

ORIGINAL

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OCT 28 2005
CENTRAL DISTRICT OF CALIFORNIA
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6 Attorneys for Plaintiff
7 FEDERAL TRADE COMMISSION
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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

11 FEDERAL TRADE COMMISSION,
12
13 Plaintiff,
14 v.
15 NATURAL PRODUCTS, LLC;
16 ALL NATURAL 4 U, LLC; and
17 ANA M. SOLKAMANS,
18 Defendants.

SACV 04-1279 AHS (MLG:rc)

~~[PROPOSED]~~ STIPULATED FINAL
JUDGMENT AND ORDER AGAINST ALL
DEFENDANTS

19 WHEREAS Plaintiff, the Federal Trade Commission ("Commission")
20 or "FTC"), has commenced this action by filing the Complaint
21 herein; Defendants Natural Products, LLC, All Natural 4 U, LLC,
22 and Ana M. Solkamans have been served with the Summons and
23 Complaint; the parties have been represented by the attorneys
24 whose names appear hereafter; and the parties have agreed to
25 settlement of this action upon the following terms and conditions,
26 without adjudication of any issue of fact or law and without
27 Defendants admitting liability for any of the matters alleged in
28 the Complaint;

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1 Federal Trade Commission Act, 15 U.S.C. § 44.

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

8 D. "Covered product or service" shall mean any
9 health-related service or program, weight loss product, dietary
10 supplement, food, drug, or device.

11 E. "Endorsement" means as defined in 16 C.F.R. § 255.0(b).

12 F. "Food," "drug," and "device" shall mean as "food,"
13 "drug," and "device" are defined in Section 15 of the Federal
14 Trade Commission Act, 15 U.S.C. § 55.

15 G. "Weight loss product" shall mean any product, program,
16 or service designed, used, or purported to produce weight loss,
17 reduction or elimination of fat, change in body composition,
18 slimming, or caloric deficit; or to prevent weight gain, in a user
19 of the product, program, or service.

20 H. The term "including" in this Order shall mean
21 "including, without limitation."

22 I. The terms "and" and "or" in this Order shall be
23 construed conjunctively or disjunctively as necessary, to make the
24 applicable phrase or sentence inclusive rather than exclusive.

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I.

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PROHIBITED REPRESENTATIONS

28 IT IS THEREFORE ORDERED that:

- 1 A. Defendants, and their officers, agents, servants,
2 employees, and representatives, and all persons and
3 entities in active concert or participation with them
4 who receive actual notice of this Order by personal
5 service or otherwise, whether acting directly or through
6 any corporation, subsidiary, division, or other entity,
7 in connection with the manufacturing, labeling,
8 advertising, marketing, promotion, offering for sale,
9 sale, or distribution of any weight loss product, in or
10 affecting commerce, are hereby permanently enjoined from
11 representing, in any manner, expressly or by
12 implication, including through the use of endorsements
13 or trade names, that such product:
- 14 1. causes users to lose substantial weight while
15 eating unlimited amounts of food;
 - 16 2. causes substantial weight loss by blocking the
17 absorption of fat or calories; and
 - 18 3. works for all overweight users;
- 19 B. Defendants, and their officers, agents, servants,
20 employees, and representatives, and all persons and
21 entities in active concert or participation with them
22 who receive actual notice of this Order by personal
23 service or otherwise, whether acting directly or through
24 any corporation, subsidiary, division, or other entity,
25 in connection with the manufacturing, labeling,
26 advertising, marketing, promotion, offering for sale,
27 sale, or distribution of any covered product or service,
28 in or affecting commerce, are hereby permanently

1 enjoined from making any representation, expressly or by
2 implication, including through the use of endorsements
3 or trade names:

4 1. that any such covered product or service:

5 a. causes weight loss;

6 b. causes rapid and substantial weight loss; or

7 2. about the health benefits, performance, efficacy,
8 safety or side effects of such product or service;

9 unless, at the time the representation is made, the
10 representation is true, and they possess and rely upon
11 competent and reliable scientific evidence that
12 substantiates the representation; and

13 C. Defendants, and their officers, agents, servants,
14 employees, and representatives, and all persons and
15 entities in active concert or participation with them
16 who receive actual notice of this Order by personal
17 service or otherwise, whether acting directly or through
18 any corporation, subsidiary, division, or other entity,
19 in connection with the manufacturing, labeling,
20 advertising, marketing, promotion, offering for sale,
21 sale, or distribution of any covered product or service,
22 in or affecting commerce, are hereby permanently
23 enjoined from misrepresenting, in any manner, expressly
24 or by implication, including through the use of
25 endorsements or trade names, the existence, contents,
26 validity, results, conclusions, or interpretations of
27 any test, study, or research.

