

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NutriMost LLC, also d/b/a NutriMost, NutriMost Pittsburgh, NutriMost System, NutriMost Weight Loss System, and NutriMost Weight Loss Program, a limited liability company,

NutriMost Doctors, LLC, also d/b/a NutriMost, NutriMost Weight Loss System, EZ Practice Growth, and EZ Practice Management System, a limited liability company, and

Raymond Wisniewski, individually and as owner and officer of NutriMost LLC and NutriMost Doctors, LLC,

Defendants.

Case No. 17-509

STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Equitable Relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The Commission and Defendants NutriMost LLC, NutriMost Doctors, LLC, and Raymond Wisniewski, stipulate to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive and unfair acts or practices and false advertisements in violation of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52, in connection with the advertising, marketing, distribution, and sale of weight loss and health-related systems and products.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.
4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.
5. Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Order. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law.

ORDER

DEFINITIONS

For the purpose of this Order:

1. **“Corporate Defendants”** means **NutriMost LLC** (“NutriMost”), also doing business as NutriMost, NutriMost Pittsburgh, NutriMost System, NutriMost Weight Loss System, NutriMost Weight Loss Program, NutriMost Wellness & Weight Loss, and any other

names under which it has done business, and **NutriMost Doctors, LLC** (“NutriMost Doctors”), also doing business as NutriMost, NutriMost Weight Loss System, EZ Practice Growth, EZ Practice Management System, and any other names under which it has done business; and their successors and assigns.

2. **“Individual Defendant”** means Raymond Wisniewski.
3. **“Defendants”** means the Individual Defendant and the Corporate Defendants.
4. **“Clearly and Conspicuously”** means that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

- A. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
- B. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
- C. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
- D. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

- E. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
 - F. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
 - G. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
 - H. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.
5. **“Close Proximity”** means that the disclosure is very near the triggering representation. In an interactive electronic medium (such as a mobile app or other computer program), a visual disclosure that cannot be viewed at the same time and in the same viewable area as the triggering representation, on the technology used by ordinary consumers, is not in close proximity. A disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering representation. A disclosure made on a different printed page than the triggering representation is not in close proximity.
6. **“Covered Product”** means any dietary supplement, food, drug, or other product intended to provide weight loss or health-related benefits, including any product provided as part of the NutriMost System.
7. **“Covered Program”** means any program or service purported, designed, or intended to cause or assist in causing weight loss or health-related benefits.

8. **“Dietary Supplement”** means: (1) any product labeled as a dietary supplement or otherwise represented as a dietary supplement; or (2) any pill, tablet, capsule, powder, softgel, gelcap, liquid, or other similar form containing one or more ingredients that are a vitamin, mineral, herb or other botanical, amino acid, probiotic, or other dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of any ingredient described above, that is intended to be ingested, and is not represented to be used as a conventional food or as a sole item of a meal or the diet.

9. **“Drug”** and **“food”** mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55(b) and (c). **“Drug”** means (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories. **“Food”** means (1) articles used for food or drink for man or other animals; (2) chewing gum; and (3) articles used for components of any such article.

10. **“Endorsement”** means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the

sponsoring advertiser.

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

12. “**Essentially Equivalent Program**” means a program that includes all components of the Covered Program that are purported, designed, or intended to cause or assist in causing weight loss or health improvements; *provided that* the Covered Program may contain additional components if reliable scientific evidence generally accepted by experts in the field demonstrates that such additional components are unlikely to impede or inhibit the effectiveness of the Essentially Equivalent Program.

13. “**Franchisee**” shall mean an independently owned business that operates under or has a franchise agreement with Defendants.

14. “**Licensee**” shall mean an independently owned business that operates under or has a licensing agreement with Defendants.

15. “**Material Connection**” means any relationship that materially affects the weight or credibility of any Endorsement and that would not reasonably be expected by consumers.

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

17. “**Reliably Reported,**” for a human clinical test or study, means a report of the test or study has been published in a peer-reviewed journal, and such published report provides sufficient information about the test or study for experts in the relevant field to assess the reliability of the results.

18. “**Very Low Calorie Diet**” or “**VLCD**” means any dietary regimen that provides less than 800 calories per day.

19. The term “**including**” in this Order means “including without limitation.”

I.

