

*Part 6*

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

_____	)	
FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	Civil No. 10 C 4931
	)	
v.	)	Judge Charles R. Norgle, Sr.
	)	
CENTRAL COAST NUTRACEUTICALS, INC.,	)	Magistrate Judge Sidney I. Schenkier
a California corporation, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**STIPULATED ORDER FOR PERMANENT INJUNCTION AND FINAL  
JUDGMENT AGAINST DEFENDANTS CENTRAL COAST NUTRACEUTICALS, INC.,  
iLIFE HEALTH AND WELLNESS, LLC, SIMPLY NATURALS, LLC,  
FIT FOR LIFE, LLC, HEALTH AND BEAUTY SOLUTIONS LLC,  
GRAHAM D. GIBSON, AND MICHAEL A. MCKENZY**

Plaintiff, 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), and Section 917(c) of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. § 1693o(c), filed its Complaint for Injunctive and Other Equitable Relief, alleging that Defendants Central Coast Nutraceuticals, Inc., iLife Health and Wellness, LLC, Simply Naturals, LLC, Fit for Life, LLC, Health and Beauty Solutions LLC, Graham D. Gibson, and Michael A. McKenzie engaged in deceptive and unfair acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52; Section 907(a) of EFTA, 15 U.S.C. § 1693e(a); and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

Defendants Central Coast Nutraceuticals, Inc., iLife Health and Wellness, LLC, Simply Naturals, LLC, Fit for Life, LLC, Health and Beauty Solutions LLC, Graham D. Gibson, and

Michael A. McKenzy, having been represented by counsel, and acting by and through said counsel, have consented to the entry of this Stipulated Order for Permanent Injunction and Final Judgment Against Central Coast Nutraceuticals, Inc., iLife Health and Wellness, LLC, Simply Naturals, LLC, Fit for Life, LLC, Health and Beauty Solutions LLC, Graham D. Gibson, and Michael A. McKenzy ("Order") without a trial or adjudication of any issue of law or fact herein.

**NOW THEREFORE**, the Plaintiff and Defendants, having requested the Court to enter this Order, and the Court having considered the Order reached between the parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS**

1. This is an action by the Commission instituted under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and EFTA, 15 U.S.C. § 1693o(c). The Commission has the authority to seek the relief contained herein.
2. The Commission's complaint states a claim upon which relief may be granted under Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52; Section 907(a) of EFTA, 15 U.S.C. § 1693e(a); and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).
3. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over the parties.
4. Venue in the United States District Court for the Northern District of Illinois is proper pursuant to 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).
5. The alleged activities of Defendants are "in or affecting commerce" as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
6. Defendants do not admit the allegations set forth in the Commission's complaint and deny all allegations, with the exception of venue and jurisdictional facts, to which

Defendants are stipulating only as to this action and subsequent actions arising from this action, including enforcement and modification of this Order. Without any admission or finding of liability thereunder, Defendants agree to entry of this Order.

7. Defendants waive: (a) all rights to seek judicial review or otherwise challenge or contest the validity of this Order; (b) any claim that they may have against the Commission, its employees, representatives, or agents; (c) all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended* by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996); and (d) any rights to attorney's fees that may arise under said provision of law. The Commission and Defendants shall each bear their own costs and attorney's fees incurred in this action.

8. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

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

#### DEFINITIONS

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

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

2. **"Affiliate"** means any Person, including third-party marketers, who participates in an Affiliate Program.

3. **"Affiliate Network"** means any Person who provides any Defendant with Affiliates for an Affiliate Program or whom any Defendant contracts with as an Affiliate to promote any good or service.

4. **"Affiliate Program(s)"** means any arrangement under which any Defendant pays, offers to pay, or provides or offers to provide any form of consideration to any third party, either directly or through an Affiliate Network, to (a) provide any Defendant with, or refer to any Defendant, potential or actual customers; or (b) otherwise market, advertise, or offer for sale any product or service on behalf of any Defendant.

5. **"Asset" or "Assets"** means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.

6. **"Assisting Others"** includes, but is not limited to: (a) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any sales script or other marketing material; (c) providing names of, or assisting in the generation of, potential customers; (d) verifying, processing, fulfilling, or arranging for the fulfillment of orders; (e) performing or providing marketing, billing, or collection services of any kind, including, but not limited to, creating, hosting, or maintaining websites, or recruiting affiliates; or (f) acting as an officer or director of a business entity.

7. **"Individual Defendants"** means Graham D. Gibson and Michael A. McKenzy, and by whatever other names each may be known.

8. **"Corporate Defendants" or "Receivership Defendants"** means Central Coast Nutraceuticals, Inc.; iLife Health and Wellness, LLC; Simply Naturals, LLC; Fit For Life, LLC;

and Health and Beauty Solutions LLC; and their successors and assigns, as well as any subsidiaries, and any fictitious business entities or business names created or used by these entities, or any of them.

9. **“Covered Product”** means any Dietary Supplement, Food, or Drug.

10. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

11. **“Document”** or **“Documents”** means any materials listed in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or nonidentical copy is a separate Document within the meaning of the term.

12. **“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) which message consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser.

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

14. **“Dietary Supplement”** means: a) any product labeled as a dietary supplement or otherwise represented as a dietary supplement; or b) 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.

