Commission has the authority to seek the
19 relief it requested.

20 2. This Court has jurisdiction over the subject matter of this case and
21 jurisdiction over all parties, and venue in this district is proper.

22 3. The Commission’s Complaint states claims upon which relief may be
23 granted against Defendants under Sections 5(a) and 12 of the FTC Act, 15 U.S.C.
24 §§ 45(a) and 52.

25 4. The activities of Defendants, as alleged in the Complaint, are in or
26 affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

27 5. Defendants waive all claims under the Equal Access to Justice Act, 28
28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat 847, 863-64 (1996).

1 6. Defendants also waive all rights to seek judicial review or otherwise
2 challenge or contest the validity of this Final Judgment. Defendants further waive and
3 release any claim they may have against the Commission, its employees, agents, or
4 representatives.

5 7. Entry of this Final Judgment is in the public interest.

6 8. This Final Judgment does not constitute and shall not be interpreted to
7 constitute either an admission by Defendants or a finding by the Court that Defendants
8 have engaged in violations of the FTC Act or any other law.

9 9. This Final Judgment resolves claims only against the named Defendants
10 and does not preclude the Commission from initiating further action or seeking any
11 remedy against any other persons or entities, including without limitation persons or
12 entities who may be subject to portions of this Final Judgment by virtue of actions taken
13 in concert or participation with Defendants, and persons or entities in any type of
14 indemnification or contractual relationship with Defendants.

15 DEFINITIONS

16 For the purposes of this Final Judgment, the following definitions shall apply:

17 1. "Advertising" means any written or verbal statement, illustration, or
18 depiction that is designed to effect a sale or create interest in the purchasing of goods or
19 services, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet,
20 circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart,
21 billboard, public transit card, point of purchase display, packaging, package insert, label,
22 film, slide, radio, television or cable television, audio program transmitted over a
23 telephone system, program-length commercial ("infomercial"), Internet website
24 (including metatags), or in any other medium.

25 2. "Defendants" means:

- 26 a. Bela Berkes and Jason Berkes (individually and in his capacity as an
27 officer of Seasilver USA, Inc. and Americaloce, Inc.), and
- 28 b. Seasilver USA, Inc. and Americaloce, Inc., and their respective

1 subsidiaries, divisions, affiliates, successors, and assigns;
2 and each of the above, and any entity through which any of the above does business.

3 3. "Covered product" means any food, drug, or device as defined in Section
4 15 of the FTC Act, 45 U.S.C. § 55, or any dietary supplement, or any ingredient or aspect
5 of any such food, drug, device, or dietary supplement, including but not limited to
6 Seasilver, however formulated, or any product containing aloe vera, phyto-silver, sea
7 vegetables, or the herb Pau D'Arco.

8 4. "Distributor" shall mean any purchaser or other transferee of any covered
9 product who acquires such product from any Defendant for resale and is entitled to or has
10 received any commission or bonus in connection with the sale or distribution of any
11 covered product.

12 5. "Endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

13 6. The terms "and" and "or" in this Final Judgment shall be construed
14 conjunctively or disjunctively as necessary, to make the applicable sentence or phrase
15 inclusive rather than exclusive.

16 **I. PROHIBITED BUSINESS ACTIVITIES**

17 **IT IS HEREBY ORDERED** that Defendants and their officers, directors, agents,
18 servants, employees, salespersons, Distributors, corporations, subsidiaries, affiliates,
19 successors, assigns, and those persons or entities in active concert or participation with
20 them who receive actual notice of this Final Judgment by personal service, facsimile, or
21 otherwise are hereby enjoined from

22 A. Making, or assisting others in making, expressly or by implication,
23 including through the use of endorsements, any false or misleading verbal or written
24 statement or representation in connection with the advertising, marketing, labeling,
25 promotion, offer for sale, distribution, or sale of Seasilver or any covered product,
26 including but not limited to:

- 27 1. Misrepresenting that any covered product cures or treats cancer,
28 including but not limited to multiple myeloma, non-Hodgkin's

1 lymphoma, lung, breast, and prostate cancer, and brain tumors;

2 2. Misrepresenting that any covered product treats or cures diabetes or
3 enables diabetes patients to reduce or eliminate their insulin
4 medication;

5 3. Misrepresenting that any covered product is clinically or
6 scientifically proven to be effective in treating or curing over 650
7 diseases, including cancer and AIDS;

8 4. Misrepresenting that any covered product is clinically or
9 scientifically proven to be effective in treating or curing typhoid or
10 anthrax;

11 5. Misrepresenting that any covered product is clinically or
12 scientifically proven to be non-toxic;

13 6. Misrepresenting the ingredients of any covered product;

