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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 San Francisco Division

18 FEDERAL TRADE COMMISSION,

19 Plaintiff,

20 v.

21 WELLNESS SUPPORT NETWORK,
22 INC., a corporation,

23 ROBERT HELD, individually and as
24 an officer of Wellness Support
25 Network, Inc., and

26 ROBYN HELD, individually and as
27 an officer of Wellness Support
28 Network, Inc.,

Defendants.

Case No.: 3:10-cv-4879 JCS

**FIRST AMENDED COMPLAINT
FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF**

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint
alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade
Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive

1 relief, rescission or reformation of contracts, restitution, the refund of monies
2 paid, disgorgement of ill-gotten monies, and other equitable relief for
3 Defendants' acts or practices in violation of Sections 5(a) and 12 of the FTC Act,
4 15 U.S.C. §§ 45(a) and 52, in connection with the advertising, marketing, and
5 sale of two dietary supplements that they claim prevent, treat, or ameliorate the
6 symptoms of diabetes: WSN[®] Diabetic Pack ("Diabetic Pack") and WSN[®] Insulin
7 Resistance Pack ("Insulin Resistance Pack").

8 **JURISDICTION AND VENUE**

9 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
10 §§ 1331, 1337(a) and 1345, and 15 U.S.C. §§ 45(a), 52, and 53(b).

11 3. Venue in the United States District Court for the Northern District of
12 California is proper under 28 U.S.C. §§ 1391(b) and (c) and 15 U.S.C. § 53(b).

13 **INTRADISTRICT ASSIGNMENT**

14 4. Defendants have advertised and sold their products in the County of
15 San Francisco.

16 **THE PARTIES**

17 5. The FTC is an independent agency of the United States Government
18 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Sections 5(a) and 12
19 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, which prohibit, respectively, unfair or
20 deceptive acts or practices and false advertisements for food, drugs, devices,
21 services, or cosmetics in or affecting commerce. The FTC is authorized to
22 initiate federal district court proceedings, by its own attorneys, to enjoin
23 violations of the FTC Act, and to secure such equitable relief as may be
24 appropriate in each case, including rescission or reformation of contracts,
25 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies.
26 15 U.S.C. § 53(b).

27 6. Defendant Wellness Support Network ("WSN") is a closely held
28 California corporation with its principal place of business at 620 N. Brand Blvd.,

1 Ste. 400, Glendale, CA 91203. At times material to this Complaint, WSN has
2 advertised, marketed, distributed, or sold a variety of dietary supplements,
3 including the Diabetic Pack and Insulin Resistance Pack to consumers throughout
4 the United States. WSN transacts, or has transacted, business in this District and
5 throughout the United States.

6 7. Defendant Robert Held is, or at times material to this Complaint has
7 been, the President, a Director, and an owner of WSN. At times material to this
8 Complaint, acting individually or in concert with others, Robert Held has
9 formulated, directed, controlled, had the authority to control, or participated in
10 the policies, acts, or practices of WSN, including the acts or practices alleged in
11 this complaint. Among other things, in conjunction with Defendant Robyn Held,
12 Defendant Robert Held develops all advertising and marketing for WSN
13 products, including the Diabetic Pack and the Insulin Resistance Pack. In
14 conjunction with Defendant Robyn Held, Defendant Robert Held also created the
15 website through which WSN advertises these products. Robert Held transacts, or
16 has transacted, business in this District and throughout the United States.

17 8. Defendant Robyn Held is, or at times material to this Complaint has
18 been, the Secretary, Chief Financial Officer, a Director, and an owner of WSN.
19 At times material to this Complaint, acting individually or in concert with others,
20 Robyn Held has formulated, directed, controlled, had the authority to control, or
21 participated in the policies, acts, or practices of WSN, including the acts or
22 practices alleged in this complaint. Among other things, in conjunction with
23 Defendant Robert Held, Defendant Robyn Held develops all advertising and
24 marketing for WSN products, including the Diabetic Pack and the Insulin
25 Resistance Pack. In conjunction with Defendant Robert Held, Defendant Robyn
26 Held also created the website through which WSN advertises these products.
27 Robyn Held transacts, or has transacted, business in this District and throughout
28 the United States.

1 **COMMERCE**

2 9. At all times material to this Complaint, Defendants have maintained
3 a substantial course of trade in or affecting commerce, as “commerce” is defined
4 in Section 4 of the FTC Act, 15 U.S.C. § 44.

5 **DEFENDANTS’ PRODUCTS**

6 **The WSN® Diabetic Pack**

7 10. Since at least 2004, and continuing thereafter, Defendants WSN,
8 Robert Held, and Robyn Held (collectively, “Defendants”) have advertised,
9 promoted, offered for sale, sold, or distributed a group of dietary supplements
10 called the WSN® Diabetic Pack to consumers throughout the United States.