15. **“Drug”** means: a) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and c) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and d) articles intended for use as a component of any article specified in clause (a), (b), or (c); but does not include devices or their components, parts, or accessories.

16. **“Essentially Equivalent Product”** means a product that contains the identical ingredients, except for inactive ingredients (e.g., inactive binders, flavors, preservatives, 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 or other differences in formulation to affect taste, texture, or nutritional value (so long as the other differences do not change the form of the product or involve the ingredients from which the functional benefit is derived), if reliable scientific evidence generally accepted by experts in the field demonstrates that the amount and combination of additional ingredients, and any other differences in formulation, are unlikely to impede or inhibit the effectiveness of the ingredients in the Essentially Equivalent Product.

17. **“Financial Institution”** means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage

house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

18. **“Merchant Account”** means any account with an acquiring bank or other financial institution or service provider that enables an individual, a business, or other organization to accept payments by debit or credit cards, ACH debits, or remotely-created checks.

19. **“Negative Option Feature”** means, in an offer or agreement to sell or provide any product, program or service, a provision under which the consumer’s silence or failure to take an affirmative action to reject products or services or to cancel the agreement is interpreted by the seller or provider as acceptance of the offer. Offers or agreements with negative option features include, but are not limited to:

a. free or introductory price trial offers in which the consumer receives a product, program or service for free or at a nominal or introductory price for an initial period and will incur an obligation to pay or pay a greater amount for the product, program or service if he or she does not take affirmative action to cancel, reject, or return the product, program or service before the end of that period;

b. continuity plans in which, subsequent to the consumer’s agreement to the plan, the seller or provider automatically ships products to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the products; and

c. automatic renewal plans in which the seller or provider automatically renews the agreement and charges the consumer unless the consumer cancels before the renewal.

20. **“Payment Processor”** means any Person providing any payment processing services in connection with the sale or purchase of goods or services, including, but not limited

to, banks, depository financial institutions, third-party processors, data processing service bureaus, and any others who provide services to verify, correct, transmit, or update account or bank routing data or formats.

21. **“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.

22. **“Plaintiff”** means the Federal Trade Commission (“Commission” or “FTC”).

23. **“Preauthorized Electronic Fund Transfer,”** as defined by EFTA, 15 U.S.C. § 1693a(9), means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

I.

**BANNED CONDUCT**

**IT IS THEREFORE ORDERED** that Defendants, and their officers, agents, servants, and employees, 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, are hereby restrained and enjoined from engaging in, or Assisting Others engaging in, the advertising, marketing, promotion, offering for sale, or sale of any product, program, or service with a Negative Option Feature. Nothing in this Order shall be read as an exception to this Section.

II.

**PROHIBITED BUSINESS ACTIVITIES**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, and employees, 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 good or service, are hereby restrained and enjoined from:

A. Misrepresenting, or Assisting Others in misrepresenting, directly or indirectly, expressly or by implication, any material fact, including, but not limited to:

1. That there is no cost for a trial of Defendants' goods or services and that Defendants will not charge consumers anything other than a nominal fee;
2. That Defendants will provide full refunds to all consumers who request them;
3. That Defendants' goods or services are used, endorsed, or approved by specifically identified individuals, including celebrities such as Oprah Winfrey and Rachael Ray;
4. That consumer testimonials reflect typical consumer experiences with a good or service, if such testimonials do not reflect typical consumer experiences;
5. The total cost to purchase, receive, or use the goods or services;
6. The timing or manner of any charge or bill;
7. Any material restrictions, limitations, or conditions to purchase, receive, or use the goods or services;
8. Any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the goods or services; and
9. Any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services.

B. Failing to disclose, clearly and conspicuously, all material terms and conditions of any offer of any good or service, including, but not limited to:

1. That consumers who sign up for one of Defendants' goods are charged for a month's supply of the good if they do not return it to Defendants within a certain time period;

2. That consumers who attempt to cancel during the trial period must obtain a return merchandise authorization number from Defendants before returning the good to Defendants;

3. That consumers who attempt to cancel during the trial period will incur additional costs in returning the good, including, but not limited to, paying for return shipping, paying for delivery confirmation, and paying a restocking fee;

4. The total cost to purchase, receive, or use, and the quantity of any goods or services that are the subject of the sales offer;

5. The timing or manner of any charge or bill;

6. Any Material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer; and

7. If there is a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the policy; or, if any representation is made about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy.

~~C. Charging, causing to be charged, or Assisting Others in charging any consumer's credit card, or debiting, causing to be debited, or Assisting Others in debiting any consumer's bank account without the consumer's express informed consent for such charge or debit, which shall include express informed consent to be charged for the good or service using a specified~~

billing account, and the clear and conspicuous disclosure of the information identified in Section II.B, above, in close proximity prior to the consumer's express informed consent to purchase such goods or services. Such consent includes, but is not limited to, the consumer's signature (the term "signature" includes a verifiable electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal law or state contract law);

D. Failing to, in connection with the advertising, promotion, marketing, offering for sale, sale, or provision of any goods or services through an Affiliate Program:

