

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

In the Matter of  MICHAEL D. MILLER, individually and d/b/a Natural Heritage Enterprises.	) ) ) ) ) ) )	FILE NO. 992-3225  AGREEMENT CONTAINING CONSENT ORDER
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The Federal Trade Commission has conducted an investigation of certain acts and practices of Michael D. Miller ("proposed respondent"), individually and d/b/a Natural Heritage Enterprises. Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Michael D. Miller, individually and d/b/a Natural Heritage Enterprises, and counsel for the Federal Trade Commission that:

1. Proposed respondent Michael D. Miller is a Colorado resident. His principal office or place of business is at 183 Bellevue Overlook, Crestone, Colorado 81131. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the business operating under the trade name "Natural Heritage Enterprises."
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
  - a. Any further procedural steps;
  - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
  - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.
5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true. *Provided,*

*however*, that in the event of any subsequent litigation to collect amounts due pursuant to this order, including but not limited to a nondischargeability complaint in any bankruptcy proceeding, respondent agrees that the facts as alleged in the Commission's complaint in this action shall be taken as true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right he may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. He understands that he may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

## ORDER

### DEFINITIONS

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

A. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

B. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

C. "Essiac product" shall mean any product for which the term "Essiac" or "Caisse" appears on the product label or on any advertising or promotion, and any product containing burdock root, sheep sorrel, rhubarb root, and slippery elm bark herbs.

D. "Food" and "drug" shall mean "food" and "drug" as defined in Section 15 of the FTC Act, 15 U.S.C. § 55(b)-(c).

E. "Metatags" shall mean any word or words embedded in the source code of an Internet Web site that may be used by an Internet search engine in indexing Web sites for the purpose of selecting sites in response to an Internet user's search request.

F. “Mouseover text” shall mean any terms, triggered by the movement of the user’s mouse, that are displayed in a dialog box or other similar device.

G. A requirement that respondent “notify the Commission” shall mean that the respondent shall send the necessary information via first-class mail, costs prepaid, to the Associate Director for Division of Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Attention: In the Matter of Michael D. Miller.

H. “Person” shall mean a natural person, organization or other legal entity, including a partnership, corporation, proprietorship, association, cooperative, or any other group acting together as an entity.

I. Unless otherwise specified, “respondent” shall mean Michael D. Miller, individually and doing business as Natural Heritage Enterprises, and his agents, representatives, and employees.

I.

IT IS HEREBY ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Essiac product, service, or program, or any other food, drug, or dietary supplement in or affecting commerce, shall not, a, or di2ther foodG.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any "Essiac" product, service, or program, or any other food, drug, or dietary supplement in or affecting commerce, shall not misrepresent, in any manner, including by means of metatags or mouseover text, expressly or by implication:

- A. The connection or association between any Web site created and/or maintained by respondent and any other Web site; or
- B. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

### III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any "Essiac" product, service, or program, or any other food, drug, or dietary supplement in or affecting commerce, shall not represent, in any manner, including by means of metatags or mouseover text, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product, service, or program represents the typical or ordinary experience of members of the public who use the product, service, or program, unless:

- A. The representation is true and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation; or
- B. Respondent discloses, clearly and prominently, and in close proximity to the endorsement or testimonial, either:
  - 1. what the generally expected results would be for users of the product, or
  - 2. the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Section, "endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

### IV.

IT IS FURTHER ORDERED that respondent" ither:

- A.

telephone number and email address of each consumer and the full purchase price, including shipping, handling, and taxes, of any Essiac product purchased from respondent.

- B. Within thirty (30) days after service of this Order upon respondent, send by first class mail, with postage prepaid, an exact copy of the notice attached hereto as Attachment A, showing the date of mailing, to each person who purchased respondent's Essiac product between September 15, 1996, and the date respondent executed this Order. This mailing shall not include any other document.

V.

IT IS FURTHER ORDERED that respondent shall pay to the Federal Trade Commission the sum of seventeen thousand five hundred dollars (\$17,500). This payment shall be made in the following manner:

- A. The payment shall be made by wire transfer or certified or cashier's check made payable to the Federal Trade Commission, the payment to be made no later than the date that this order becomes final.
- B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. 1961 from the date of default to the date of payment, shall immediately become due and payable.
- C. The funds paid by respondent, together with any accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of an Essiac product in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondent shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty or punitive assessment.
- D. Respondent relinquishes all dominion, control and title to the funds paid, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondent shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondent, respondent acknowledges that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

VI.

Nothing in this Order shall prohibit respondent from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration. Nor shall it prohibit respondent 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.

VII.

IT IS FURTHER ORDERED that respondent shall, for ten (10) years after the last date of dissemination of any representation covered by this Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VIII.

IT IS FURTHER ORDERED that respondent shall, for a period of ten (10) years after the date of entry of this Order, deliver a copy of this Order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and

change with regard to Natural Heritage Enterprises that may affect compliance obligations arising under this Order, including but not limited to its incorporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the proposed filing of a bankruptcy petition; or a change in the business or corporate name or address. Provided, however, that, with respect to any proposed change about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.

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