14 7. Misrepresenting the contents, validity, results, conclusions, or
15 interpretations of any test or study;

16 8. Making any representation that any covered product causes rapid,
17 substantial, or permanent weight loss without reducing caloric
18 intake; and

19 B. Making or assisting others in making any representation about the health
20 benefits, efficacy, or safety of any covered product, or the performance of the product as
21 it relates to health benefits, efficacy, or safety, including but not limited to
22 representations that such product:

23 1. Causes rapid, substantial, or permanent weight loss;

24 2. Enables users to lose weight, or any specific amount of weight, or
25 assists in maintaining weight loss;

26 3. Is effective in the treatment or cure of any disease, including but not
27 limited to cancer, AIDS, obstructive pulmonary disease, lyme
28 disease, heart disease, and diabetes;

1 4. Reduces blood pressure; and

2 5. Is safe, has no side effects, or is non-toxic;

3 unless, at the time of making such representation, Defendants possess and rely upon
4 competent and reliable scientific evidence that substantiates the representation. For
5 purposes of this provision, "Competent and reliable scientific evidence" shall mean tests,
6 analyses, research, studies, or other evidence based on the expertise of professionals in
7 the relevant area, that have been conducted and evaluated in an objective manner by
8 persons qualified to do so, using procedures generally accepted in the profession to yield
9 accurate and reliable results; and

10 C. Providing to any person or entity the means and instrumentalities that
11 contain any claim prohibited under this Section. For purposes of this Section, "means
12 and instrumentalities" shall mean any information, including but not necessarily limited
13 to any advertising, labeling, or promotional materials, for use by Distributors in their
14 marketing or sale of any covered product;

15 **Provided, however, that** nothing in this Final Judgment shall prohibit Defendants
16 from making (1) any representation for any drug that is permitted in labeling for any such
17 drug under any tentative final or final standard promulgated by the Food and Drug
18 Administration, or under any new drug application approved by the Food and Drug
19 Administration, or (2) any representation that is specifically permitted in labeling for any
20 product by regulations promulgated by the Food and Drug Administration pursuant to the
21 Nutrition Labeling and Education Act of 1990.

22 **II. MONETARY JUDGMENT AND CONSUMER REDRESS**

23 **IT IS FURTHER ORDERED** that

24 A. Judgment is hereby entered against Defendants, jointly and severally, in the
25 amount of ONE HUNDRED TWENTY MILLION DOLLARS (\$120,000,000);
26 **provided, however, that** all of this amount except those amounts set forth hereafter shall
27 be suspended.

28 B. Defendants Seasilver USA, Inc., Americaloe, Inc., Bela Berkes and Jason

1 Berkes, jointly and severally, shall pay to the Commission the sum of Three Million
2 Dollars (\$3,000,000) not later than one hundred eighty (180) days after the date of entry
3 of this Final Judgment.

4 C. As security for the payment required by Subsection II. B, Defendants,
5 individually and on behalf of their respective successors, assigns and all other related
6 persons and entities reflected on the title of or otherwise asserting a lien, mortgage, deed
7 of trust, assignment, pledge, security interest or other interest in the real and personal
8 property described in Attachment A to this Final Judgment (collectively, the "Related
9 Parties"), hereby grant to the Commission liens on and security interests in the real and
10 personal property described in Attachment A to this Final Judgment, together with all
11 dwelling houses, other structures, improvements, appurtenances, hereditaments and other
12 rights appertaining or belonging thereto, or which hereafter may be added or attached
13 thereto, and all replacements, substitutions therefor or thereto, and all proceeds thereof,
14 whether presently existing or hereafter arising (collectively, the "Collateral"); **provided,**
15 **however, that** Attachment A to this Final Judgment shall be filed under seal.

16 Defendants represent and acknowledge that the Commission is relying on the material
17 representations that the Defendants and/or the Related Parties are the sole owners in fee
18 simple of the Collateral, title to the Collateral is marketable, and the Collateral currently
19 is not encumbered by any other lien, mortgage, deed of trust, assignment, pledge, security
20 interest or other interest except as set forth in Attachment A to this Final Judgment.