1. Require each Affiliate and/or Affiliate Network used in any Affiliate Program to provide the following identifying information:

a. In the case of a natural person, the Affiliate's or Affiliate Network's first and last name, physical address, country, telephone number, email address, and complete bank account information as to where payments are to be made to that Person;

b. In the case of a business entity that is a direct Affiliate with Defendants, the Affiliate's name and any and all names under which it does business, state of incorporation, registered agent, and the first and last name, physical address, country, telephone number, and email address for at least one natural person who owns, manages, or controls the Affiliate, and the complete bank account information as to where payments are to be made to the Affiliate;

c. In the case of a business entity that is an Affiliate Network, the Affiliate Network's name and any and all names under which it does business, state of incorporation, registered agent, and the first and last name, physical address, country, telephone number, and email address for at least one natural person who owns, manages, or controls the

Affiliate Network, and the complete bank account information as to where payments are to be made to the Affiliate Network; and

d. If Defendants only have access to certain Affiliates through an Affiliate Network, then Defendants shall require each Affiliate Network to obtain and maintain from those Affiliates the identifying information set forth in Subsection D.1.a and D.1.b of this Section prior to the Affiliate's or Affiliate Network's participation in any Defendant's Affiliate Program.

2. As a condition of doing business with any Affiliate or Affiliate Network or such Affiliate or Affiliate Network's acceptance into any Defendant's Affiliate Program: (a) provide each such Affiliate or Affiliate Network a copy of this Order; (b) obtain from each such Affiliate or Affiliate Network a signed and dated statement acknowledging receipt of this Order and expressly agreeing to comply with this Order; and (c) clearly and conspicuously disclose in writing that engaging in acts or practices prohibited by this Order will result in immediate termination of any Affiliate or Affiliate Network and forfeiture of all monies owed to such Affiliate or Affiliate Network; *provided, however*, that if Defendants only have access to certain Affiliates through an Affiliate Network, then Defendants shall require that the Affiliate Network provide the information required by this Subsection to each of those Affiliates and retain proof of the same prior to any such Affiliate being used in any Defendant's Affiliate Program; and if Defendants should acquire an entity that has an existing program of selling through affiliates, the entity must complete all steps in this Subsection prior to Defendant's acquisition of the entity.

3. Require that each Affiliate or Affiliate Network, prior to the release of any marketing materials, including, but not limited to, websites, emails, and pop-ups used by any Affiliate or Affiliate Network to advertise, promote, market, offer for sale, or sell any

Defendant's goods or services, provide Defendant with the following information: (a) copies of all material created by the Affiliate or Affiliate Network displayed or contained within the marketing materials, including text, graphics, video, audio, and photographs; (b) the location of any online marketing materials, as denoted by a unique URL; (c) the URL of any hyperlink contained in the marketing materials; and (d) the range of dates that the marketing materials will run; *provided, however*, that if Defendants only have access to certain Affiliates through an Affiliate Network, then Defendants shall require that the Affiliate Network obtain and maintain the same information set forth above from each of those Affiliates who are part of any Defendant's Affiliate Program prior to the release of any such marketing materials, and provide proof to such Defendant of having obtained the same.

4. Prior to the release of any marketing materials submitted to any Defendant or any Defendant's Affiliate Network pursuant to Section II.D.3 above, review the marketing material for compliance with this Order. If, after reviewing such marketing materials, a Defendant determines that the materials comply with this Order, then that Defendant shall provide to the Affiliate or Affiliate Network who submitted the material a written acknowledgment of approval of such material. If, however, any Defendant determines that such material does not comply with this Order, such Defendant shall inform the Affiliate or Affiliate Network in writing that approval is denied and shall not pay any amounts to the Affiliate or the Affiliate Network for such marketing, including any payments for leads, "click-throughs," or sales resulting therefrom; *provided, however*, that if Defendants only have access to certain Affiliates through an Affiliate Network, then it shall require that the Affiliate Network comply with the procedures set forth in this Subsection as to those Affiliates.

5. Promptly and completely investigate any complaints that any Defendant receives through any source to determine whether any Affiliate or Affiliate Network is engaging in acts or practices prohibited by this Order, either directly or through any Affiliate that is part of any Defendant's Affiliate Program.

6. Upon determining that any Affiliate or Affiliate Network has engaged in, or is engaging in, acts or practices prohibited by this Order, either directly or through any Affiliate that is part of any Defendant's Affiliate Program:

a. Immediately halt the processing of any payments or charges generated by the Affiliate or Affiliate Network;

b. Fully refund, within five (5) business days, each consumer charged by any Defendant whose sale originated from the Affiliate or Affiliate Network on or after the date the Affiliate or Affiliate Network engaged in acts or practices prohibited by this Order; and

c. Immediately terminate the Affiliate or Affiliate Network; *provided, however*, Defendants shall not be in violation of this subsection if Defendants fail to terminate an Affiliate Network in a case where Defendants only have access to an Affiliate who has engaged in acts or practices prohibited by this Order through an Affiliate Network and the Affiliate Network immediately terminates the Affiliate violating this Order.

