

Plaintiffs, the Federal Trade Commission (“FTC” “Commission”) and the State of Maine, as represented in this matter by the Office of the Attorney General of Maine (“Maine AG”) (“Plaintiffs”), filed a Complaint for Permanent Injunction and Other Equitable Relief against Defendants pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), pursuant to Section 4(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”) 15 U.S.C. § 6103(a), and pursuant to Section 209 of the Maine Unfair Trade Practices Act (“Maine UTPA”) ME. REV. STAT. tit. 5, § 209, to obtain permanent injunctive relief, rescission or reformation of contracts,

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6106-6108, the FTC’s Trade Regulation Rule entitled “Telemarketing Sales Rule” (“TSR”), 16 C.F.R. Part 310, the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. §§ 1693-1693r, and its implementing Regulation E, 12 C.F.R. § 1005.10, and Section 207 of the Maine UTPA, ME. REV. STAT. tit. 5, § 207, in connection with the labeling, advertising, marketing, distribution, and sale of products purported to provide pain relief and to prevent or mitigate cognitive decline.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Defendants admit the facts necessary to establish jurisdiction only for purposes of this action.
4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.
5. Defendants and Plaintiffs waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

by humans to supplement the diet by increasing the total dietary intake, or

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- B. Provides relief from backpain;
- C. Reduces the need for medication
- D. Helps rebuild damaged joints cartilage; pa(o7 -Ts 0cat)(0 . Ta 0 Ts 0 T)ot 3((o)2.1

II.

PROHIBITED REPRESENTATIONS: OTHER HEALTH -RELATED CLAIMS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, are permanently restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation about the health benefits, safety, performance, or efficacy of any Covered Product, other than a representation covered under Section of this Order entitled Prohibited Representations: Pain Relief, Cartilage Rebuilding, Cognitive Decline, Memory Improvement, and Disease Claims, unless the representation is misleading, and, at the time of making such representation, they possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted by experts in the relevant disease, condition, or function to which the representation relates, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

For purposes of this Section, competent and reliable scientific evidence means tests, analyses, research, or studies (1) that have been conducted and evaluated in an objective manner by experts in the relevant disease, condition, or function to which the representation relates (2) that are generally accepted by such experts to yield accurate and reliable results; and (3) are randomized, double-blind, and placebo controlled human clinical testing of the Covered Product, or of an Essentially Equivalent Product, when such experts would generally require

- D. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

IV.

FDA-APPROVED CLAIMS

IT IS FURTHER ORDERED that nothing in this Order

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- B. All documents referring or relating to recruitment; randomization; instructions, including oral instructions, to participants; and participant compliance;
- C. Documents sufficient to identify all test participants, including any participants who did not complete the test, and all communications with any participants relating to the test; all raw data collected from participants enrolled in the test, including any participants who did not complete the test; source documents for such data; any data dictionaries; and any case report forms;
- D. All documents referring or relating to any statistical analysis of any test data, including, but not limited to, any pretest analysis, intertreat analysis, or between-group analysis performed on any test data; and
- E. All documents referring or relating to the sponsorship of the test, including all communications and contracts between any sponsor and the test's researchers.

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

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

VI.

PROHIBITED REPRESENTATIONS
RELATED TO ENDORSEMENTS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any good or service, are permanently restrained and enjoined from representing, in any manner, expressly or by implication, including through the use of any good or service name, endorsement, depiction, or illustration, that:

- A. Any person is an expert with respect to the ET

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PROHIBITED REPRESENTATIONS
RELATED TO ADVERTISING FORMAT

IT IS FURTHER ORDERED that Defendants and their officers, agents, 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, in connection with the advertising, marketing, promotion, offering for sale, sale, or distribution of any good or service, are hereby permanently restrained and enjoined from representing that paid commercial advertising is independent programming, including independent, educational programming, or an objective news report.

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VIII.

DISCLOSURE OF MATERIAL CONNECTIONS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents,
employees, and all other persons in active concert or participation with any of them, who receive

1. In close proximity to such claim, the total cost to purchase, receive, or use any good or service that is the subject of the sales offer, including shipping, handling, and processing;
 2. The amount, timing, and manner of payment of all fees, charges, or other amounts that a consumer will be charged or billed, and any additional financial obligations that may be incurred as a result of accepting the free product, service, or offer; and
 3. The terms and conditions of any refund, cancellation, exchange, or purchase policy or policies, including the specific steps and means by which such requests must be submitted, and the telephone number, email address, web address, or street address to which such requests must be directed, including the deadline (by date or frequency) by which the consumer must act, and, if there is a policy of not making refunds, cancellations, exchanges, or repurchases, a statement regarding this policy; and
- B. Failing to Clearly and Conspicuously disclose, or assisting others in failing to Clearly and Conspicuously disclose, before consumers are asked to reveal billing information or consent to any purchase that includes a Negative Option Feature:
1. That the consumer will be charged for the good or service, or that the charges will increase after the trial period ends, and if applicable, that the charges will be on a recurring basis, unless the consumer timely takes steps to prevent or stop such charges;

2. The amount (or range of costs) the consumer will be charged or billed,
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consumer, unless, prior to using such billing information to obtain payment, Defendants obtain the express informed consent of the consumer.

- A. For all written offers with a Negative Option Feature (including the Internet or other webbased applications or services), a consumer's express informed consent shall be obtained, prior to Defendants' obtaining any billing information from consumers, through a check box, signature, or other substantially method, that consumers must affirmatively select or sign to accept the Negative Option Feature. Immediately adjacent to such check box, signature, or

2. Understands that the transaction includes a Negative Option Feature; and
3. Understands the specific affirmative steps the consumer must take to prevent further charges.