21 Defendants agree, individually and on behalf of the Related Parties, to subordinate any
22 liens, mortgages, deeds of trusts, assignments, pledges, security interests or other
23 interests that Defendants, individually or through or on behalf of any Related Parties,
24 have in the Collateral to the liens and security interests granted herein to the
25 Commission. Defendants further agree, individually and on behalf of the Related Parties,
26 that as of the date on which they sign this Final Judgment they shall refrain from
27 transferring, converting, encumbering, selling, assigning, or otherwise disposing of the
28 Collateral, except with the express prior written permission of counsel for the

1 Commission.

2 Defendants, individually and on behalf of the Related Parties, shall cooperate fully
3 with the Commission and be responsible (at their expense) for preparing, executing and
4 recording the necessary instruments and documents, including financing statements and
5 continuation statements, doing whatever else the Commission deems necessary or
6 desirable to perfect, evidence and continue its liens on and security interests in the
7 Collateral, and paying all related fees and costs, including attorneys' fees and filing fees.
8 Not later than five (5) days after the date on which the Commission authorizes staff to
9 sign this Final Judgment, Defendants and their Related Parties shall prepare (at their
10 expense), execute and deliver to the Commission mortgages, security agreements, UCC-1
11 Financing Statements and other documents in form and substance satisfactory to the
12 Commission, record such documents (at their expense), and take such other steps as the
13 Commission deems necessary or desirable to perfect and evidence its liens on and
14 security interests in the Collateral and to carry out the purposes of this Final Judgment.
15 Upon Defendants' timely and complete satisfaction of the payment required by
16 Subsection II. B or, if applicable, Subsection II. I.1, and at Defendants' written request,
17 the Commission agrees to release the liens and security interests granted herein and
18 Defendants shall be responsible for preparing and filing (at their expense) any
19 termination or other statements reasonably required in connection therewith. The
20 Commission shall also promptly release such liens and security interests to the extent
21 necessary to permit the sale or encumbrance of part or all of the Collateral if the proceeds
22 of such sale or financing are remitted directly to the Commission immediately upon
23 closing of such sale or financing in partial or complete satisfaction of this Final Judgment
24 and Defendants shall pay all fees and costs related to such release, including filing fees.
25 Defendants shall be responsible for paying all fees and costs relating to the preparation,
26 execution, delivery, filing, recording, continuation and termination of the liens and
27 security interests granted herein, including filing fees.

28 Defendants may pay the first \$625,000 of any such proceeds into a Federal Trade

1 Commission trust account established to hold these funds solely for use as a cash bond in
2 the matter of *United States v. Seasilver USA, Inc., et al.*, Case No. 03cv1186-W(LSP)
3 (S.D. Cal.) ("the FDA action") or payment to the Federal Trade Commission in partial
4 satisfaction of the Defendants' obligation under Subsection II.B. After such a trust
5 account is established and funded, Defendants may apply to have a United States
6 Treasury instrument in the amount of \$625,000 transferred to the Clerk of the United
7 States District Court for the Southern District of California in accordance with the
8 requirements of Paragraph 6 of the Consent Decree of Condemnation and Permanent
9 Injunction in the FDA action. Upon completion of the requirements of the FDA action
10 and discharge of the bond pursuant to Paragraph 11 of the Consent Decree of
11 Condemnation in the FDA action, the \$625,000 shall be returned to the Federal Trade
12 Commission trust account for immediate payment to the Federal Trade Commission in
13 partial satisfaction of the Defendants' obligation under Subsection II.B. Defendants
14 shall not receive any credit for the \$625,000 until it is paid to the Federal Trade
15 Commission from the Federal Trade Commission trust account in accordance with this
16 subsection; **provided, however, that** nothing in this Paragraph shall affect Defendants'
17 obligations pursuant to Section II. B.

18 D. Defendants shall pay all amounts due under this Final Judgment in cash by
19 electronic funds transfer to the Commission, or to such agent as the Commission may
20 direct, pursuant to instructions provided by the Commission.

21 E. All funds paid pursuant to this Final Judgment shall be deposited into a
22 fund administered by the Commission or its agent to be used for equitable relief,
23 including but not limited to consumer redress and any attendant expenses for the
24 administration of any redress fund. In the event that direct redress to consumers is
25 wholly or partially impracticable or funds remain after redress is completed, the
26 Commission may apply any remaining funds for such other equitable relief (including
27 consumer information remedies) as it determines to be reasonably related to the
28 Defendants' practices alleged in the Complaint. Any funds not used for such equitable

1 relief shall be deposited in the United States Treasury as disgorgement. Defendants shall
2 have no right to challenge the Commission's choice of remedies under this Section or the
3 manner of distribution chosen by the Commission.

4 F. Within twenty (20) calendar days after the date of entry of this Final
5 Judgment, Defendants shall provide the Commission with the full names, addresses, and
6 telephone numbers of all purchasers of Seasilver who purchased Seasilver prior to June
7 16, 2003, and received such Seasilver from the Defendants or any Seasilver Distributor,
8 to the extent that such purchaser is known to the Defendants through a diligent search of
9 their records, including but not limited to computer files, sales records, and inventory
10 lists, and, for each such purchaser, the quantity and the amount paid, including shipping
11 and handling charges and taxes. For purposes of this section, a "purchaser" shall not
12 include any Distributor. The Defendants shall take all reasonable steps to provide this
13 data in a form that is the most recent and accurate available to the Defendants, and in an
14 electronic format usable and compatible with the Commission's information system (to
15 be determined after consultation with the Commission).