### III.

#### **PROHIBITED REPRESENTATIONS: MERCHANT ACCOUNTS**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, and employees, 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

applying for or maintaining Merchant Accounts for a Defendant or any third person, are hereby restrained and enjoined from:

A. Making or Assisting Others in making, expressly or by implication, any false or misleading statement or representation to a Payment Processor or a financial institution, including, but not limited to, any statement or representation concerning the identity of the owner, manager, director, or officer of the applicant for or holder of a Merchant Account; or

B. Failing to disclose to a Payment Processor or a financial institution any material fact related to the Merchant Account, including, but not limited to, the identity of the owner, manager, director, or officer of the applicant for or holder of a Merchant Account, and any material connection between the owner, manager, director, or officer of the applicant for or holder of a Merchant Account and any third person who has been or is placed in a Merchant Account monitoring program, had a Merchant Account terminated by a Payment Processor or a financial institution, or has been fined or otherwise disciplined in connection with a Merchant Account by a Payment Processor or a financial institution.

#### IV.

#### **PROHIBITED REPRESENTATIONS: DISEASE CLAIMS**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, and employees, 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 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, 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 that such product is effective in the diagnosis, cure, mitigation, treatment, or prevention of any disease, including, but not limited to, any representation that such product will aid in the prevention of cancer, unless the representation is non-misleading and such product: is subject to a final OTC drug monograph promulgated by the Food and Drug Administration (FDA) for such use, and conforms to the conditions of such use; remains covered by a tentative final OTC drug monograph for such use, and adopts the conditions of such use; or is the subject of a new drug application for such use approved by FDA, and conforms to the conditions of such use.

V.

**PROHIBITED REPRESENTATIONS: WEIGHT LOSS CLAIMS**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, and employees, 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 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, 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 that such product:

- A. Causes weight loss;
- B. Causes rapid weight loss; or
- C. Causes substantial weight loss;



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 substantiates that the representation is true. For purposes of this Section, competent and reliable scientific evidence shall consist of at least two Adequate and Well-Controlled Human Clinical Studies of the Covered Product, or of an Essentially Equivalent Product, conducted by different researchers, independently of each other, that conform to acceptable designs and protocols and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true. Defendants shall have the burden of proving that a product satisfies the definition of Essentially Equivalent Product.

**VI.**

**PROHIBITED REPRESENTATIONS: OTHER HEALTH-RELATED CLAIMS**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, and employees, 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 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, 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 Sections IV or V of this Order, about the health benefits, performance, or efficacy of any Covered Product, 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 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.

**VII.**

**PROHIBITED REPRESENTATIONS: TESTS OR STUDIES**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, and employees, 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 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, are hereby permanently restrained and enjoined from misrepresenting, in any manner, expressly or by implication, including through the use of any product name or Endorsement, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, in connection with any representations covered by Sections IV through VI of this Order.

**VIII.**

**FDA APPROVED CLAIMS**

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

**IX.**

**ACTIVITIES PROHIBITED PURSUANT TO  
THE ELECTRONIC FUNDS TRANSFER ACT**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, and employees, 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, are hereby restrained and enjoined from:

A. Engaging in, or Assisting Others engaging in, any recurring debiting of a consumer's account without first obtaining a valid written pre-authorization for Preauthorized Electronic Fund Transfers from the consumer's account, so that the authorization is clear and readily understandable, identifiable as an authorization, and reflects the consumer's assent, as required by Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I, or as they may hereafter be amended;

B. Engaging in, or Assisting Others engaging in, any recurring debiting of a consumer's account on a recurring basis without providing to the consumer a copy of the written authorization signed or similarly authenticated by the consumer for Preauthorized Electronic Fund Transfers from the consumer's account, as required by Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I, or as they may hereafter be amended; and

C. Failing to maintain, or Assisting Others in failing to maintain, procedures reasonably adapted to avoid an unintentional failure to obtain a written authorization for Preauthorized Electronic Fund Transfers, as required in Section 205.10(b)(7) of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I, or as it may hereafter be amended.

X.

**MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that:

A. Judgment is hereby entered in favor of the Commission, and against Defendants, jointly and severally, for equitable monetary relief, including, but not limited to, consumer redress, in the amount of Seventy-Nine Million Seven Hundred Forty-Four Thousand Eight Hundred and Two Dollars (\$79,744,802), the total amount of consumer injury caused by the activities alleged in the Commission's Complaint; *provided, however*, that the Judgment for equitable monetary relief shall be suspended upon the satisfaction of the obligations imposed by Subsections B through J of this Section, and subject to the conditions set forth in Section XI of this Order.

B. Defendant Gibson shall pay to the Commission the balance in Defendant Gibson's account at E\*Trade Securities, LLC, account number ending in 1489, in equitable monetary relief, including, but not limited to, consumer redress or disgorgement, within five (5) days of the date of entry of this Order. Payment shall be made to the Commission by wire transfer in accordance with directions provided by the Commission, or by certified check or other guaranteed funds payable to and delivered to the Commission.

C. In addition to the payment required by Subsection B of this Section, Defendant Gibson shall secure a mortgage on the real property located at 5818 Calle Tuberia, Phoenix, Arizona 85018-4634 (the "Real Property"), and pay to the Commission from the proceeds of the mortgage the sum of five hundred thousand dollars (\$500,000), in equitable monetary relief, including, but not limited to, consumer redress or disgorgement, within sixty (60) days of the date of entry of this Order. Payment shall be made to the Commission by wire transfer in accordance with directions provided by the Commission, or by certified check or other guaranteed funds payable to and delivered to the Commission.

