

THE HONORABLE RICHARD A. JONES

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TANNER GARRETT VAUGHN, individually
and doing business as Lead Expose, Inc., and
Uptown Media, Inc.,

Defendant.

Case No. 2:11-cv-630-RAJ

**~~PROPOSED~~ STIPULATED FINAL
JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) against Defendant, alleging deceptive acts or practices and false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

Defendant, having been represented by counsel, and acting by and through said counsel, has consented to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief (“Order”) without a trial or adjudication of any issue of law or fact herein.

1 Drug, sold alone or in combination with companion products, that is advertised, marketed, promoted,
2 offered for sale, distributed, or sold with express or implied representations that the product contains
3 acai berries or the extract thereof.

4 2. **“Adequate and Well-Controlled Human Clinical Study”** means a human clinical study that
5 is randomized, double-blind, placebo-controlled, and conducted by persons qualified by training and
6 experience to conduct such a study.

7 3. **“Assisting Others”** includes, but is not limited to: (a) arranging for the dissemination or
8 publication of advertisements; (b) assisting in the formulation, drafting, or revision of advertisements;
9 (c) creating, hosting, or maintaining websites; (d) recruiting third parties to advertise or market
10 products, services, or programs; (e) obtaining or generating customer leads; (f) performing or
11 providing marketing, billing, or collection services of any kind; (g) verifying, processing, fulfilling, or
12 arranging for the fulfillment of orders; or (h) acting as an officer or director of a business entity.

13 4. **“Clearly and Prominently”** shall mean: (a) in textual communications (*e.g.*, printed
14 publications or words displayed on the screen of a computer), the required disclosures are of a type,
15 size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in
16 print that contrasts with the background on which they appear; (b) in communications disseminated
17 orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered
18 in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them; (c) in
19 communications disseminated through video means (*e.g.*, television or streaming video), the required
20 disclosures are in writing in a form consistent with subparagraph (a) of this definition and shall appear
21 on the screen for a duration sufficient for an ordinary consumer to read and comprehend them; (d) in
22 communications made through interactive media, such as the Internet, mobile applications, and
23 software, the required disclosures are unavoidable and presented in a form consistent with
24 subparagraph (a) of this definition, in addition to any audio or video presentation of them; and (e) in all
25 instances, the required disclosures are presented in an understandable language and syntax, in the same
26 language as the predominant language that is used in the communication, and with nothing contrary to,
27 inconsistent with, or in mitigation of the disclosures used in any communication of them.

28 5. **“Defendant”** means Tanner Garrett Vaughn, individually and doing business as Lead Expose,

1 Inc., and Uptown Media, Inc., and by whatever name he may be known.

2 6. **“Device”** means an instrument, apparatus, implement, machine, contrivance, implant, in vitro
3 reagent, or other similar or related article, including any component, part, or accessory, which is:

4 (a) recognized in the official National Formulary, or the United States Pharmacopeia, or any
5 supplement to them; (b) intended for use in the diagnosis of disease or other conditions, or in the cure,
6 mitigation, treatment, or prevention of disease, in man or other animals; or (c) intended to affect the
7 structure or any function of the body of man or other animals; and which does not achieve any of its
8 principal intended purposes through chemical action within or on the body of man or other animals and
9 which is not dependent upon being metabolized for the achievement of any of its principal intended
10 purposes.

11 7. **“Dietary Supplement”** means: (a) any product labeled as a dietary supplement or otherwise
12 represented as a dietary supplement; or (b) any pill, tablet, capsule, powder, softgel, gelcap, liquid, or
13 other similar form containing one or more ingredients that are a vitamin, mineral, herb or other
14 botanical, amino acid, probiotic, or other dietary substance for use by humans to supplement the diet
15 by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination
16 of any ingredient described above that is intended to be ingested, and is not represented to be used as a
17 conventional Food or as a sole item of a meal or the diet.

18 8. **“Document” or “Documents”** is equal in scope and synonymous in meaning to the terms
19 “document” and “electronically stored information,” as described and used in Federal Rule of Civil
20 Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video
21 recordings, computer records, and any other data compilations from which information can be
22 obtained. A draft or nonidentical copy is a separate Document within the meaning of the term.