PROHIBITED REPRESENTATIONS: WEIGHT LOSS AND HEALTH CLAIMS

IT IS ORDERED that Defendants, Defendants’ officers, agents, employees, Licensees, Franchisees, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, are hereby permanently restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of a product or program name, Endorsement, depiction, or illustration, any representation that such product:

- A. Enables users to lose weight, including 20-40 pounds;
- B. Is safe for users;
- C. Enables the user to achieve permanent weight loss;
- D. Enables the user to burn a specific number of calories, including 2,000-7,000 calories per day;
- E. Targets abnormal fat;
- F. Allows the user to achieve targeted weight loss; or

G. Effectively treats, mitigates, or cures a disease, including diabetes or psoriasis; unless the representation is non-misleading and, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence to substantiate that the representation is true.

For purposes of this Section, competent and reliable scientific evidence shall consist of human clinical testing of the Covered Product or of an Essentially Equivalent Product, that is sufficient in quality and quantity based on standards generally accepted by experts in the relevant disease, condition, or function to which the representation relates, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. Such testing shall be: (1) randomized, double-blind, and placebo-controlled; and (2) conducted by researchers qualified by training and experience to conduct such testing. In addition, all underlying or supporting data and documents generally accepted by experts in the relevant field as relevant to an assessment of such testing as described in the Section entitled "Preservation of Records Relating to Competent and Reliable Human Clinical Tests or Studies" must be available for inspection and production to the Commission. Defendants shall have the burden of proving that a product satisfies the definition of Essentially Equivalent Product.

II.

PROHIBITED REPRESENTATIONS AND REQUIRED DISCLOSURES: DIET CLAIMS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, Licensees, Franchisees, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product or Covered Program, are permanently restrained and enjoined from:

A. Misrepresenting, or assisting others in misrepresenting, expressly or by implication, including through the use of a product name, Endorsement, depiction, or illustration, that a Covered Product or Covered Program does not require users to follow a restrictive diet, including prohibiting the consumption of certain foods at certain times or on the same day;

B. Failing to disclose, Clearly and Conspicuously, that users are required to follow a calorie-restricted diet, if a Covered Program or Covered Product requires calorie restrictions;

C. Failing to disclose, Clearly and Conspicuously, the daily calorie intake of any Covered Product or Covered Program that includes a VLCD; and

D. Failing to disclose, Clearly and Conspicuously and in Close Proximity to any representation, made expressly or by implication, regarding the safety of a Covered Program or Covered Product that includes a VLCD, that physician monitoring is required to minimize the potential for health risks.

III.

PROHIBITED REPRESENTATIONS: OTHER WEIGHT LOSS OR HEALTH-RELATED CLAIMS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, Licensees, Franchisees, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product or Covered Program, are permanently restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of a product or program name, Endorsement, depiction, or illustration, any representation, other than representations for a Covered Product covered under Section I of this Order, about the weight loss, health benefits, performance, or efficacy of any Covered Product or Covered Program,

unless the representation is non-misleading, and, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted by experts in the relevant disease, condition, or function to which the representation relates, 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 (1) that have been conducted and evaluated in an objective manner by experts; (2) that are generally accepted by experts to yield accurate and reliable results; and (3) that are randomized, double-blind, and placebo-controlled human clinical testing of the Covered Product or of an Essentially Equivalent Product, or the Covered Program or of an Essentially Equivalent Program, as applicable, when experts would generally require such human clinical testing to substantiate that the representation is true. In addition, when such tests or studies are human clinical tests or studies, all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of such testing as set forth in the Section entitled “Preservation of Records Relating to Competent and Reliable Human Clinical Tests or Studies” must be available for inspection and production to the Commission. Defendants shall have the burden of proving that a product satisfies the definition of Essentially Equivalent Product or Essentially Equivalent Program.

IV.

PRESERVATION OF RECORDS RELATING TO COMPETENT AND RELIABLE HUMAN CLINICAL TESTS OR STUDIES

IT IS FURTHER ORDERED that, with regard to any human clinical test or study (“test”) upon which a Defendant relies to substantiate any claim covered by this Order, that

Defendants must secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test, including:

A. All protocols and protocol amendments, reports, articles, write-ups, or other accounts of the results of the test, and drafts of such documents reviewed by the test sponsor or any other Person not employed by the research entity;

B. All documents referring or relating to recruitment; randomization; instructions, including oral instructions, to participants; and participant compliance;

C. Documents sufficient to identify all test participants, including any participants who did not complete the test, and all communications with any participants relating to the test; all raw data collected from participants enrolled in the test, including any participants who did not complete the test; source documents for such data; any data dictionaries; and any case report forms;

D. All documents referring or relating to any statistical analysis of any test data, including any pretest analysis, intent-to-treat analysis, or between-group analysis performed on any test data; and

E. All documents referring or relating to the sponsorship of the test, including all communications and contracts between any sponsor and the test's researchers.

Provided, however, that the preceding preservation requirement shall not apply to a Reliably Reported test, unless the test was conducted, controlled, or sponsored, in whole or in part by: (1) any Defendant; (2) any Defendant's officers, agents, representatives, or employees; (3) any other Person or entity in active concert or participation with any Defendant; (4) any Person or entity affiliated with or acting on behalf of any Defendant; (5) any supplier of any ingredient contained in the product at issue to any of the foregoing or to the product's

manufacturer; or (6) the supplier or manufacturer of such product.

For any test conducted, controlled, or sponsored, in whole or in part, by a Defendant, that Defendant must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of any personal information collected from or about participants. These procedures shall be documented in writing and shall contain administrative, technical, and physical safeguards appropriate to the Defendant's size and complexity, the nature and scope of the Defendant's activities, and the sensitivity of the personal information collected from or about the participants.

V.

PROHIBITED REPRESENTATIONS AND DISCLOSURE OF MATERIAL CONNECTIONS REGARDING ENDORSEMENTS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, Licensees, Franchisees, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promoting, offering for sale, sale, or distribution of any Covered Product or Covered Program, are permanently restrained and enjoined from:

A. Misrepresenting, in any manner, expressly or by implication, that a Person providing an Endorsement is describing their opinions, findings, beliefs, or experience with the product or program being promoted; and

B. Failing to disclose, Clearly and Conspicuously, and in Close Proximity to the representation, a Material Connection, if one exists, between a user or a Person providing an Endorsement and a Defendant or a Defendant's agents, Licensees, or Franchisees.

VI.

**PROHIBITIONS AND LIMITS ON USE OF
CERTAIN CONTRACT PROVISIONS**

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, marketing, promotion, offering for sale, sale, or distribution of any Covered Product or Covered Program, are permanently restrained and enjoined from:

A. Purporting to bind, including through any notice, warning, threat to enforce, or attempt to enforce, any purchaser of any Covered Product or Covered Program—regardless of when purchased—to any contractual provision that purports to:

1. prohibit purchasers from speaking or publishing truthful or non-defamatory negative comments or reviews about any Defendant, or any of Defendants' products or programs, agents, or employees; or

2. impose any precondition on purchasers speaking or publishing any comments or reviews about any Defendant, or any of Defendants' products or programs, agents, or employees;

B. Requiring any purchaser of any Covered Product or Covered Program to sign any agreement, including in order to obtain a full or partial refund, that purports to prohibit such purchaser from speaking or publishing truthful or non-defamatory negative comments or reviews about any Defendant, or any of Defendants' products or programs, agents, or employees; or

C. Seeking damages, including liquidated damages, or representing that any purchaser of any Covered Product or Covered Program could be liable for damages, including liquidated damages, for speaking or publishing any truthful or non-defamatory statement that

disparages, criticizes, or otherwise casts in a negative light any Defendant, or any of Defendants' products or programs, agents, or employees.

VII.

MEANS AND INSTRUMENTALITIES

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, Licensees, Franchisees, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promoting, offering for sale, sale, or distribution of any Covered Product or Covered Program, are permanently restrained and enjoined from providing to others the Means and Instrumentalities with which to (1) make, directly or indirectly, expressly or by implication, including through the use of Endorsements or trade names, any false or misleading statement of material fact, including the representations covered by Sections I—III and V, above, or (2) engage in any unfair practice as set forth in Section VI, above. For purposes of this Section, "Means and Instrumentalities" means any information, including any advertising, labeling, promotional, sales, training, or purported substantiation materials, contracts, or other agreements, for use by others in their marketing or sale of any product, package, or service, in or affecting commerce.

VIII.

MONETARY JUDGMENT AND PARTIAL SUSPENSION

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of \$32,044,000 is entered in favor of the Commission against Defendants, jointly and severally, as equitable monetary relief.
- B. Defendants are ordered to pay to the Commission \$2,000,000, according to the

following terms:

1. Within 10 days of entry of this Order, Defendants shall pay to the Commission \$1,000,000.
2. Defendants shall pay to the Commission the remaining \$1,000,000 in six installments. The first installment of \$166,670 shall be paid to the Commission no later than 30 days after the date of entry of this Order. The next five installments shall each be \$166,666, and shall be paid to the Commission starting 60 days after the date of entry of this Order, and every 30 days thereafter, until the total amount of \$1,000,000 under this Subsection has been paid. If any payment date is a Saturday, Sunday or bank holiday, the payment shall be due on the next business day. Defendants shall have the right to make prepayments at any time, and any such prepayments (both partial and full) may be made without any prepayment premium, charge or penalty. If the Defendants elect to make a prepayment, that prepayment shall be applied to the next immediate regular monthly payment, reducing the amount of that regular monthly payment by the amount of the prepayment.
3. All payments shall be made by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.
4. In order to secure Defendants' payment of the amounts set forth in Subsection B.2, above, Individual Defendant has transferred \$1,000,000 to a Fidelity Investments account, with account number ending in [REDACTED], which is held solely in the Individual Defendant's name (the "Frozen Account"). The \$1,000,000 held in said Frozen Account shall remain otherwise unencumbered, in the Individual Defendant's name, and in that Fidelity Investments account until all payments required by Subsection B.2, above, have been received by the Commission in accordance with the payment instructions referenced in Subsection B.3,

above. Should Defendants remove any funds from the Frozen Account before all payments required by Subsection B.2, above, have been received by the Commission, then the judgment amount set forth in Subsection A, above, minus any payments previously made pursuant to this Subsection B, shall be immediately due and payable by Defendants to the Commission.

5. Upon service of a copy of this Order, Fidelity Investments shall hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation or other disposal of the funds in the Frozen Account; *provided, however*, that should Defendants elect to use the funds in the Frozen Account for the sole purpose of paying, in full, the amount remaining on their obligation under Subsection B.2, above, Fidelity Investments shall, upon written direction of the Defendants and the Commission, transfer the balance of Defendants' obligation to the Commission in accordance with payment instructions to be provided by the Commission.

6. Upon the Commission's receipt of the full \$1,000,000 payable under Subsection B.2, above, the Commission shall, within 5 business days, provide notice to Fidelity Investments to lift the freeze on the Frozen Account, at which time the Individual Defendant shall have the right to full dominion, title, and control over the funds in the Frozen Account.

7. The FTC's agreement to the suspension of part of the Judgment is expressly premised upon Defendants' promise to timely make payments as described in this Subsection.. If, upon motion of the Commission, the Court finds that Defendants have defaulted on any obligation to make a payment as required by this Order, then the judgment amount in this Subsection A above, minus any payments previously made pursuant to this Subsection B, becomes immediately due and shall be paid by Defendants to the Commission. As partial payment of the judgment, the Commission shall be entitled to the funds in the Frozen Account,

and Fidelity Investments shall, upon Order of this Court, immediately transfer the funds in the Frozen Account to the Commission in accordance with the payment instructions provided by the Commission.

8. If Defendants fail to pay in full the amounts due at the time specified, they must cooperate fully with the Commission and their representatives in all attempts to collect the judgment. In such an event, Defendants agree to provide federal and state tax returns for the preceding two years, and to complete new financial disclosure forms fully and accurately within 10 business days of receiving a request from the Commission. Defendants further authorize the Commission to verify all information provided on their financial disclosure forms with all appropriate third parties, including financial institutions.

9. Upon the Commission's receipt of \$2,000,000 pursuant to this Subsection, the remainder of the judgment is suspended, subject to the Subsections below.

C. The Commission's agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely:

1. the Financial Statement of Individual Defendant Raymond Wisniewski, signed and provided on June 8, 2016, including the attachments;
2. the Financial Statement of Corporate Defendant NutriMost LLC, provided on June 8, 2016, including the attachments;
3. the Financial Statement of Corporate Defendant NutriMost Doctors, LLC, provided on June 8, 2016, including the attachments;
4. the additional financial documentation and information submitted by

Defendants' former counsel, Jonathan Emord or his representative to Commission counsel Dana Barragate, provided July 7, 2016, and July 11, 2016, and the additional documentation and information submitted by Defendants' counsel Tonya Esposito or her representative to Commission counsel Dana Barragate, provided August 9, 2016, September 20, 2016, December 22, 2016 and December 23, 2016, which includes financial representations of and financial information from and about Individual Defendant, Corporate Defendants, NutriMost Wellness & Weight Loss LLC, NutriMost Distribution, LLC, and NutriMost Technology, LLC; and