Defendants shall maintain for three (3) years from the date of each transaction a recorded voice recording of the entire transaction, including the prescribed statements set out in the Section of this Order entitled Required Disclosures. Each recording must be retrievable by date and by the consumer's name, telephone number, and other information and must be provided upon request and without charge to the consumer, the consumer's bank, or any law enforcement entity.

XII.

PROHIBITIONS CONCERNING REFUNDS AND CANCELLATIONS

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

- A. Misrepresenting, expressly or by implication, any material term of any refund, return, or cancellation policy or practice;
- B. Failing to honor a refund, return, or cancellation request that complies with any policy to make refunds or allow returns or cancellations; and
- C. Failing to provide a simple mechanism for a consumer to immediately stop any recurring charge for such good or service, at least one of which is as simple and easy to use as the mechanism the consumer used to initiate the charges.

1. For consumers who entered into the agreement to purchase a good or service including a Negative Option Feature over the Internet or through other web-based applications or services, Defendants must provide a mechanism for consumers to stop the recurring charge over the Internet or through such other web-based application or service.
2. For consumers who entered into the agreement to purchase a good or service including a Negative Option Feature through an oral offer and acceptance, Defendants must maintain a telephone number through which the consumer can easily cancel the good or service, seek a refund for past charges, and immediately stop all further charges. Defendants must answer all calls to this telephone number during normal business hours.

XIII.

PROHIBITION ON VIOLATING THE RESTORE ONLINE SHOPPERS'
CONFIDENCE ACT

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order whether acting directly or indirectly in connection with the advertising, marketing, promotion, offering for sale, sale, or distribution of any good or service, are permanently restrained and enjoined from violating the Restore Online Shoppers' Confidence Act, 15 U.S.C. §§ 8401-8405, a copy of which is attached hereto as EXHIBIT A

XIV.

COMPLIANCE WITH THE ELECTRONIC FUND TRANSFER ACT

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive

payment to the Commission. Such payment must be made within 7 days of entry

of this Order by electronic funds transfer in accordance with instructions
previously provided by a representative of the Commission.

- C. Upon satisfaction of the obligations described in Subsection B, the remainder of the judgment as to the Defendants shall be suspe

3. Corporate and individual bank statements submitted to Plaintiffs on August 5, 2016;
 4. Email from counsel dated September 22, 2016 with attachments explaining all receivables.
- F. The suspension of the judgment will be lifted as to any Defendant if, upon motion by either of Plaintiffs, the Court finds that such Defendant failed to disclose any material asset or income, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified

Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection;

- I. All money paid to the State of Maine pursuant to this Order shall be deposited into the Attorney General's other special revenue account and used for consumer education, consumer protection, antitrust enforcement, or for any lawful purpose at the sole discretion of the Attorney General;
- J. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets;
- K. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of either of Plaintiffs including in a proceeding to enforce their rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.
- L. The facts alleged in the Complaint establish all elements necessary to sustain an action by either of Plaintiffs pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes; and
- M. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants must submit to Plaintiffs may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

XVI.

COOPERATION WITH FTC AND MAINE

IT IS FURTHER ORDERED that Defendants must fully cooperate with representatives of the Commission, the Maine AG, and any of their representatives in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Defendants must provide truthful and complete information, evidence, and testimony. Individual Defendants must appear and Corporate Defendant must appear, its officers, officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that a representative of the Commission or the Maine AG reasonably request upon five (5) days' written notice, or other reasonable notice, at such places and times as a Commission or Maine AG representative may designate, without the service of a subpoena.

XVII.

CUSTOMER INFORMATION

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

- A. Failing to provide sufficient customer information in the possession, custody, or control to Plaintiffs to enable the Commission to efficiently administer consumer

majority owner or controls directly or indirectly, and Corporate Defendant, must deliver a copy of this Order to:

1. All principals, officers, directors, LP and LLC partners, managers, and members;
2. All employees, agents, and representatives who participate in the manufacturing, labeling, advertising, marketing, distribution, or sale of any Covered Product or service; and
3. Any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting.

Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

XIX.

COMPLIANCE REPORTING

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

- A. 60 days after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:
1. Each Defendant must: (a) identify the primary physical, postal, and e address and telephone number as designated points of contact, which

Plaintiffs' representatives may use to communicate with Defendant;

(b) identify all of that Defendant's businesses by all of their names,

telephonønumbers, an

contact; (b) the structure of Corporate Defendant or any entity that Defendants have any ownership interest in or control directly or indirectly that may affect compliance obligations arising under this Order,


- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; address; telephone numbers; job title or position; dates of service; and (if applicable) the ~~reason~~ for termination;
- C. Complaints and full or partial refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this

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Defendant who has agreed to such an interview. The person interviewed may have counsel present.

- C. Plaintiffs may use all other lawful means, including posing, through their representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1. Nothing in this Order limits the Maine AG's lawful use of compulsory process, pursuant to section 211 of the Maine UTPA, ME. REV. STAT. tit. 5, § 211. Defendants hereby consent to the disclosure by the Maine AG to any law enforcement agency and any representative of the State of Maine of any material or information produced by Defendants pursuant to section 211 of the Maine UTPA, whether produced before or after the date of this Order.
- D. Upon written request from a representative of the Commission or the State of Maine, any consumer reporting agency must furnish consumer reports concerning individual Defendants pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

IT IS



IT IS SO

STIPULATED this 12th day of February, 2017



IT IS SO STIPULATED this 13th day of February, 2017


By _____

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