23 9. **“Drug”** means: (a) articles recognized in the official United States Pharmacopoeia, official
24 Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement
25 to any of them; (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention
26 of disease in man or other animals; (c) articles (other than Food) intended to affect the structure or any
27 function of the body of man or other animals; and (d) articles intended for use as a component of any

1 article specified in clause (a), (b), or (c); but does not include Devices or their components, parts, or
2 accessories.

3 10. **“Endorsement”** means any advertising message (including verbal statements, demonstrations,
4 or depictions of the name, signature, likeness, or other identifying personal characteristics of an
5 individual or the name or seal of an organization) that consumers are likely to believe reflects the
6 opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser.

7 11. **“Essentially Equivalent Product”** means a product that contains the identical ingredients,
8 except for inactive ingredients (*e.g.*, binders, colors, fillers, excipients), in the same form and dosage,
9 and with the same route of administration (*e.g.*, orally, sublingually), as the Dietary Supplement, Food,
10 or Drug; *provided that* the Dietary Supplement, Food, or Drug may contain additional ingredients if
11 reliable scientific evidence generally accepted by experts in the field demonstrates that the amount and
12 combination of additional ingredients are unlikely to impede or inhibit the effectiveness of the
13 ingredients in the Essentially Equivalent Product.

14 12. **“Food”** means: (a) articles used for food or drink for man or other animals; (b) chewing gum;
15 and (c) articles used for components of any such article.

16 13. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or
17 services.

18 14. **“Material connection”** means any relationship that materially affects the weight or credibility
19 of any endorsement and that would not reasonably be expected by consumers.

20 15. **“Person”** means a natural person, an organization or other legal entity, including a corporation,
21 partnership, sole proprietorship, limited liability company, association, cooperative, or any other group
22 or combination acting as an entity.

23 16. **“Plaintiff”** means the Federal Trade Commission (“Commission” or “FTC”).
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25 I. PROHIBITED BUSINESS ACTIVITIES

26 **IT IS THEREFORE ORDERED** that Defendant and his officers, agents, servants,
27 employees and attorneys, and all other persons in active concert or participation with any of them,
28 who receive actual notice of this Order by personal service or otherwise, whether acting directly or

1 through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with
2 the advertising, marketing, promotion, offering for sale, or sale of any product, service, or program, are
3 hereby permanently restrained and enjoined from:

4 A. Misrepresenting, or assisting others in misrepresenting, any material fact, expressly or
5 by implication, including, but not limited to:

- 6 1. That any website or other publication is an objective news report;
- 7 2. That objective news reporters have performed independent tests of any product,
8 service, or program, including but not limited to Acai Berry Products, any other
9 Dietary Supplement, Food, Drug, or Device, and penny or surplus auctions;
- 10 3. That independent tests demonstrate the effectiveness of any product, service, or
11 program featured in any website or other publication, including but not limited
12 to Acai Berry Products, any other Dietary Supplement, Food, Drug, or Device,
13 and penny or surplus auctions;
- 14 4. That comments posted on websites express the views of independent consumers;
- 15 5. The total cost to purchase, receive, or use the product, service, or program;
- 16 6. Any material restrictions, limitations, or conditions to purchase, receive, or use
17 the product, service, or program;
- 18 7. Any material aspect of the performance, efficacy, nature, or central
19 characteristics of the product, service, or program; and
- 20 8. Any material aspect of the nature or terms of a refund, cancellation, exchange,
21 or repurchase policy for the product, service, or program; and
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24 B. Failing to disclose, clearly and prominently:

- 25 1. Any material connection, when one exists, between any user or endorser of any
26 product, service, or program and Defendant or any other person manufacturing,
27 advertising, labeling, promoting, offering for sale, selling or distributing such
28 product, service, or program; and

1 2. If applicable, that the content of any website or other publication has not been
2 authored by an objective journalist but is in fact an advertisement placed for
3 compensation.