5. the sworn statement from Individual Defendant Raymond Wisniewski, dated January 24, 2017, affirming that: (a) the financial representations, financial documentation and financial information provided on June 8, 2016, July 7, 2016, July 11, 2016, August 9, 2016, September 20, 2016, December 22, 2016, and December 23, 2016, and described in Subsections C.1-4, above, are true, accurate and complete; (b) there is no material change to the financial condition of either of the Corporate Defendants, NutriMost Wellness & Weight Loss LLC, NutriMost Distribution, LLC, or NutriMost Technology, LLC, as represented in their financial representations, documents and information provided on December 22, 2016 and December 23, 2016; (c) there is no material change to the Individual Defendant's financial condition as presented in financial documents provided on September 20, 2016, and as represented by email from Tonya Esposito, counsel for Defendants, on December 23, 2016, and; (d) Individual Defendant has transferred \$1,000,000 to the Frozen Account referenced in Subsection B.4, above, and that the funds in the Frozen Account are otherwise unencumbered, held in the Individual Defendant's name, and will remain in the Frozen Account at least until the date of entry of this Order and thereafter in accordance with Subsection B, above.

D. The suspension of the judgment will be lifted if, upon motion by the Commission,

the Court finds that a Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

E. If the suspension of the judgment is lifted, the judgment becomes immediately due in the amount specified in Subsection A above, which the parties stipulate only for purposes of this Section represents the consumer injury and unjust enrichment alleged in the Complaint, less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

F. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

G. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

H. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

I. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

J. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including

consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

IX.

CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly:

A. Failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. Defendants represent that they have provided this redress information to the Commission. If a representative of the Commission requests in writing any information related to redress, Defendants must provide it, in the form prescribed by the Commission, within 14 days; and

B. Disclosing, using, or benefitting, including from continuity program shipments, from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to August 9, 2016 in connection with the sale of a Covered Product or Covered

Program.

X.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, Individual Defendant for any business that he, individually or collectively with a Corporate Defendant, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, LLC managers and members, and all current or former Licensee and/or Franchisee principals; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel and for current and former Licensee and/or Franchisee principals. For all others, delivery must occur before they assume their responsibilities or enter into licensing or franchise agreements. Delivery to former Licensee and/or Franchisee principals must be made by certified mail, return receipt requested.

C. Within 14 days of entry of this Order, Defendants must provide the Commission with a list of every former and current Licensee and/or Franchisee to whom Defendants are required to provide a copy of this Order under this Section. Such list shall identify the Licensee and/or Franchisee by principal name, business name, and location.

D. From each individual or entity to which a Defendant delivered a copy of this Order, except former Licensees and former Franchisees, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

XI.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. Sixty days after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement, if any, of any other Defendant (which the Individual Defendant must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest; and

(c) describe in detail his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 10 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that a Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: the creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which he performs services, whether as an employee or otherwise, and any entity in which he has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

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

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

E. Unless otherwise directed by a Commission representative in writing, all

submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580. The subject line must begin: *FTC v. NutriMost LLC., et al.*

XII.

RECORDKEEPING PROVISIONS

IT IS FURTHER ORDERED that Defendants must create certain records for 10 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendants and Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all products or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
- B. Personnel records showing, for each Person providing services, whether as an employee or otherwise, that Person's: name, addresses, telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. A copy of each unique advertisement or other marketing material disseminated since the date of entry of this Order.

XIII.

COMPLIANCE MONITORING

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

A. Within 14 days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission also is authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendants must permit representatives of the Commission to interview any employee or other Person affiliated with any Defendant who has agreed to such an interview. The Person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants, or any individual or entity affiliated with Defendants, 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.

XIV.

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.

SO ORDERED:

DATED: April 20, 2017


UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:
FOR PLAINTIFF:

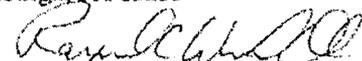


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cpanek@ftc.gov

Dated: April 19, 2017

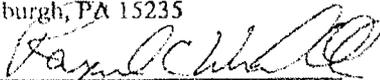
FOR DEFENDANTS

NutriMost LLC
10483 Frankstown Road,
Pittsburgh, PA 15235

By: 
Raymond Wisniewski, CEO

Dated: FEBRUARY 6, 2017

NutriMost Doctors, LLC
10483 Frankstown Road,
Pittsburgh, PA 15235

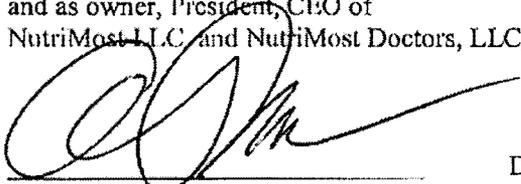
By: 
Raymond Wisniewski, CEO

Dated: FEBRUARY 6, 2017



Raymond Wisniewski, individually,
and as owner, President, CEO of
NutriMost LLC and NutriMost Doctors, LLC,

Dated: FEBRUARY 6, 2017



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