D. If the payment required by Subsection C of this Section is not made within sixty (60) days of the date of entry of this Order, unless otherwise agreed to in writing by counsel for the Commission, Defendant Gibson shall vacate and transfer possession and legal and equitable title to the Real Property to the Liquidator appointed in the Section titled "Appointment of Liquidator," or to his or her designated trust. *Provided, however,* that Defendant Gibson may use and occupy the premises at the sole discretion of, and in accordance with the terms set by, the Liquidator, which shall not unduly interfere with the Liquidator's sale of the Real Property.

E. Defendant Gibson shall cooperate fully with the Liquidator and take such other steps as the Liquidator may require to transfer to the Liquidator, or to his designated trust, possession and legal and equitable title to the Real Property, including executing any documents, procuring the signatures of any person or entity under his control, providing access to the Real Property, providing any necessary information, and turning over the Real Property. Except as set forth in the Section of this Order titled "Appointment of Liquidator," the costs and expenses of transferring the Real Property to the Liquidator shall be paid by the Liquidatorship.

F. Defendant Gibson represents that no encumbrances to the Real Property have been added since execution of his sworn financial statements on August 19, 2010 and December 6, 2010. Defendant Gibson represents that he will not add any such encumbrances after signing this Order, except as provided in Subsection C of this Section. Defendant Gibson shall not add any such encumbrances after entry of this Order, except as provided in Subsection C of this Section.

G. As long as he occupies the Real Property, Defendant Gibson shall maintain and take no action to diminish the value of the Real Property, including any structures, fixtures, and appurtenances thereto, in the same condition as on the date he executed his sworn financial statements on August 19, 2010 and December 6, 2010.

H. Until Defendant Gibson is required to transfer possession of the Real Property to the Liquidator under Subsection D of this Section, Defendant Gibson shall remain current on all amounts due and payable on the Real Property, including but not limited to tax, insurance, homeowner's assessments, reasonable and necessary maintenance, and similar fees.

I. Nothing in this Order requires Defendant Gibson to pay any amount relating to or concerning the above described Real Property, including but not limited to any taxes, insurance, homeowner's assessments, maintenance, and similar fees, after Defendant Gibson has vacated and transferred possession and legal and equitable title of the Real Property to the Liquidator. The transfer of possession of the Real Property occurs when Defendant Gibson vacates the Real Property in "broom clean condition," delivers all keys and security codes, if any, to the Liquidator along with written notice that possession is surrendered, or has transferred legal and equitable title but remains on the premises pursuant to agreement with the Liquidator.

J. Immediately upon entry of this Order, Defendant Gibson shall transfer his interest in the residence located at 321 Kealahou Pl., Kailua, HI 96734, to his co-owners, Brian Bagnuolo and Mary Bagnuolo. Defendant Gibson shall provide written proof of such transfer, in a form acceptable to the Commission, within five (5) days of the transfer. Defendant Gibson shall receive no consideration, cash or otherwise, for the transfer of his interest to his co-owners Brian Bagnuolo and Mary Bagnuolo.

K. Time is of the essence for the payments and other actions specified above. In the event of any default by Defendants on any obligation imposed under this Section, including, but not limited to, the failure to timely and completely fulfill their payment obligations:

1. The judgment imposed herein will not be suspended, and the full amount of that judgment shall immediately become due and payable, plus interest from the date of entry of this Order pursuant to 28 U.S.C. § 1961, as amended, less any amounts already paid; and

2. The Commission shall be entitled to immediately exercise any and all rights and remedies against Defendants and their property to collect the full amount of the judgment and interest thereon, less any amounts already paid.

L. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress, and any attendant expenses for the administration of such equitable relief. Defendants shall cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Order. If the Commission determines, in its sole discretion, that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to

Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Section. Defendants shall have no right to contest the manner of distribution chosen by the Commission. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

M. In accordance with 31 U.S.C. § 7701, as amended, Defendants are hereby required, unless they already have done so, to furnish to the Commission their respective taxpayer identifying numbers (social security numbers or employer identification numbers), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government. Defendants are further required, unless they have already done so, to provide the Commission with clear, legible and full-size photocopies of all valid driver's licenses that they possess, which will be used for reporting and compliance purposes.

N. Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendants shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

O. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Defendants further stipulate and agree that 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 that this Order shall have collateral estoppel effect for such purposes.

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

**XI.**

**RIGHT TO REOPEN**

**IT IS FURTHER ORDERED** that:

A. Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' financial condition, as represented in the financial statements they submitted to the Commission, namely the financial statements of Graham D. Gibson dated August 19, 2010 and December 6, 2010, and of Michael A. McKenzie dated August 20, 2010, which contain material information upon which the Commission relied in negotiating and agreeing to the terms of this Order;

B. If, upon motion of the Commission, the Court finds that any Defendant failed to disclose any material Asset, materially misrepresented the value of any Asset, or made any other material misrepresentation in or omission from his sworn financial statement or supporting documents, the suspended judgment entered in Section X shall become immediately due and payable as to that Defendant (less any amounts already paid). *Provided, however,* that, in all other respects, this Order shall remain in full force and effect, unless otherwise ordered by the Court; and

C. Any proceedings instituted under this Section shall be in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including, but not

limited to, contempt proceedings, or any other proceedings that the Commission or the United States might initiate to enforce this Order. For purposes of this Section, Defendants waive any right to contest any of the allegations in the Commission's Complaint.