4 **II. PROHIBITED REPRESENTATIONS: WEIGHT LOSS CLAIMS**

5 **IT IS FURTHER ORDERED** that Defendant and his officers, agents, servants, employees
6 and attorneys, and all other persons in active concert or participation with any of them, who receive
7 actual notice of this Order by personal service or otherwise, whether acting directly or through any
8 trust, corporation, subsidiary, division, or other device, or any of them, in connection with the
9 advertising, marketing, promotion, offering for sale, or sale of any Dietary Supplement, Food, or Drug,
10 are hereby permanently restrained and enjoined from making, or Assisting Others in making, directly
11 or by implication, including through the use of a product name, Endorsement, depiction, or illustration,
12 any representation that such product:

- 13 A. Causes or helps cause weight loss;
14 B. Causes or helps cause rapid weight loss; or
15 C. Causes or helps cause substantial weight loss;

16 unless the representation is non-misleading and, at the time of making such representation, Defendant
17 possesses and relies upon competent and reliable scientific evidence that substantiates that the
18 representation is true. For purposes of this Section, competent and reliable scientific evidence shall
19 consist of at least two Adequate and Well-Controlled Human Clinical Studies of any Dietary
20 Supplement, Food, or Drug or of an Essentially Equivalent Product, conducted by different
21 researchers, independently of each other, that conform to acceptable designs and protocols and whose
22 results, when considered in light of the entire body of relevant and reliable scientific evidence, are
23 sufficient to substantiate that the representation is true. Defendant shall have the burden of proving
24 that a product satisfies the definition of Essentially Equivalent Product.
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III. PROHIBITED REPRESENTATIONS: OTHER HEALTH-RELATED CLAIMS

IT IS FURTHER ORDERED that Defendant and his officers, agents, servants, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertising, marketing, promotion, offering for sale, or sale of any Dietary Supplement, Food, Drug, or Device, are hereby permanently restrained and enjoined from making, or Assisting Others in making, directly or by implication, including through the use of a product name, Endorsement, depiction, or illustration, any representation, other than representations covered under Section II of this Order for any Dietary Supplement, Food, or Drug, about the health benefits, performance, or efficacy of any Dietary Supplement, Food, Drug, or Device, unless the representation is non-misleading, and, at the time of making such representation, Defendant possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Section, competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

IV. PROHIBITED REPRESENTATIONS: NON HEALTH-RELATED CLAIMS

IT IS FURTHER ORDERED that Defendant and his officers, agents, servants, employees and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product, service, or program that is *not* a Dietary Supplement, Food, Drug, or Device, are hereby permanently restrained and enjoined from making, or Assisting Others in making, directly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation regarding the benefits,

1 performance, or efficacy of any products, services, or programs, unless the representation is not
2 misleading, and, at the time of making such representation, Defendant possesses and relies upon
3 competent and reliable evidence that substantiates that the representation is true. For the purposes of
4 this Section, competent and reliable evidence means tests, analyses, research, studies, or other
5 evidence based on the expertise of professionals in the relevant area, that have been conducted and
6 evaluated in an objective manner by individuals qualified to do so, using procedures generally
7 accepted in the profession to yield accurate and reliable results.

8 **V. PROHIBITED REPRESENTATIONS: TESTS OR STUDIES**

9 **IT IS FURTHER ORDERED** that Defendant, and his officers, agents, servants, employees,
10 and attorneys and all other Persons in active concert or participation with any of them, who receive
11 actual notice of this Order by personal service or otherwise, whether acting directly or through any
12 trust, corporation, subsidiary, division, or other device, or any of them, in connection with the
13 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Dietary
14 Supplement, Food, Drug, or Device, or any other product, service, or program, in or affecting
15 commerce, are hereby permanently restrained and enjoined from misrepresenting, in any manner,
16 expressly or by implication, including through the use of any product name or Endorsement, the
17 existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, in
18 connection with any representations covered by Sections II, III, and IV of this Order.
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20 **VI. FDA-APPROVED CLAIMS**

21 **IT IS FURTHER ORDERED** that nothing in this Order shall prohibit Defendant from
22 making any representation for any product that is specifically permitted in labeling for such product by
23 regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and
24 Education Act of 1990.