16 G. All money paid pursuant to this Final Judgment is irrevocably paid to the
17 Commission for purposes of settlement between the Commission and Defendants, and
18 Defendants relinquish all right, title, and interest to assets held by the Commission in
19 connection with this case.

20 H. No portion of the payment as herein provided shall be deemed payment of
21 any fine, penalty, forfeiture, or punitive assessment.

22 I. In the event of any default by Defendants of any obligation imposed on
23 Defendants under this Section, including but not limited to the failure to timely and
24 completely fulfill the payment obligations set forth in Subsection II. B or the failure to
25 provide the liens and security interests described in Subsection II. C:

- 26 1. The suspension of the judgment amount set forth in Subsection II. A
27 shall be vacated as to Defendants, and the full amount of that
28 judgment shall immediately become due, plus interest from the date

1 of entry of this Final Judgment pursuant to 28 U.S.C. § 1961, less
2 any payments already made; and

- 3 2. The Commission shall be entitled to immediately exercise any and
4 all rights and remedies against the Defendants and their property,
5 including the Collateral, to collect the full amount of the judgment
6 amount set forth in Subsection II. A and interest thereon, less any
7 payments already made, including but not limited to enforcing and
8 realizing upon its liens and security interests in the Collateral.

9 J. Defendants agree that, if they fail to timely and completely fulfill the
10 payment and other obligations set forth in this Final Judgment, the facts as alleged in the
11 Complaint filed in this matter shall be taken as true in any subsequent litigation filed by
12 the Commission to enforce its rights pursuant to this Final Judgment, including but not
13 limited to, a nondischargeability complaint in any bankruptcy case.

14 K. Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to
15 furnish to the Commission Defendants' taxpayer identifying numbers (social security
16 number or employer identification number), which shall be used for purposes of
17 collecting and reporting on any delinquent amount arising out of Defendants' relationship
18 with the government.

19 **III. RIGHT TO REOPEN**

20 **IT IS FURTHER ORDERED** that, within five (5) business days after the date of
21 entry of this Final Judgment, Defendants shall submit to the Commission a truthful sworn
22 statement that shall reaffirm and attest to the truthfulness, accuracy and completeness of
23 the financial statements submitted to the Commission by Defendants, namely that of:
24 Defendant Bela Berkes, dated July 25, 2003; and Defendant Jason Berkes, dated July 25,
25 2003.

26 The Commission's agreement to this Final Judgment is expressly premised on the
27 truthfulness, accuracy, and completeness of such financial statements. Such financial
28 statements contain material information upon which the Commission relied in

1 negotiating and agreeing to this Final Judgment. If, upon motion by the Commission, the
2 Court finds that such financial statement of any Defendant contains any material
3 misrepresentation or omission, the suspended judgment entered pursuant to Subsection
4 II. A of this Final Judgment shall become immediately due and payable by such
5 Defendant, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as
6 amended, shall immediately begin to accrue on the unpaid balance; **provided, however,**
7 **that** in all other respects this Final Judgment shall remain in full force and effect unless
8 otherwise ordered by the Court; and, **provided further, that** proceedings instituted under
9 this provision would be in addition to, and not in lieu of, any other civil or criminal
10 remedies as may be provided by law, including but not limited to contempt proceedings,
11 or any other proceedings that the Commission or the United States may initiate to enforce
12 this Final Judgment. For purposes of this Section, and any subsequent proceedings to
13 enforce payment, including but not limited to a non-dischargeability complaint filed in a
14 bankruptcy proceeding, Defendants agree not to contest any of the allegations in the
15 Commission's Complaint.

16 **IV. LIFTING OF ASSET FREEZE**

17 **IT IS FURTHER ORDERED** that the freeze on Defendants' assets, as ordered
18 in the Preliminary Injunction entered by this Court on July 15, 2003, shall be dissolved
19 upon entry of this Final Judgment and the provision of the security interests required
20 under Subsection II.C.

21 **V. TERMINATION OF RECEIVERSHIP**

22 **IT IS FURTHER ORDERED** that the Receiver shall, concurrently with the
23 filing of this Final Judgment, submit to the Court a Final Report and Application for Fees
24 and Expenses.

25 The parties shall, concurrently with the filing of this Final Judgment, submit to the
26 Court a Stipulation and Order Terminating Receivership which shall be in the form of
27 Attachment B hereto.