**XII.**

**DISSOLUTION OF ASSET FREEZE**

**IT IS FURTHER ORDERED** that the freeze on the Assets of Defendant Graham D. Gibson shall remain in effect until he has taken all the actions required by Section X above, *provided, however*, that Defendant Graham D. Gibson, with the express written consent of counsel for the Commission, may transfer funds to the extent necessary to make all payments required by Section X. Once Defendant Graham D. Gibson has fully complied with the requirements of Section X, the freeze against his Assets shall be lifted permanently. The freeze on the Assets of Defendant Michael A. McKenzy shall be lifted upon entry of this Order. A financial institution shall be entitled to rely upon a letter from Plaintiff stating that the freeze on the Assets of either Graham D. Gibson or Michael A. McKenzy has been lifted.

**XIII.**

**APPOINTMENT OF LIQUIDATOR**

**IT IS FURTHER ORDERED** that if the payment required by Subsection C of the Section titled "Monetary Judgment" is not made within sixty (60) days of the date of entry of this Order, Robb Evans & Assocs., LLC is appointed as Liquidator for the Real Property, as described in Subsection D of that Section. The Liquidator's responsibilities are as follows:

A. The Liquidator is directed to take possession of the Real Property, including all buildings, improvements, fixtures, appurtenances, materials, and equipment thereon, upon the vacation of the property by the current residents, to preserve and protect the value of that

property, to put it into saleable condition, and to arrange for the sale of that property, free and clear of any rights, titles, claims, or interests of Defendant Graham D. Gibson and of any other parties to this action.

B. The Liquidator shall have the authority to arrange for the sale of the Real Property, subject to confirmation by this Court, in any manner approved by counsel for the Commission. The terms of any purchase agreement shall include the balance of the purchase price paid in cash at closing, and may include an earnest money deposit, in an amount to be approved by counsel for the Commission, forfeitable upon the purchaser's failure to perform. The closing shall not occur until after the sale has been confirmed by further order of this Court. At closing, the purchaser or purchasers shall receive a quitclaim deed to the Real Property executed by the Liquidator. In the event a closing takes place prior to an order of this Court regarding the distribution of proceeds, the Liquidator shall hold all of the proceeds of any sales of the property, net of any closing costs, including any earnest money deposits, in an interest-bearing account until such time as this Court shall make a further order regarding the distribution of those proceeds.

C. The Liquidator shall have all of the rights and powers necessary to fulfill its obligations under this Order, including, but not necessarily limited to, the power to enter onto the Real Property, to manage the Real Property, to collect rents on the Real Property, to advertise the sale of the Real Property, and to take any action reasonably necessary to protect and preserve the value of the Real Property prior to sale, and to put it into saleable condition, including making expenditures of funds that are first approved by counsel for the Commission for reasonable and necessary maintenance and improvements, including, but not limited to, the purchase of property and liability insurance.

D. The provisions of Local Rule 66.1(b) shall not apply to this Liquidatorship.

E. The Liquidator shall be compensated from the proceeds of the sale of the Real Property (a) in an amount equal to six (6) percent of the gross sale proceeds, and (b) for its reasonable and necessary expenditures to protect and preserve the value of the Real Property that were first approved by counsel for the Commission. The Liquidator shall further satisfy additional obligations from the proceeds of the sale of the Real Property at the direction of counsel for the Commission. Upon the sale of the Real Property, all net proceeds not to exceed five hundred thousand dollars (\$500,000) shall first be paid to the Commission within ten (10) days of the sale. The Liquidator shall then pay any remaining net proceeds up to one hundred fifty thousand dollars (\$150,000) from the sale of the Real Property to Defendant Gibson, with any remainder to the Commission.

F. Defendant Gibson, and all other persons acting in concert with, or on his behalf, are hereby restrained and enjoined from interfering in any way with the Real Property, or with the Liquidator, or with the Liquidator's efforts to comply with its obligations under this Order.

#### XIV.

#### PROHIBITION ON DISCLOSING CUSTOMER INFORMATION

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, and employees, 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, are permanently restrained and enjoined from:

A. Disclosing, using, or benefitting 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), of any person which any Defendant obtained prior to entry of this Order in connection with the sale of any good or service; and

B. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

*Provided, however,* that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

**XV.**

**PROHIBITION ON COLLECTING ON ACCOUNTS**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, and employees, 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, are hereby permanently restrained and enjoined from causing any withdrawal, assessment of a fee, or other payment to be made against any consumer account, or otherwise causing collection of, or attempts to collect, payment, directly or indirectly, from a consumer, for any product, program, or service offered or provided to consumers, where the purported authorization for such payment occurred prior to the effective date of this Order.