25 **VII. MONETARY JUDGMENT**

26 **IT IS FURTHER ORDERED** that:
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- 1 A. Judgment is entered in favor of the Commission and against Defendant for equitable
2 monetary relief in the amount of two hundred and three thousand, one hundred and
3 sixty nine dollars (\$203,169), *provided, however*, that the judgment relief shall be
4 suspended upon satisfaction of the obligations imposed by this Section;
- 5 B. Defendant shall pay to the Commission seventy nine thousand, three hundred and nine
6 dollars (\$79,309) in installments as follows:
- 7 1. Defendant shall pay three thousand five hundred dollars (\$3,500) within ten (10)
8 days of the date of entry of this Order;
 - 9 2. After the initial payment of \$3,500, Defendant shall pay to the Commission the
10 remaining balance of seventy five thousand, eight hundred and nine dollars
11 (\$75,809) in thirty-four monthly installments of two thousand, one hundred
12 sixty five dollars and ninety seven cents (\$2,165.97) and an additional, final
13 payment of two thousand, one hundred sixty six dollars and two cents
14 (\$2,166.02);
 - 15 3. These monthly payments shall begin on the first day of the second month
16 following the date of entry of this Order, and shall be made on the first day of
17 every month thereafter until complete; and
 - 18 4. All payments required by this Order shall be made by electronic fund transfer in
19 accordance with instructions previously provided by a representative of the
20 Commission;
- 21 C. Time is of the essence for the payments specified above. In the event of any default by
22 Defendant on the initial payment or on any installment payment imposed under this
23 Section, where default continues for ten (10) days beyond the due date of payment:
- 24 1. The judgment imposed herein will not be suspended as to Defendant, and the
25 full amount of that Judgment (\$203,169) shall immediately become due and
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1 payable, plus interest from the date of entry of this Order pursuant to 28 U.S.C.
2 § 1961, as amended, less any amounts already paid; and

3 2. The Commission shall be entitled to exercise immediately any and all rights and
4 remedies against Defendant and his assets to collect the full amount of the
5 judgment and interest thereon, less any amounts already paid;

6 D. All money paid to the Commission under this Order shall be deposited into a fund
7 administered by the Commission or its representatives to be used for equitable relief,
8 including consumer redress and any attendant expenses for the administration of any
9 redress fund. If direct redress to consumers is wholly or partially impracticable or
10 money remains after redress is completed, the Commission may apply any remaining
11 money for such other equitable relief (including consumer information remedies) as it
12 determines to be reasonably related to Defendant's practices alleged in the Complaint.
13 Any monies not used for such equitable relief shall be deposited to the United States
14 Treasury as disgorgement. Defendant shall have no right to challenge any actions the
15 Commission or its representatives may take pursuant to this Subsection;

16 E. In accordance with 31 U.S.C. § 7701, as amended, Defendant is required, unless he has
17 already done so, to furnish to the Commission his taxpayer identifying number or social
18 security number, which shall be used for purposes of collecting and reporting on any
19 delinquent amount arising out of Defendant's relationship with the government;
20 Defendant is further required, unless he has already done so, to provide the Commission
21 with clear, legible and full-size photocopies of all valid driver's licenses that he possess,
22 which will be used for reporting and compliance purposes;

23 F. Defendant relinquishes all dominion, control, and title to the funds paid to the fullest
24 extent permitted by law. Defendant shall make no claim to or demand for return of the
25 funds, directly or indirectly, through counsel or otherwise;

26 G. Defendant agrees that the facts as alleged in the Complaint filed in this action shall be
27 taken as true without further proof in any bankruptcy case or subsequent civil litigation
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1 pursued by the Commission to enforce its rights to any payment or money judgment
2 pursuant to this Order, including but not limited to a nondischargeability complaint in
3 any bankruptcy case. Defendant further stipulates and agrees that the facts alleged in
4 the Complaint establish all elements necessary to sustain an action by the Commission
5 pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A),
6 and that this Order shall have collateral estoppel effect for such purposes;

7 H. The Commission's agreement to the suspension of this judgment is expressly premised
8 upon the truthfulness, accuracy, and completeness of Defendant's financial condition as
9 represented in the financial statements executed on April 18, 2011, and October 26,
10 2011, and Defendant's 2008 – 2010 Individual Federal Income Tax Returns, which
11 contain material information upon which the Commission relied in negotiating and
12 agreeing to the terms of this Order. If, upon motion by the Commission, the Court finds
13 that Defendant failed to disclose any material asset, materially misrepresented the value
14 of any asset, or made any other material misrepresentation in or omission from the
15 financial statements or tax returns, then the full judgment against Defendant, less
16 amounts already paid, shall become immediately due, and interest computed pursuant to
17 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance.
18 *Provided, however,* that in all other respects, this Order shall remain in full force and
19 effect unless otherwise ordered by the Court;

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

23 J. Paragraph III ("Asset Preservation") of the Stipulated Preliminary Injunction entered in
24 this matter is modified to permit the payments and transfers to the Commission
25 described above in this monetary judgment section, and the same Paragraph III of the
26 Stipulated Preliminary Injunction entered in this matter shall be dissolved upon
27 completion of the initial payment of \$3,500 specified in Section VII.B.2., above;
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1 **VIII. COOPERATION WITH FTC COUNSEL**

2 **IT IS FURTHER ORDERED** that Defendant shall, in connection with this action or any
3 subsequent investigations related to or associated with the transactions or the occurrences that are the
4 subject of the FTC’s Complaint, cooperate in good faith with the FTC and appear at such places and
5 times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial
6 discovery, review of documents, and for such other matters as may be reasonably requested by the
7 FTC. If requested in writing by the FTC, Defendant shall appear and provide truthful testimony in any
8 trial, deposition, or other proceeding related to or associated with the transactions or the occurrences
9 that are the subject of the Complaint, without the service of a subpoena.

10 **IX. ORDER ACKNOWLEDGMENTS**

11 **IT IS FURTHER ORDERED** that Defendant obtain acknowledgments of receipt of this
12 Order:

- 13 A. Defendant, within 7 days of entry of this Order, must submit to the Commission an
14 acknowledgment of receipt of this Order sworn under penalty of perjury.
- 15 B. For 5 years after entry of this Order, for any business of which the Defendant is the
16 majority owner or that he directly or indirectly controls, Defendant must deliver a copy
17 of this Order to: (1) all principals, officers, directors, and managers; (2) all employees,
18 agents, and representatives who participate in conduct related to the subject matter of
19 the Order; and (3) any business entity resulting from any change in structure as set forth
20 in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry
21 of this Order for current personnel. To all others, delivery must occur before they
22 assume their responsibilities.
- 23 C. From each individual or entity to which Defendant delivered a copy of this Order, he
24 must obtain, within 30 days, a signed and dated acknowledgment of receipt of this
25 Order.

26 **X. COMPLIANCE REPORTING**

27 **IT IS FURTHER ORDERED** that Defendant make timely submissions to the Commission:
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- 1 A. One year after entry of this Order, Defendant must submit a compliance report, sworn
2 under penalty of perjury.
- 3 1. Defendant must: (a) designate at least one telephone number and an email,
4 physical, and postal address as points of contact, which representatives of the
5 Commission may use to communicate with Defendant; (b) identify all of
6 Defendant's businesses by all of their names, telephone numbers, and physical,
7 postal, email, and Internet addresses; (c) describe the activities of each business,
8 including the products and services offered, and the means of advertising,
9 marketing, and sales; (d) describe in detail whether and how Defendant is in
10 compliance with each Section of this Order; and (e) provide a copy of each
11 Order Acknowledgment obtained pursuant to this Order, unless previously
12 submitted to the Commission;
- 13 2. Additionally, Defendant must: (a) identify all telephone numbers and all email,
14 Internet, physical, and postal addresses, including all residences; (b) identify all
15 titles and roles in all business activities, including any business for which
16 Defendant performs services whether as an employee or otherwise and any
17 entity in which Defendant has any ownership interest; and (c) describe in detail
18 Defendant's involvement in each such business, including title, role,
19 responsibilities, participation, authority, control, and any ownership.
- 20 B. For 20 years following entry of this Order, Defendant must submit a compliance notice,
21 sworn under penalty of perjury, within 14 days of any change in the following:
- 22 1. Defendant must report any change in: (a) any designated point of contact; (b)
23 the structure of any entity that Defendant has any ownership interest in or
24 directly or indirectly controls that may affect compliance obligations arising
25 under this Order, including: creation, merger, sale, or dissolution of the entity
26 or any subsidiary, parent, or affiliate that engages in any acts or practices subject
27 to this Order.
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1 2. Additionally, Defendant must report any change in: (a) name, including aliases
2 or fictitious name, or residence address; or (b) title or role in any business
3 activity, including any business for which Defendant performs services whether
4 as an employee or otherwise and any entity in which Defendant has any
5 ownership interest, and identify its name, physical address, and Internet address,
6 if any.

7 C. Defendant must submit to the Commission notice of the filing of any bankruptcy
8 petition, insolvency proceeding, or any similar proceeding by or against Defendant
9 within 14 days of its filing.