28 Upon entry of the Stipulation and Order Terminating Receivership, the

1 receivership over Seasilver USA, Inc. and Americaloe, Inc. pursuant to this Court's
2 Order for Preliminary Injunction entered on July 15, 2003, shall then be terminated and
3 the provisions of said Preliminary Injunction related to the appointment of the Receiver
4 shall be dissolved.

5 **VI. MONITORING DISTRIBUTORS**

6 **IT IS FURTHER ORDERED** that

7 A. Defendants shall not disseminate to any Distributor any advertisement
8 containing any representations prohibited by this Final Judgment.

9 B. Defendants shall not, directly or indirectly, authorize or encourage any
10 Distributor to make any representations prohibited under this Final Judgment.

11 C. Within thirty (30) days after the date of entry of this Final Judgment, the
12 Defendants Seasilver USA, Inc. and Americaloe, Inc., shall send by first class mail,
13 postage prepaid, a copy of the notice attached hereto as Attachment C to each
14 Distributor, to the extent that such Distributor is known to said Defendants through a
15 diligent search of their records, including but not limited to computer files, sales records,
16 and inventory lists. The mailing shall not include any other documents, except
17 documents that may be required to be mailed to Distributors pursuant to any order
18 entered in the matter entitled *United States v. Seasilver USA, Inc., et al.*, Case No.
19 03cv1186-W(LSP) (S.D. Calif). The costs of this mailing shall be borne by said
20 Defendants. Within five (5) days after the date this mailing is completed, Defendants
21 shall provide to the Federal Trade Commission a list of all persons to whom Attachment
22 C was sent, together with the address to which it was mailed.

23 D. For a period of four (4) years following the date of entry of this Final
24 Judgment, the Defendants Seasilver USA, Inc. and Americaloe, Inc., shall send by first
25 class mail, postage prepaid, a copy of the notice attached hereto as Attachment C to each
26 Distributor with whom they first do business after the date of entry of this Final
27 Judgment who has not previously received the notice. Said Defendants shall send such
28 notice prior to any sale or distribution of Seasilver or any covered product to said

1 Distributor. The mailing shall not include any other documents, except documents that
2 may be required to be mailed to Distributors pursuant to any order entered in the matter
3 entitled *United States v. Seasilver USA, Inc., et al.*, Case No. 03cv1186-W(LSP) (S.D.
4 Calif). The costs of this mailing shall be borne by said Defendants.

5 E. Defendants may, as an alternative to first class mailing required in
6 Subsections VI. C or D, make Attachment C available by e-mail to any Distributor for
7 whom Defendants have a valid e-mail address.

8 F. Defendants Seasilver USA, Inc. and Americaloe, Inc., shall, within thirty
9 (30) days of providing notice pursuant to Subsections VI. C, D or E, secure from each
10 Distributor to whom a notice is sent a signed and dated statement acknowledging receipt
11 of such and, as to any Distributor who has not provided such a statement, shall not sell or
12 distribute Seasilver or any covered product to any such Distributor, accept any orders for
13 Seasilver or any covered product submitted by or on behalf of any such Distributor or pay
14 any commission, bonus or other compensation to any such Distributor. A form
15 acknowledgment may be included in the mailings described in Subsections VI. C and D
16 and in the e-mailings described in Subsection VI. E. Defendants shall retain the original
17 of each acknowledgment for a period of seven (7) years following the date of entry of
18 this Final Judgment.

19 G. For a period of four (4) years following the date of entry of this Final
20 Judgment, Defendants Seasilver USA, Inc. and Americaloe, Inc., shall post the complete
21 text of this Final Judgment on any website or part of a website maintained by or on
22 behalf of said Defendants for the purpose of communicating with Distributors. Such text
23 shall be accessible through a link entitled "FTC Final Judgment" that appears clearly and
24 conspicuously on the opening page of any such website or the opening page of any part
25 of such website that is for the purpose of communicating with Distributors. The Final
26 Judgment shall be posted in its entirety and shall not contain any other content.

27 H. Defendants Seasilver USA, Inc. and Americaloe, Inc., shall monitor
28 Distributors' advertising and promotional activities, including representations made

1 verbally or through electronic communications. In the event that Defendants receive any
2 information that, subsequent to receipt of Attachment C pursuant to Subsections VI. C
3 through E, any Distributor is using or disseminating any advertisement or promotional
4 material or making any verbal statement that contains any representation prohibited by
5 this Final Judgment, Defendants Seasilver USA, Inc. and Americaloe, Inc., shall
6 immediately terminate said Distributor's right to market Defendants' products and to
7 receive commissions, and shall immediately provide, by certified mail, all relevant
8 information, including name, address, and telephone number of the company or
9 individual making such representations, to the Federal Trade Commission at the address
10 provided in Subsection VII. E of this Final Judgment. With respect to any Distributor
11 whose right to market has been terminated pursuant to the terms of this Subsection,
12 Defendants Seasilver USA, Inc. and Americaloe, Inc., shall not sell or distribute
13 Seasilver or any covered product to any such Distributor, accept any orders for Seasilver
14 or any covered product submitted by or on behalf of any such Distributor, or pay any
15 commission, bonus, or other compensation to any such Distributor.

16 I. Defendants Seasilver USA, Inc. and Americaloe, Inc., shall require
17 Distributors to submit to Seasilver USA, Inc. all advertising and promotional materials
18 and claims for any covered product for approval prior to their dissemination and
19 publication. Seasilver USA, Inc. shall not authorize Distributors to disseminate these
20 materials and claims unless such materials and claims are in compliance with this Final
21 Judgment.

22 **VII. COMPLIANCE REPORTING BY DEFENDANTS**

23 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions
24 of this Final Judgment may be monitored,

25 A. Within ten (10) business days after the date of entry of this Final Judgment,
26 Jason Berkes and Bela Berkes each shall notify the Commission in writing of (1) his
27 residence address and mailing address; (2) his home telephone number; (3) the name,
28 address, and telephone number of each of his employers; (4) if applicable, the names of

1 his employment supervisors; (5) a description of each employer's activities; and (6) a
2 description of his duties and responsibilities in connection with such employment.

3 B. For a period of four (4) years from the date of entry of this Final Judgment,

4 1. Jason Berkes and Bela Berkes each shall notify the Commission in
5 writing of the following:

6 a. Any changes in his residence, mailing addresses, and
7 telephone numbers, within ten (10) days of the date of such
8 change;

9 b. Any changes in his employment status (including self-
10 employment) within ten (10) days of the date of such change.
11 Such notice shall include the name and address of each
12 business that said Defendant is affiliated with, employed by,
13 or performs services for; a statement of the nature of the
14 business; and a statement of his duties and responsibilities in
15 connection with the business; and

16 c. Any changes in his name or use of any aliases or fictitious
17 names within ten (10) days of the date of such change or use;
18 and

19 2. Defendants Seasilver USA, Inc. and Americaloe, Inc., shall notify
20 the Commission in writing of any changes in corporate structure that
21 may affect compliance obligations arising under this Final
22 Judgment, including but not limited to a dissolution, assignment,
23 sale, merger, or other action that would result in the emergence of a
24 successor corporation; the creation or dissolution of a subsidiary,
25 parent, or affiliate that engages in any acts or practices subject to
26 this Final Judgment; the filing of a bankruptcy petition; or a change
27 in the corporate name or address, at least thirty (30) days prior to
28 such change, **provided that**, with respect to any proposed change in

1 the corporation about which the Defendant learns less than thirty
2 (30) days prior to the date such action is to take place, Defendant
3 shall notify the Commission as soon as is practicable after obtaining
4 such knowledge.

5 C. Sixty (60) days after the date of entry of this Final Judgment, Defendants
6 shall each provide a written report to the FTC, sworn to under penalty of perjury, setting
7 forth in detail the manner and form in which they have complied and are complying with
8 this Final Judgment.

9 D. The report referred to in Subsection VII. C shall include, but not be limited
10 to:

- 11 1. Any changes required to be reported pursuant to Subsection VII. B;
- 12 and
- 13 2. A copy of each acknowledgment of receipt of this Final Judgment
14 obtained by any Defendant pursuant to Section X.

15 E. For the purposes of this Final Judgment, Defendants shall, unless otherwise
16 directed by the Commission's authorized representatives, mail all written notifications to
17 the Commission to:

18 Associate Director, Division of Advertising Practices
19 Federal Trade Commission
20 600 Pennsylvania Avenue, NW
Washington, DC 20580
Re: FTC v. Seasilver USA, Inc., et al., CV-S-03-0676-RLH-(LRL).

21 F. For purposes of the compliance reporting required by this Section, the
22 Commission is authorized to communicate directly with any Defendant.

23 **VIII. COMPLIANCE MONITORING**

24 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and
25 investigating compliance with any provision of this Final Judgment,

26 A. Within ten (10) days of receipt of written notice from a representative of
27 the Commission, Defendants each shall submit additional written reports, sworn to under
28 penalty of perjury; produce documents for inspection and copying; appear for deposition;

1 or provide entry during normal business hours to any business location in such
2 Defendant's possession or direct or indirect control to inspect the business operation.

3 B. In addition, the Commission is authorized to monitor compliance with this
4 Final Judgment by all other lawful means, including but not limited to the following:

- 5 1. Obtaining discovery from any person, without further leave of court,
6 using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34,
7 36, and 45; and
- 8 2. Posing as consumers and suppliers to any Defendant or any other
9 entity managed or controlled in whole or in part by any Defendant
10 without the necessity of identification or prior notice.