**XVI.**

**COMPLETION OF RECEIVERSHIP**

**IT IS FURTHER ORDERED** that the appointment of Lisa Snow as Receiver pursuant to the Stipulated Preliminary Injunction entered on September 17, 2010, is hereby continued in full force and effect except as modified by this Section. The Receiver shall complete liquidation of all Assets of Receivership Defendants. Upon liquidation of such Assets, the Receiver shall submit her final report and application for fees and expenses, and upon approval of the same by the Court, shall pay any remaining funds to the FTC. Upon the Court's approval of the Receiver's final report, and the payment of any remaining funds to the FTC under this Section, the Receivership shall be terminated.

**XVII.**

**MONITORING COMPLIANCE OF SALES PERSONNEL**

**IT IS FURTHER ORDERED** that, in connection with any business: (1) where any Defendant is the majority owner of the business or directly or indirectly controls the business; and (2) where the business is engaged in, or is assisting others engaged in, the advertising, marketing, promotion, offering for sale, sale, or provision of any product or service, Defendants and their officers, agents, servants, and employees, 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 person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from:

- A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions

comply with Sections I-IX of this Order. These steps shall include adequate monitoring of sales presentations and telephone calls with consumers, and shall also include, at a minimum, the following: (1) listening to the oral representations made by persons engaged in sales or other customer service functions; (2) establishing a procedure for receiving and responding to consumer complaints; and (3) ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;

B. Failing promptly to investigate fully any consumer complaint received by any business to which this Section applies; and

C. Failing to take adequate corrective action with respect to any employee or independent contractor whom such Defendant determines is not complying with this Order. This corrective action may include training, disciplining, and/or terminating such employee or independent contractor.

### **XVIII.**

#### **COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of (i) monitoring and investigating compliance with any provision of this Order and (ii) investigating the accuracy of any Defendant's financial statements upon which the Commission's agreement to this Order is expressly premised:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce Documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
2. having its representatives pose as consumers and suppliers to Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

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

*Provided, however,* that nothing in this Order shall limit 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, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

**XIX.**

**COMPLIANCE REPORTING**

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

- A. For a period of three (3) years from the date of entry of this Order,
  1. Defendants Graham D. Gibson and Michael A. McKenzy each shall notify the Commission of the following:



- a. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
- b. Any changes in his employment status (including self-employment), and any change in his ownership in any business entity within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of his duties and responsibilities in connection with the business or employment; and
- c. Any changes in his name or use of any aliases or fictitious names within ten (10) days of the date of such change;

2. Defendants shall notify the Commission of any changes in structure of any Corporate Defendant or any business entity that any Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any such change in the business entity about which a Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant 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 and annually thereafter for a period of three (3) years, Defendants each shall provide a written report to the FTC, which is true and accurate and 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 shall include, but not be limited to:

1. For Defendants Graham D. Gibson and Michael A. McKenzy:
  - a. The then-current residence address, mailing addresses, and telephone numbers;
  - b. The then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that he is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of his duties and responsibilities in connection with the business or employment; and
  - c. Any other changes required to be reported under Subsection A of this Section.

2. For all Defendants:
  - a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and
  - b. Any other changes required to be reported under Subsection A of this Section.

C. Each Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.

~~D. For the purposes of this Order, Defendants shall, unless otherwise directed by the~~  
Commission's authorized representatives, send by overnight courier (not the U.S. Postal Service) all reports and notifications to the Commission that are required by this Order, to:

Associate Director for Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
Re: FTC v. Central Coast Nutraceuticals, Inc., et al., No.10-cv-4931.

*Provided that*, in lieu of overnight courier, Defendants may send such reports or notifications by first-class mail, but only if Defendants contemporaneously send an electronic version of such report or notification to the Commission at: DEBrief@ftc.gov.

E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with each Defendant.

**XX.**

**RECORD KEEPING**

**IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of this Order, Defendants, for any business for which they, individually or collectively, are the majority owner or directly or indirectly control, are hereby restrained and enjoined from failing to create and/or 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, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

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

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

## XXI.

### DISTRIBUTION OF ORDER

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

A. **Corporate Defendants:** Each Corporate Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in

structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

**B. Defendants Graham D. Gibson or Michael A. McKenzie as control person:**

For any business that any Individual Defendant controls, directly or indirectly, or in which he has a majority ownership interest, such Defendant must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

**C. Defendants Graham D. Gibson or Michael A. McKenzie as employee or non-**

**control person:** For any business where any Individual Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, he must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

**D. Defendants must secure a signed and dated statement acknowledging receipt of**

**the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order**  
pursuant to this Section.

**XXII.**

**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 submit to the Commission a truthful sworn statement, in the form shown on **Attachment A** to this Order, acknowledging receipt of this Order.

**XXIII.**

**COOPERATION WITH FTC COUNSEL**

**IT IS FURTHER ORDERED** that Defendants shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear, or cause their officers, employees, representatives, or agents to appear, at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendants shall appear, or cause their officers, employees, representatives, or agents to appear, and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

**XXIV.**

**SEVERABILITY**

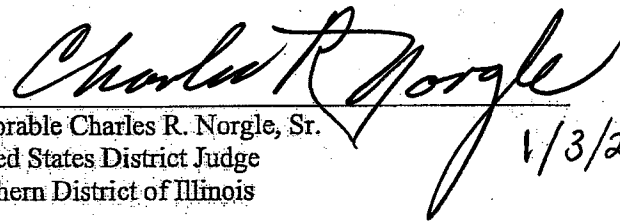
**IT IS FURTHER ORDERED** that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

XXV.