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II.

FOOD AND DRUG ADMINISTRATION

IT IS FURTHER ORDERED that nothing in this Order shall prohibit Defendants from making any representation for any drug that is permitted in the labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration ("FDA"), or under any new drug application approved by the FDA. Nothing in this Order shall prohibit Defendants from making any representation for any product that is specifically permitted in labeling by FDA regulations promulgated pursuant to the Nutrition Labeling and Education Act of 1990.

III.

MONETARY RELIEF

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of two million, one hundred fifty-eight thousand, four hundred ninety dollars (\$2,158,490.00) is hereby entered in favor of the Commission against Defendants, for equitable monetary relief; provided that this judgment shall be suspended subject to the conditions set forth in Paragraph IV of this Order.
- B. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent in its sole discretion to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of such equitable relief. In the event that direct redress to

1 consumers is wholly or partially impracticable or funds
2 remain after redress is completed, the Commission may
3 apply any remaining funds for such other equitable
4 relief (including consumer information remedies) as it
5 determines to be reasonably related to the Defendants'
6 practices alleged in the Complaint. Any funds not used
7 for such equitable relief shall be deposited to the
8 United States Treasury as disgorgement. Defendants
9 shall have no right to challenge the Commission's choice
10 of remedies under this Paragraph, and shall have no
11 right to contest the manner of distribution chosen by
12 the Commission. No portion of any payments under the
13 judgment herein shall be deemed a payment of any fine,
14 penalty, or punitive assessment.

16 IV.

17 TERMINATION OF SUSPENSION

18 IT IS FURTHER ORDERED that the Commission's agreement to and
19 the Court's approval of this Order are expressly premised
20 upon the truthfulness, accuracy, and completeness of Defendants'
21 financial conditions, as represented in their financial statements
22 dated January 25, 2005, including attachments, and in any other
23 documents submitted by Defendants, upon which the Commission
24 relied in negotiating and agreeing to the terms of this Order.
25 If, upon motion by the Commission to the Court, the Court finds
26 the Defendants, in the above-referenced financial statements and
27 information, failed to disclose any material asset the value of
28 which exceeds \$1,000, materially misrepresented the value of any

1 asset, or made any other material misrepresentation or omission,
2 the Court shall terminate the suspension of the monetary judgment
3 against such Defendant, in favor of the Commission, and the entire
4 judgment amount of two million, one hundred fifty-eight thousand,
5 four hundred ninety dollars (\$2,158,490.00), representing the
6 approximate amount of consumer injury, will become immediately due
7 and payable, less any payments already made. For purposes of this
8 Paragraph, and any subsequent proceedings to enforce payment,
9 including but not limited to a non-dischargeability complaint
10 filed in bankruptcy proceedings, Defendants waive any right to
11 contest any of the allegations set forth in the Complaint filed in
12 this matter or the judgment referenced above.

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14 V.

15 **DISTRIBUTION OF ORDER BY DEFENDANTS**

16 **IT IS FURTHER ORDERED** that, for a period of five (5) years
17 from the date of entry of this Order, Defendants shall deliver
18 copies of this Order as directed below:

- 19 A. **LLC Defendants:** Defendants Natural Products and All
20 Natural, and their successors and assigns, must deliver
21 a copy of this Order to each of their principals,
22 officers, directors, and managers. Defendants Natural
23 Products and All Natural, and their successors and
24 assigns, must also deliver a copy of this Order to each
25 of their employees, agents, and representatives who
26 engage in conduct related to the subject matter of this
27 Order. For current personnel, delivery shall be within
28 five (5) days after the date of service of this Order

1 upon Defendants. For new personnel, delivery shall
2 occur prior to them assuming their responsibilities.

3 **B. Individual Defendant as Control Person:** For any
4 business that Defendant Solkamans controls, directly or
5 indirectly, or in which she has a majority ownership
6 interest, Defendant Solkamans must deliver a copy of
7 this Order to each principal, officer, director, and
8 manager of the business. Defendant Solkamans must also
9 deliver a copy of this Order to each employee, agent,
10 and representative of that business who engages in
11 conduct related to the subject matter of this Order.
12 For current personnel, delivery shall be within five (5)
13 days of service of this Order upon Defendant Solkamans.
14 For new personnel, delivery shall occur prior to them
15 assuming their responsibilities.

16 **C. Individual Defendant as Employee or Non-Control Person:**
17 For any business where Defendant Solkamans is not a
18 controlling person of a business but otherwise engages
19 in conduct related to the subject matter of this Order,
20 Defendant Solkamans must deliver a copy of this Order to
21 each principal and manager of such business before
22 engaging in such conduct.