11 **Provided that** nothing in this Final Judgment shall limit the Commission's lawful use of
12 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and
13 57b-1, to obtain any documentary material, tangible things, testimony, or information
14 relevant to unfair or deceptive acts or practices in or affecting commerce (within the
15 meaning of 15 U.S.C. § 45(a)(1)).

16 C. Defendants shall permit representatives of the Commission to interview
17 any employer, consultant, independent contractor, representative, agent, or employee who
18 has agreed to such an interview, relating in any way to any conduct subject to this Final
19 Judgment. The person interviewed may have counsel present.

20 **IX. RECORD KEEPING PROVISIONS**

21 **IT IS FURTHER ORDERED** that, for a period of seven (7) years from the date
22 of entry of this Final Judgment, in connection with any business involved in the
23 advertising, marketing, promotion, offer for sale, distribution, or sale of any covered
24 product, or any other health-related product, operated by any Defendant, or where any
25 Defendant is a majority owner of the business or directly or indirectly manages or
26 controls such a business, Defendants and their agents, employees, officers, corporations,
27 successors, and assigns, and those persons in active concert or participation with them
28 who receive actual notice of this Final Judgment by personal service or otherwise, are

1 hereby restrained and enjoined from failing to create and retain the following records:

2 A. Accounting records that reflect the cost of goods or services sold, revenues
3 generated, and the disbursement of such revenues;

4 B. Personnel records accurately reflecting the name, address, and telephone
5 number of each person employed in any capacity by such business, including as an
6 independent contractor; such person's job title or position; the date upon which such
7 person commenced work; and the date and reason for such person's termination, if
8 applicable;

9 C. Customer files containing the names, addresses, phone numbers, dollar
10 amounts paid, quantity of items or services purchased, and description of items or
11 services purchased, to the extent such information is obtained in the ordinary course of
12 business;

13 D. Complaints and refund requests (whether received directly, indirectly, or
14 through any third party) and any responses to those complaints or requests;

15 E. Copies of all advertisements, promotional materials, sales scripts, training
16 material, or other marketing material utilized in the advertising, marketing, promotion,
17 offering for sale, distribution, or sale of any covered product; and

18 F. All materials that were relied upon in making any representations contained
19 in the materials identified in Subsection IX. E, including all documents evidencing or
20 referring to the accuracy of any claim therein or to the efficacy of any covered product,
21 including but not limited to all tests, reports, studies, demonstrations, or other evidence
22 that confirm, contradict, qualify, or call into question the accuracy of any claim about a
23 covered product or the efficacy of such covered product, including complaints and other
24 communications with consumers or with governmental or consumer protection agencies.

25 **X. DISTRIBUTION OF FINAL JUDGMENT BY DEFENDANTS**

26 **IT IS FURTHER ORDERED** that, for a period of four (4) years from the date of
27 entry of this Final Judgment,

28 A. Seasilver USA, Inc. and Americaloe, Inc. shall deliver a copy of this Final

1 Judgment to all principals, officers, directors, and managers, and to all current or newly
2 hired employees, agents, and representatives having responsibilities with respect to the
3 subject matter of this Final Judgment, and shall secure from each such person a signed
4 and dated statement acknowledging receipt of the Final Judgment. Seasilver USA, Inc.
5 and Americaloe, Inc. shall make such delivery as to current personnel within ten (10)
6 days after the date of entry of this Final Judgment, and as to new personnel within ten
7 (10) days after the person assumes such position or responsibilities.

8 B. In the event that Jason Berkes or Bela Berkes becomes employed by, enters
9 into a contract for personal services with, or becomes a distributor for, any business, such
10 Defendant shall, within thirty (30) days of entering into such relationship, deliver a copy
11 of the Final Judgment to the principals, officers, directors, and managers of such
12 business, and to any employees of such business who have responsibilities with respect to
13 the subject matter of this Final Judgment and who are under the control of or supervised
14 by such Defendant, and shall secure from each such person a signed and dated statement
15 acknowledging receipt of the Final Judgment.

16 **XI. ACKNOWLEDGMENT OF RECEIPT OF FINAL JUDGMENT BY**
DEFENDANTS

17 **IT IS FURTHER ORDERED** that each Defendant, within five (5) business days
18 of receipt of this Final Judgment as entered by the Court, shall submit to the Commission
19 a truthful sworn statement acknowledging receipt of this Final Judgment.

20 **XII. RETENTION OF JURISDICTION**

21 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this
22 matter for purposes of construction, modification and enforcement of this Final
23 Judgment.