**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.

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

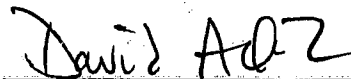


Honorable Charles R. Norgle, Sr.  
United States District Judge  
Northern District of Illinois

1/3/2012

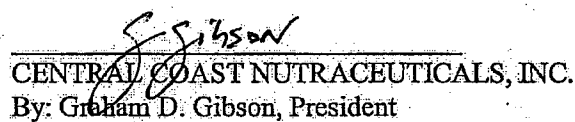
SIGNED AND STIPULATED BY:

**PLAINTIFF FEDERAL TRADE COMMISSION**

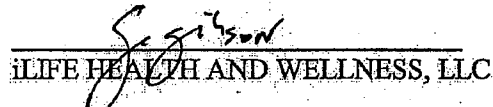


Dated: 12/20/11

DAVID A. O'TOOLE  
ROZINA C. BHIMANI  
Attorneys for Plaintiff  
Federal Trade Commission  
DEFENDANTS

  
CENTRAL COAST NUTRACEUTICALS, INC.  
By: Graham D. Gibson, President

Dated: 10/17/11

  
iLIFE HEALTH AND WELLNESS, LLC

Dated: 10/17/11

SIMPLY NATURALS, LLC  
FIT FOR LIFE, LLC  
HEALTH AND BEAUTY SOLUTIONS LLC  
By: Graham D. Gibson, Member

  
\_\_\_\_\_  
GRAHAM D. GIBSON, individually

Dated: 10/17/11

\_\_\_\_\_  
MICHAEL A MCKENZY, individually

Dated: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
ROGER A. COLAIZZI  
PETER J. CURTIN  
Attorneys for Defendants

Dated: \_\_\_\_\_



SIMPLY NATURALS, LLC  
FIT FOR LIFE, LLC  
HEALTH AND BEAUTY SOLUTIONS LLC  
By: Graham D. Gibson, Member

\_\_\_\_\_  
GRAHAM D. GIBSON, individually

  
\_\_\_\_\_  
MICHAEL A. MCKENNEY, individually

Dated: \_\_\_\_\_

Dated: 11-1-11

Approved as to Form:

\_\_\_\_\_  
ROGER A. COLAIZZI  
PETER J. CURTIN  
Attorneys for Defendants

Dated: \_\_\_\_\_

SIMPLY NATURALS, LLC  
FIT FOR LIFE, LLC  
HEALTH AND BEAUTY SOLUTIONS LLC  
By: Graham D. Gibson, Member

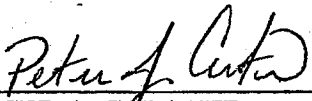
\_\_\_\_\_  
GRAHAM D. GIBSON, individually

Dated: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL A MCKENZY, individually

Dated: \_\_\_\_\_

Approved as to Form:

  
\_\_\_\_\_  
ROGER A. COLAIZZI  
PETER J. CURTIN  
Attorneys for Defendants

Dated: 10/18/11

**ATTACHMENT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

	)	
FEDERAL TRADE COMMISSION,	)	
	)	Case No. 10 C 4931
Plaintiff,	)	
v.	)	Judge Norgle
	)	
CENTRAL COAST NUTRACEUTICALS, INC. <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**AFFIDAVIT ATTESTING TO RECEIPT OF  
STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION**

I, \_\_\_\_\_, being duly sworn, hereby state and affirm as follows:

1. My name is \_\_\_\_\_. I am a citizen of \_\_\_\_\_ and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a Defendant in *FTC v. Central Coast Nutraceuticals, Inc., et al.*, Case No. 10 C 4931 (United States District Court for the Northern District of Illinois). I am also the president, director, officer, and/or owner of \_\_\_\_\_  
[Name of Corporate Defendant(s)]  
Defendant(s) in *FTC v. Central Coast Nutraceuticals, Inc., et al.*, Case No. 10 C 4931 (United States District Court for the Northern District of Illinois).

3. My current employer is \_\_\_\_\_. My current business address is \_\_\_\_\_  
\_\_\_\_\_. My current business telephone number is \_\_\_\_\_  
\_\_\_\_\_. My current residential address is \_\_\_\_\_  
My current residential telephone number is \_\_\_\_\_.

4. On \_\_\_\_\_, I received a copy of the Stipulated Final  
[Date]  
Judgment and Order for Permanent Injunction, which was signed by the Honorable John Norgle, and entered by the Court on \_\_\_\_\_. A true and correct copy of  
[Date of entry of the Order]  
Order I received is appended to this Affidavit.

5. On \_\_\_\_\_, \_\_\_\_\_ received a  
[Date] [Name of Corporate Defendant(s)]  
copy of the Stipulated Final Judgment and Order for Permanent Injunction, which was signed by  
the Honorable John Norgle and entered by the Court on \_\_\_\_\_.  
[Date of entry of the Order]

A true and correct copy of the order it received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the  
foregoing is true and correct. Executed on [\_\_\_\_\_] at [\_\_\_\_\_].  
[Date] [City, State, and Country]

\_\_\_\_\_  
[Name of Defendant]

State of \_\_\_\_\_, City of \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: