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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

FEDERAL TRADE COMMISSION,)	Hon. Garrett E. Brown, Jr.
)	
Plaintiff,)	Civil Action No. 05-3460 (GEB)
)	
v.)	
)	
ROBERT CHINERY, JR., TRACY)	
A. CHINERY, and RTC RESEARCH)	
& DEVELOPMENT, LLC,)	
Defendants.)	
)	

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION
AND SETTLEMENT OF CLAIMS FOR MONETARY RELIEF
AS TO ALL DEFENDANTS**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission") filed a Complaint for Permanent Injunction and Other Equitable Relief ("Complaint") against Defendants Robert Chinery, Jr.; Tracy A. Chinery; and RTC Research & Development, LLC (collectively, "Defendants") pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure permanent injunctive relief, restitution, disgorgement, and other equitable relief against Defendants for their alleged deceptive acts or practices and false advertisements in connection with the advertising, promotion, and sale of an alleged weight-loss product, Xenadrine EFX, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

Other than the allegations pertaining to jurisdictional facts and except as otherwise stated herein, Defendants deny the allegations in the Complaint. Defendants agree to the terms of the Order to avoid the uncertainties and costs of litigation.

The Commission and Defendants have stipulated to the entry of the following Order in settlement of the Commission's Complaint against Defendants. The Court, being advised in the premises, finds:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties pursuant to 15 U.S.C. §§ 45(a), 52, and 53(b) and 28 U.S.C. §§ 1331, 1337(a) and 1345.
2. Venue in the District of New Jersey is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

3. The acts and practices of Defendants were and are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The Complaint states a claim upon which relief can be granted under Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and the Commission has the authority to seek the relief it has requested.

5. The Commission and Defendants stipulate and agree to this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the Complaint through the date of entry of this Order. Other than the allegations pertaining to jurisdictional facts and except as otherwise stated herein, Defendants deny the allegations in the Complaint. By entering this stipulation, Defendants do not admit that they, or any one of them, has engaged in conduct prohibited by Sections 5 or 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52. Nothing in this stipulation shall be considered or construed to be an admission of liability by Defendants.

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

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

8. Nothing in this Order obviates Defendants' obligation to comply with Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52.

9. This Order was drafted jointly by the Commission and Defendants and reflects the negotiated agreement of the parties. Each party reserves all rights not expressly addressed in this Order.

10. The paragraphs of this Order shall be read as the necessary requirements for compliance and not as alternatives for compliance and no paragraph serves to modify another paragraph unless expressly so stated.

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

12. Entry of this Order is in the public interest.

13. This Order resolves (a) all of the Commission's claims against Defendants and Nutraquest, Inc., a company owned by Defendants and which previously was authorized to sell Xenadrine EFX and which is now a debtor-in-possession pursuant to Chapter 11 of the United States Bankruptcy Code; and (b) all of the Commission's claims against any other person or entity based upon advertisements for Xenadrine EFX that were created or disseminated by or on behalf of Defendants on or before the date of entry of this Order, with the exception of any claims arising under the Agreement Containing Consent Order entered by the Commission in the administrative proceeding captioned *In the Matter of Cytodyne, LLC, Evergood Products Corp., and Melvin L. Rich*, FTC Docket No. C-4146. This Order 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 future actions taken in concert or participation with Defendants, and by virtue of such

future actions, and any other persons or entities in any type of indemnification or contractual relationship with Defendants.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "Defendants" shall mean:
 - a. Robert Chinery, Jr. ("Robert Chinery"), individually and in his capacity as an officer and director of Nutraquest, Inc. and as an officer of RTC Research & Development, LLC;
 - b. Tracy A. Chinery ("Tracy Chinery"), individually and in her capacity as an officer of Nutraquest, Inc. and as managing member of RTC Research & Development, LLC; and
 - c. RTC Research & Development, LLC ("RTC"), a limited liability company, its managers, members, divisions and subsidiaries, its successors and assigns.

2. "Advertising" and "promotion" shall mean any written or verbal statement, illustration or depiction designed to effect a sale or create interest in the purchasing of goods, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, packaging, package insert, label, film, slide, radio, television or cable

television, audio program transmitted over a telephone system, program-length commercial (“infomercial”), the Internet, email, press release, video news release, or in any other medium.

3. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

4. “Competent and reliable scientific evidence” shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has 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.

5. “Xenadrine EFX” shall refer to all past, present, and future formulations of any dietary supplement marketed under the name Xenadrine EFX.

6. “Substantially similar product” shall mean any product containing active ingredients identical to those of Xenadrine EFX and any product containing a majority of active ingredients common to the active ingredients in Xenadrine EFX.

7. “Weight-loss product” shall mean any product, program, or service designed, used, or purported to produce weight loss, reduction or elimination of fat, slimming, or caloric deficit in a user of the product, program, or service and shall include but not be limited to Xenadrine EFX and any substantially similar product.

8. “Covered product” shall mean any weight-loss product, dietary supplement, food, drug, or device.

9. “Endorsement” shall mean as defined in 16 C.F.R. § 255.0(b).

10. “Food,” “drug,” and “device” shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.

11. "Commission" shall mean the Federal Trade Commission.

12. "Eligible Purchasers" shall mean all consumers who purchased Xenadrine EFX between February 1, 2002 and May 22, 2006 and shall include:

- a. Consumers who purchased Xenadrine EFX directly from Nutraquest, Inc. and who can be specifically identified from information in one or more of Defendants' possession ("Direct Eligible Purchasers");
- b. Consumers who are members of the *Markowitz* plaintiff class of consumers of Xenadrine EFX, who have not opted out of the *Markowitz* settlement, who can be specifically identified by name and current address in the possession of *Markowitz* counsel, and who are identified in a searchable electronic file to be provided by *Markowitz* counsel to counsel for the Commission no later than twenty (20) days after entry of this Order ("*Markowitz* Eligible Purchasers"); and
- c. All other consumers who purchased Xenadrine EFX, who are not either Direct Eligible Purchasers or *Markowitz* Eligible Purchasers, and who have not opted out of the *Markowitz* settlement ("Other Eligible Purchasers").

13. "Participating Purchasers" shall mean all Eligible Purchasers who fully comply with the redress program procedures in Part VII of this Order. Participating Purchasers will receive redress in an amount that will be calculated based on the purchase of one bottle of Xenadrine EFX at a retail price of \$30.00 per bottle. Depending upon the number of allowable