11 11. The Diabetic Pack consists of three different products: (1) Glucose
12 Support Formula; (2) Calcium-Magnesium Formula; and (3) Vitamin & Mineral
13 Formula.

14 12. The Glucose Support Formula purportedly contains a variety of
15 dietary ingredients, including Vitamin A, Vitamin D, biotin, chromium,
16 vanadium, and banaba leaf extract. Users are instructed to take three capsules of
17 the Glucose Support Formula each day.

18 13. The Calcium-Magnesium Formula purportedly contains Vitamin D,
19 calcium, magnesium, and other ingredients. Users are instructed to take one
20 capsule of the Calcium-Magnesium Formula per day.

21 14. The Vitamin & Mineral Formula purportedly contains a variety of
22 vitamins, minerals and other ingredients. Users are instructed to take one capsule
23 of the Vitamin & Mineral Formula per day.

24 15. The suggested retail price for the Diabetic Pack is \$76.70 for a 30-
25 day supply.

26 **The WSN® Insulin Resistance Pack**

27 16. Since at least 2004, and continuing thereafter, Defendants have
28 advertised, promoted, offered for sale, sold, or distributed the WSN® Insulin

1 Resistance Pack to consumers throughout the United States.

2 17. Insulin resistance is a condition in which a person's body produces
3 insulin, but does not use it properly. Insulin resistance can increase the chance of
4 developing Type 2 diabetes and heart disease.

5 18. The Insulin Resistance Pack is comprised of the same three products
6 that are in the Diabetic Pack: (1) the Glucose Support Formula; (2) the Calcium-
7 Magnesium Formula; and (3) the Vitamin & Mineral Formula. Users are
8 instructed to take three capsules of the Glucose Support Formula per day, and to
9 take one capsule each of the Calcium-Magnesium Formula and the Vitamin &
10 Mineral Formula per day.

11 19. The suggested retail price for the Insulin Resistance Pack is
12 \$76.70 for a 30-day supply.

13 **DEFENDANTS' COURSE OF CONDUCT**

14 **The Diabetic Pack**

15 20. To induce consumers to purchase their Diabetic Pack, Defendants
16 have created, prepared, disseminated, or caused to be disseminated,
17 advertisements and other marketing materials, including, but not limited to, the
18 attached Exhibits A (excerpts from website of June 8, 2009) and B (excerpts from
19 website of June 14, 2010). These promotional materials contain, among other
20 things, the following statements:

21
22 a. **Completely Natural!**
Diabetes Breakthrough

23 * * *

24 Lower your blood sugar, safely and effectively
25 with absolutely *NO SIDE EFFECTS !! GUARANTEED !!*

26 Exhibit ("Ex.") A, p. 1 (Excerpt from website)

27 b. **Completely Natural!**
Diabetes Breakthrough

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Maintain normal blood sugar levels, safely and effectively with absolutely *NO SIDE EFFECTS !! GUARANTEED !!*

Ex. B, p. 1 (Excerpt from website)

- c. Nobel Prize winning technology validates WSN® Diabetic Pack ingredients!
Studies show a **31.9%** drop in blood sugar levels!

Ex. A, p. 1 (Excerpt from website)

Include:

- d. **The WSN® Diabetic Pack Breakthrough Benefits***

- ✓ Lower Blood Glucose Levels
- ✓ Higher Energy Levels
- ✓ Easier Weight Loss
- ✓ Lower Cholesterol Levels
- ✓ Higher Quality of Sleep
- ✓ Less Dependency on Medications

Ex. A, p. 2 (Excerpt from website)

- e. **The WSN® Diabetic Pack Breakthrough Benefits Include:**

- ✓ Helps Maintain Normal Blood Glucose Levels
- ✓ Higher Energy Levels
- ✓ Lose Weight More Easily
- ✓ Helps Maintain Lower Cholesterol Levels
- ✓ Higher Quality of Sleep

Ex. B, p. 2 (Excerpt from website)

- f. The WSN® Diabetic Pack also contains important botanical extracts. A recent independent clinical trial was done on one of these herbal ingredients from this amazing product. This study was done on type 2 diabetics (mildly insulin dependent) and reported **an average drop of blood glucose levels of 31.9% and average weight loss of 4.8 pounds in just 30 days!**

Ex. A, p. 2 (Excerpt from website)

- g. **Nobel Prize** Winning Technology
Validates WSN® Diabetic Pack Ingredients!

The good news is that cutting-edge science and nutrition have come together to create a truly monumental and natural breakthrough for diabetics.