10 D. Any submission to the Commission required by this Order to be sworn under penalty of
11 perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by
12 concluding: “I declare under penalty of perjury under the laws of the United States of
13 America that the foregoing is true and correct. Executed on:_____” and supplying the
14 date, signatory’s full name, title (if applicable), and signature.

15 E. Unless otherwise directed by a Commission representative in writing, all submissions to
16 the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by
17 overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement,
18 Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue
19 NW, Washington, DC 20580. The subject line must begin: *FTC v. Vaughn*, Matter No.
20 X110027.

21 **XI. RECORDKEEPING**

22 **IT IS FURTHER ORDERED** that Defendant must create certain records for 20 years after
23 entry of the Order, and retain each such record for 5 years. Specifically, for any business in which
24 Defendant is a majority owner or directly or indirectly controls, he must maintain the following
25 records:
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27 A. Accounting records showing the revenues from all goods or services sold, all costs
28 incurred in generating those revenues, and the resulting net profit or loss;

- 1 B. Personnel records showing, for each person providing services, whether as an employee
2 or otherwise, that person's: name, addresses, and telephone numbers; job title or
3 position; dates of service; and, if applicable, the reason for termination;
- 4 C. Customer files showing the names, addresses, telephone numbers, dollar amounts paid,
5 and the quantity and description of goods or services purchased;
- 6 D. Complaints and refund requests, whether received directly or indirectly, such as through
7 a third party, and any response;
- 8 E. All records necessary to demonstrate full compliance with each provision of this Order,
9 including all submissions to the Commission; and
- 10 F. A copy of each advertisement or other marketing material.

11
12 **XII. COMPLIANCE MONITORING**

13 **IT IS FURTHER ORDERED** that, for the purpose of monitoring Defendant's compliance
14 with this Order, including the financial representations upon which part of the judgment was suspended
15 and any failure to transfer any assets as required by this Order:

- 16 A. Within 14 days of receipt of a written request from a representative of the Commission,
17 Defendant must: submit additional compliance reports or other requested information,
18 which must be sworn under penalty of perjury; appear for depositions; and produce
19 documents, for inspection and copying. The Commission is also authorized to obtain
20 discovery, without further leave of court, using any of the procedures prescribed by
21 Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34,
22 36, 45, and 69.
- 23 B. For matters concerning this Order, the Commission is authorized to communicate
24 directly with Defendant. Defendant must permit representatives of the Commission to
25 interview any employee or other person affiliated with Defendant who has agreed to
26 such an interview. The person interviewed may have counsel present.
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C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendant or any individual or entity affiliated with Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XIII. RETENTION OF JURISDICTION

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

ATTORNEYS FOR PLAINTIFF

s/signed on original _____ Dated: _____
JULIE K. MAYER, WSBA #34638
LAURA M. SOLIS, WSBA #36005
Federal Trade Commission
915 Second Avenue
Suite 2896
Seattle, Washington 98174
(206) 220-4475 (Mayer)
(206) 220-4544 (Solis)
(206) 220-6366 (facsimile)
jmayer@ftc.gov
lsolis@ftc.gov

DEFENDANT

s/signed on original _____ Dated: _____
Tanner Garrett Vaughn

1 **ATTORNEYS FOR DEFENDANT**

2 s/signed on original _____ Dated: _____
3 DEREK LINKE, WSBA # 38314
4 Newman Du Wors
5 1201 Third Avenue
6 Suite 1600
7 Seattle, Washington 98101
8 (206) 274-2800 (phone)
9 (206) 274-2801 (facsimile)
10 linke@newmanlaw.com

11 s/signed on original _____ Dated: _____
12 (approved as to form)
13 DAWN C. STEWART
14 The Stewart Law Firm, PLLC
15 1050 Connecticut Avenue, NW
16 Tenth Floor
17 Washington, D.C. 20036
18 Tel: 202-772-1080
19 Fax: 202-521-0616
20 dstewart@thestewartlawfirm.com

21 s/signed on original _____ Dated: _____
22 (approved as to form)
23 JAMES A. KAMINSKI
24 Hughes & Bentzen, PLLC
25 1100 Connecticut Avenue, NW
26 Suite 340
27 Washington, D.C. 20036
28 (202) 293-8975
(202) 293-8973 (facsimile)
Jkaminski@hughesbentzen.com

19 **IT IS SO ORDERED.**

20 DATED this 12th day of January, 2012.

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24 The Honorable Richard A. Jones
25 United States District Judge