24 **IT IS SO ORDERED:**

25 
26 **UNITED STATES DISTRICT JUDGE**

27 **DATED:** 4 March 2004
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So stipulated:

FOR THE FEDERAL TRADE COMMISSION

Dated: March 2, 2004

By: David M. Newman
David M. Newman
Janice L. Charter
Christa Vecchi
Matthew Daynard
Karen Muoio
Edward F. Glennon

Attorneys, Federal Trade Commission

FOR Defendant SEASILVER USA, INC.

Dated: _____

By: [Signature]
Jason Berkes, President

FOR Defendant AMERICALOE, INC.

Dated: _____

By: [Signature]
Jason Berkes, President

Dated: _____

[Signature]
JASON BERKES, individually

Dated: _____

[Signature]
BELA BERKES, individually

APPROVED AS TO FORM AND CONTENT:

KLEINFELD, KAPLAN, AND BECKER,
LLP

Dated: _____

By: [Signature]
Anthony L. Young
Anne V. Maher
Jennifer A. Davidson
Stacey L. Valerio

Attorneys for Defendants Seasilver
USA, Inc. and Americaloe, Inc.

SEYFARTH SHAW

Dated: _____

By: [Signature]
Graham R. Taylor

Attorneys for Defendants
Jason Berkes and Bela Berkes

ATTACHMENT C

NOTICE TO DISTRIBUTORS

[To be printed on letterhead of sending Defendant]

[Name and address of recipient]

[Date]

Dear [distributor's name]:

On _____, Seasilver USA, Inc., Americaloe, Inc., Jason Berkes and Bela Berkes entered into a settlement with the Federal Trade Commission regarding advertising claims for the dietary supplement Seasilver. The agreement does not constitute an admission that any of the defendants have violated any law. As part of the settlement, however, the defendants have agreed to provide the following message to Seasilver distributors, in order to put you on notice concerning the terms of the Final Judgment.

Previously, we claimed that Seasilver can cure cancer, diabetes, and a host of other serious diseases and conditions, and that taking Seasilver results in significant and permanent weight loss without dieting. No clinical studies support these claims. In fact, medical experts state that these claims are highly implausible and likely false. In addition, we represented that Seasilver is safe, has no side effects, and is non-toxic. The FTC has alleged that we did not have a reasonable basis to make any of these claims. Finally, we claimed that Seasilver provided the health benefits of natural cranberries, although it contained no natural cranberry. Rather, Seasilver contained artificial cranberry flavoring.

In the FTC settlement agreement, we have agreed, among other things, not to:

- Misrepresent that Seasilver or any other product cures or treats cancer, including, but not limited to, multiple myeloma, non-Hodgkin's lymphoma, lung, breast, and prostate cancer, and brain tumors;
- Misrepresent that Seasilver or any other product treats or cures diabetes or enables diabetes patients to reduce or eliminate their insulin medication;
- Misrepresent that Seasilver or any other product is clinically or scientifically proven to be effective in treating or curing over 650 diseases, including cancer and AIDS;
- Misrepresent that Seasilver or any other product is clinically or scientifically proven to be effective in treating or curing typhoid or anthrax;
- Misrepresent that Seasilver or any other product is clinically or scientifically proven to be non-toxic;
- Misrepresent the ingredients of Seasilver or any other product;

- Misrepresent the contents, validity, results, conclusions, or interpretations of any test or study;
- Make any representation that Seasilver or any other product causes rapid, substantial, or permanent weight loss without reducing caloric intake; and
- Make any representation about the health benefits, efficacy, or safety of Seasilver or any other product, or the performance of the product as it relates to health benefits, efficacy or safety, including, but not limited to, representations that such product:
 - ▶ Causes rapid, substantial, or permanent weight loss;
 - ▶ Enables users to lose weight, or any specific amount of weight, or assists in maintaining weight loss;
 - ▶ Is effective in the treatment or cure of any disease, including, but not limited to, cancer, AIDS, obstructive pulmonary disease, Lyme disease, heart disease, and diabetes;
 - ▶ Reduces blood pressure; and
 - ▶ Is safe, has no side effects, or is non-toxic;

unless we possess and rely upon competent and reliable scientific evidence that substantiates the representation. "Competent and reliable scientific evidence" means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. **Anecdotal evidence and consumer testimonials are not considered competent and reliable scientific evidence.**

A copy of the stipulated Final Judgment is available on the Seasilver website. Read it carefully. **Please note that failure to comply with any of the provisions of the Final Judgment that apply to distributors may subject you to civil or criminal sanctions.**

Your responsibility as a distributor is to utilize only claims, advertising, and promotional materials approved in advance by Seasilver USA, Inc. Failure to comply with these requirements will result in termination and will be reported to the Federal Trade Commission.

This letter has been provided for your files. If you have any questions, please contact _____.

Sincerely,