Nobel Prize winning science and over 60 independent American university studies confirm the superiority of Foodform® [Diabetic Pack] nutrients.

The reason the WSN® Diabetic Pack works is because it operates at the cellular level and addresses a key problem that every type 2 diabetic has. . . All type 2 diabetics have a deficiency of key nutrients the body needs to support healthy blood sugar levels. Your cells simply do not process blood sugar like they should. The WSN®Diabetic Pack helps your body metabolize blood sugar more efficiently.

Ex. B, pp. 2-4 (Excerpt from website)

h.

“My blood sugar went from 230 to 117 in just 21 days.” James Marshall, Georgia

Ex. A, p. 1 (Excerpt from website)

Ex. B, p. 1 (Excerpt from website)

i.

From Barbara Culver in Michigan

“Well, just let me tell you this. This is the first time that I have ever ordered a product that really did what it said it would do!

“I was taking 50 units of insulin plus pills twice a day and my blood sugar just kept going up. I was tired all of the time and could fall asleep as soon as I sat down. I also kept gaining weight.

“Since I've been using the Diabetic Pack I have lost 9 pounds, I have all kinds of energy and my sugar is down in the low 100s. Also I don't take insulin any more!”

Ex. B, pp. 3-4; Ex. A contains similar statements (Excerpt from website)

The Insulin Resistance Pack

21. To induce consumers to purchase their Insulin Resistance Pack, Defendants have created, prepared, disseminated, or caused to be disseminated, advertisements and other marketing materials, including, but not limited to, the attached Exhibit C (excerpt from website of June 14, 2010). These promotional materials contain, among other things, the following statements:

a.

Completely Natural!

Insulin Resistance Breakthrough

(Also known as “Metabolic Syndrome” or “Syndrome X”)

The WSN® Insulin Resistance Pack is a medical food specifically formulated for the dietary management of insulin

1 resistance.

2 Reverse Insulin Resistance, safely and effectively with
3 absolutely *NO SIDE EFFECTS !! GUARANTEED !!*

4 Ex. C, p. 1 (Excerpt from website)

- 5 b. Nobel Prize winning technology validates WSN® Insulin
6 Resistance Pack ingredients!

7 **The WSN® Insulin Resistance Pack Breakthrough
8 Benefits* Include:**

- 9 ✓ **Reduced Insulin Resistance**
- 10 ✓ **Improved Utilization of Glucose**
- 11 ✓ **Higher Energy Levels**
- ✓ **Easier Weight Loss**
- ✓ **Lower Cholesterol Levels**
- ✓ **Higher Quality of Sleep**
- ✓ **Helps Prevent Diabetes**

12 Ex. C, p. 1 (Excerpt from website)

- 13 c. The WSN® Insulin Resistance Pack also contains important
14 botanical extracts. A recent independent clinical trial was
15 done on one of these herbal ingredients from this amazing
16 product. This study was done on type 2 diabetics (mildly
17 insulin dependent) and reported **an average drop of blood
18 glucose levels of 31.9% and average weight loss of 4.8
19 pounds in just 30 days!**

20 Ex. C, p. 2 (Excerpt from website)

- 21 d. Insulin resistance is a condition that if you don't take effective
22 action against, it simply gets worse, and becomes type 2
23 diabetes. Unfortunately, medications only treat the symptoms
24 and usually do nothing to address the underlying causes. The
25 good news is that cutting-edge science and nutrition have
26 come together to create a truly monumental and natural
27 breakthrough for people who are **insulin resistant.**

28 **Nobel Prize Validates Amazing Technology**

Nobel Prize winning science and over 60 independent
American university studies confirm the superiority of
Foodform® [Insulin Resistance Pack] technology . . . Your
cells are insensitive to insulin and simply do not process blood
sugar like they should, and the WSN® Insulin Resistance
Pack helps your body metabolize blood sugar more
efficiently.

Ex. C., p. 2 (Excerpt from website)

- e. The WSN® Insulin Resistance Pack is the most
technologically advanced product of its kind available

1 anywhere and was validated by the 1999 Nobel Prize for
2 physiology.

3 Ex. C, p. 3 (Excerpt from website)

4 **DEFENDANTS' VIOLATIONS OF THE FTC ACT**

5 22. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or
6 deceptive acts or practices in or affecting commerce.” Section 12(a) of the FTC
7 Act, 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in
8 or affecting commerce for the purposes of inducing, or which is likely to induce,
9 the purchase of food, drugs, devices, services, or cosmetics.

10 23. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52,
11 Defendants’ products are either “foods” or “drugs,” as “food” and “drug” are
12 defined in Section 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b), (c).

13 **COUNT ONE**

14 **Deceptive Claims for Diabetic Pack**

15 24. Through the means described in Paragraph 20, including the
16 statements and depictions contained in the advertisements attached as Exhibits A
17 and B, among others, Defendants have represented, directly or indirectly,
18 expressly or by implication, that:

- 19 a. Diabetic Pack is an effective treatment for diabetes;
- 20 b. Diabetic Pack reduces or eliminates the need for insulin and
21 other diabetes medications;
- 22 c. Scientific studies prove that Diabetic Pack is an effective
23 treatment for diabetes; and
- 24 d. Diabetic Pack is clinically proven to cause an average drop in
25 blood glucose levels of 31.9%.

26 25. The representations set forth in Paragraph 24 are false or were not
27 substantiated at the time they were made. Therefore, the making of the
28 representations set forth in Paragraph 24 constitutes a deceptive act or practice,
and the making of false advertisements, in or affecting commerce, in violation of
First Amended Complaint - 3:10-cv-4879 JCS

1 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

2 **COUNT TWO**

3 **Deceptive Claims for Insulin Resistance Pack**

4 26. Through the means described in Paragraph 21, including the
5 statements and depictions contained in the advertisement attached as Exhibit C,
6 among others, Defendants have represented, directly or indirectly, expressly or
7 by implication, that:

- 8 a. Insulin Resistance Pack reverses insulin resistance;
9 b. Insulin Resistance Pack manages insulin resistance;
10 c. Insulin Resistance Pack prevents diabetes;
11 d. Scientific studies prove that Insulin Resistance Pack is an
12 effective treatment for insulin resistance; and
13 e. Insulin Resistance Pack is clinically proven to cause an
14 average drop in blood glucose levels of 31.9%.

15 27. The representations set forth in Paragraph 26 are false or were not
16 substantiated at the time they were made. Therefore, the making of the
17 representations set forth in Paragraph 26 constitutes a deceptive act or practice,
18 and the making of false advertisements, in or affecting commerce, in violation of
19 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

20 **CONSUMER INJURY**

21 28. Consumers have suffered and will continue to suffer substantial
22 injury as a result of Defendants' violations of the FTC Act. In addition,
23 Defendants have been unjustly enriched as a result of their unlawful acts or
24 practices. Absent injunctive relief by this Court, Defendants are likely to
25 continue to injure consumers, reap unjust enrichment, and harm the public
26 interest.

27 **THIS COURT'S POWER TO GRANT RELIEF**

28 29. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this

1 Court to grant injunctive and such other relief as the Court may deem appropriate
2 to halt and redress violations of any provision of law enforced by the FTC. The
3 Court, in the exercise of its equitable jurisdiction, may award ancillary relief,
4 including rescission or reformation of contracts, restitution, the refund of monies
5 paid, and the disgorgement of ill-gotten monies, to prevent and remedy any
6 violation of any provision of law enforced by the FTC.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act,
9 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

10 (a) Enter a permanent injunction to prevent future violations of the FTC
11 Act by Defendants;

12 (b) Award such relief as the Court finds necessary to redress injury to
13 consumers resulting from Defendants' violations of the FTC Act, including, but
14 not limited to, rescission or reformation of contracts, restitution, the refund of
15 monies paid, and the disgorgement of ill-gotten monies; and

16 (c) Award Plaintiff the costs of bringing this action, as well as such
17 other and additional relief as the Court may determine to be just and proper.

18
19 Dated: 4/29/11

Respectfully Submitted,

20 WILLARD K. TOM
21 General Counsel

22 

23 LAURA FREMONT
24 KENNETH H. ABBE

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CERTIFICATE OF SERVICE

1
2 This is to certify that on April 29, 2011, I served a true and correct copy of
3 the attached FIRST AMENDED COMPLAINT FOR PERMANENT
4 INJUNCTION AND OTHER EQUITABLE RELIEF via the electronic filing
5 system for the U.S. District Court for the Northern District of California, and via
6 electronic mail to:

7
8 Leslie Holmes, Esq.
9 Leslie@HULawyers.com
10 Holmes & Usoz
11 Attorney for Defendants

12 and by sending the attached document via email to:

13 Mitchell S. Fuerst, Esq
14 mfuerst@fuerstlaw.com

15 and

16 Andrew S. Ittleman, Esq
17 aittleman@fuerstlaw.com

18 Fuerst Ittleman PL
19 Attorneys for Defendants

20 I swear under penalty of perjury that the foregoing is true and correct.

21 Executed on April 29, 2011, at San Francisco, California.

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Kenneth H. Abbe
Attorney
Federal Trade Commission