23 **D.** Defendants must secure a signed and dated statement
24 acknowledging the Order's receipt from all recipients
25 under this Paragraph within thirty (30) days of the
26 Order's delivery.
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1 VI.

2 CUSTOMER LISTS

3 IT IS FURTHER ORDERED that Defendants, and their officers,
4 agents, servants, employees, and representatives, and all persons
5 and entities in active concert or participation with them who
6 receive actual notice of this Order by personal service or
7 otherwise, whether acting directly or through any corporation,
8 subsidiary, division, or other entity, are permanently restrained
9 and enjoined from selling, renting, leasing, transferring, or
10 otherwise disclosing the name, address, telephone number, social
11 security number, credit card number, bank account number, e-mail
12 address, or other identifying information of any person who paid
13 any money to Defendants, who was solicited to pay money to
14 Defendants, or whose identifying information was obtained for the
15 purpose of soliciting them to pay money to Defendants, at any time
16 prior to the date this Order is entered, in connection with the
17 advertising, marketing, promoting, offering for sale, sale, or
18 distribution of any weight loss product. Provided, however, that
19 any party subject to this provision may disclose such identifying
20 information to a law enforcement agency or as required by any law,
21 regulation, or court order.

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23 VII.

24 COMPLIANCE MONITORING

25 IT IS FURTHER ORDERED that, for the purpose of monitoring and
26 investigating compliance with any provision of this Order:

- 27 A. Within twenty (20) days of receipt of written notice
28 from a representative of the Commission, Defendants each

1 shall submit additional written reports, sworn to under
2 penalty of perjury; produce documents for inspection and
3 copying; appear for deposition; and/or provide entry
4 during normal business hours to any business location in
5 such Defendant's possession or direct or indirect
6 control in order to inspect the business operation;

7 B. In addition, the Commission is authorized to monitor
8 compliance with this Order by all other lawful means,
9 including but not limited to the following:

- 10 1. Obtaining discovery from any person, without
11 further leave of court, using the procedures
12 prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36,
13 and 45;
- 14 2. Posing as consumers or suppliers to Defendants,
15 Defendants' employees, or any other entity managed
16 or controlled in whole or in part by Defendants,
17 without the necessity of identification or prior
18 notice; and

19 C. Defendants shall permit representatives of the
20 Commission to interview any employer, consultant,
21 independent contractor, representative, agent, or
22 employee who has agreed to such an interview, relating
23 in any way to any conduct subject to this Order. The
24 person interviewed may have counsel present.

25 *Provided*, however, that nothing in this Order limits the
26 Commission's lawful use of compulsory process, pursuant to
27 Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to
28 obtain any documentary material, tangible things, testimony, or

1 information relevant to unfair or deceptive acts or practices in
2 or affecting commerce (within the meaning of 15 U.S.C. §
3 45(a)(1)).
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5 VIII.

6 COMPLIANCE REPORTING BY DEFENDANTS

7 IT IS FURTHER ORDERED that, in order that compliance with the
8 provisions of this Order may be monitored:

9 A. For a period of five (5) years from the date of entry of
10 this Order:

11 1. Defendant Solkamans shall notify the Commission of
12 the following:

13 a. Any changes in residence, mailing addresses,
14 and telephone numbers, within twenty (20) days
15 of the date of such change;

16 b. Any changes in employment status (including
17 self-employment), and any changes in the
18 ownership in any business entity, within
19 twenty (20) days of the date of such change.
20 Such notice shall include the name and address
21 of each business that Defendant Solkamans is
22 affiliated with, employed by, creates or
23 forms, or performs services for; a statement
24 of the nature of the business; and a statement
25 of her duties and responsibilities in
26 connection with the business or employment;

27 c. Any changes in Defendant Solkamans's name or
28 use of any aliases or fictitious names; and

2. Defendants shall notify the Commission of any changes in the structure of Defendants Natural Products or All Natural, or any business entity that Defendant Solkamans directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the business entities' name or address, at least thirty (30) days prior to such change, provided that, with respect to any proposed change in the business entity about which Defendants learn less than thirty (30) days prior to the date such action is to take place, Defendants shall notify the Commission as soon as is practicable after obtaining such knowledge;

B. One hundred eighty (180) days after the date of entry of this Order, Defendants each shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report must include, but not be limited to:

1. For Defendant Solkamans:

- 1 a. Her then-current residence address, mailing
2 address, and telephone numbers;
- 3 b. Her then-current employment and business
4 addresses and telephone numbers, a description
5 of the business activities of each such
6 employer or business, and her title and
7 responsibilities for each such employer or
8 business; and
- 9 c. Any other changes required to be reported
10 under Subparagraph A above; and
- 11 2. For all Defendants:
- 12 a. A copy of each acknowledgment of receipt of
13 this Order obtained by Defendants pursuant to
14 Paragraph V, "Distribution of Order by
15 Defendants;" and
- 16 b. Any other changes required to be reported
17 under Subparagraph A above;
- 18 C. For the purposes of this Order, Defendants shall, unless
19 otherwise directed by the Commission's authorized
20 representatives, mail all written notifications to the
21 Commission to: Assistant Regional Director, Western
22 Region, Federal Trade Commission, 10877 Wilshire Blvd.
23 Suite 700, Los Angeles, CA 90024. Attn: FTC v. Natural
24 Products; and
- 25 D. For purposes of the compliance reporting and monitoring
26 required by this Order, the Commission is authorized to
27 communicate directly with Defendants.
- 28

IX.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of seven (7) years from the date of entry of this Order, Defendants and any business where Defendant Solkamans is the majority owner, officer, or director of the business, or directly or indirectly manages or controls the business, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of products or services purchased, and description of products or services purchased, to the extent such information is obtained in the ordinary course of business;

- 1 D. Complaints and refund requests (whether received
2 directly, indirectly, or through any third party) and
3 any responses to those complaints or requests;
- 4 E. Copies of all advertisements, promotional materials,
5 sales scripts, training materials, or other materials
6 utilized in the advertising, labeling, promotion,
7 offering for sale, distribution, or sale of any product
8 or service;
- 9 F. All materials that were relied upon in making any
10 representations contained in the materials identified in
11 Subparagraph E;
- 12 G. All other documents evidencing or referring to the
13 accuracy of any claim made concerning the safety or
14 efficacy of any product or service, including, but not
15 limited to, all tests, reports, studies, demonstrations,
16 or other evidence that confirm, contradict, qualify, or
17 call into question the safety or efficacy of any such
18 product or service;
- 19 H. Records accurately reflecting the name, address, and
20 telephone number of each manufacturer or laboratory
21 engaged in the development, creation or testing of any
22 such product or service; and
- 23 I. All records and documents necessary to demonstrate full
24 compliance with each provision of this Order, including
25 but not limited to, copies of acknowledgments of receipt
26 of this Order, required by Paragraph V, and all reports
27 submitted to the FTC pursuant to Paragraph VIII.
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X.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must execute and submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XI.

RETENTION OF JURISDICTION

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

XII.

SCOPE OF ORDER

IT IS FURTHER ORDERED that this Order resolves only claims against the Defendants and does not preclude the Commission from initiating further action or seeking any remedy against any other persons or entities, including without limitation persons or entities who may be subject to portions of this Order by virtue of actions taken in concert or participation with Defendants, and persons or entities in any type of indemnification or contractual relationship with Defendants.

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1 JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and
 2 against Defendants, pursuant to all the terms and conditions
 3 recited above.

4
 5 **SO STIPULATED:**

6
 7 DATED: 8-10, 2005

ANA M. SOLKAMANS
 ANA M. SOLKAMANS, AKA ANA M.
 STEVENS, individually and as sole
 Member and Manager of Defendants
 Natural Products, LLC and All
 Natural 4 U, LLC

11 DATED: OCTOBER 27, 2005

BARBARA Y.K. CHUN
 BARBARA Y.K. CHUN
 Attorney for Plaintiff FTC

13 **APPROVED AS TO FORM:**

14
 15 DATED: 8-10, 2005

JEFFREY E. THOMAS
 JEFFREY E. THOMAS
 Attorney for Defendants

17 **IT IS SO ORDERED:**

18
 19 Dated: NOV 2, 2005

ALICEMARIE H. STOTLER
 ALICEMARIE H. STOTLER
 UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Barbara Y.K. Chun, hereby declare as follows:

1. I am over the age of 18. My business address is 10877 Wilshire Blvd. Suite 700, Los Angeles, California 90024. The following statements are within my personal knowledge, and if called as a witness I could and would competently testify thereto.

2. On October 27, 2005, I served the attached "[PROPOSED] STIPULATED FINAL JUDGMENT AND ORDER AGAINST ALL DEFENDANTS" by mailing it via pre-paid first class US Mail to:

Jeffrey E. Thomas
Law Offices of Jeffrey E. Thomas
16148 Sand Canyon Ave.
Irvine, CA 92618
Counsel for Defendants Natural Products, LLC, All Natural 4 U, LLC, and Ana M. Solkamans

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of October, 2005, at Los Angeles, California.

Barbara Y.K. Chun
Barbara Y.K. Chun