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ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
(Atlanta Division)

| | | |
|--------------------------------|---|--------------------------------|
| <hr/> |) | |
| FEDERAL TRADE COMMISSION, |) | |
| |) | Hon. |
| Plaintiff, |) | |
| |) | Civil Action No. |
| v. |) | |
| |) | STIPULATED FINAL JUDGMENT |
| ADVANCED PATCH TECHNOLOGIES, |) | AND ORDER FOR PERMANENT |
| INC., SALOMON BTESH, BUCKHEAD |) | INJUNCTION AND MONETARY |
| MARKETING AND DISTRIBUTION, |) | SETTLEMENT AS TO DEFENDANTS |
| LLC, PAP SYSTEMS, LLC, RALF |) | ADVANCED PATCH TECHNOLOGIES, |
| LESZINSKI, NANCY DUITCH, and |) | INC., SALOMON BTESH, JESSE |
| JESSE STARKMAN, |) | STARKMAN, AND RELIEF DEFENDANT |
| |) | BERNARD SILVERFARB |
| Defendants, and |) | |
| |) | |
| BERNARD SILVERFARB, and |) | |
| BUCKHEAD MARKETING GROUP, LLC, |) | |
| |) | |
| |) | |
| Relief Defendants. |) | |
| <hr/> |) | |

WHEREAS, Plaintiff, the Federal Trade Commission ("FTC" or "Commission") has filed its complaint for Permanent Injunction and Other Equitable Relief ("Complaint") pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), against Defendants Advanced Patch Technologies, Inc., Salomon Btsh, Buckhead Marketing and Distribution, L.L.C., PAP Systems, L.L.C., Ralf Leszinski, Nancy Duitch, and Jesse Starkman, and against Relief Defendants Bernard Silverfarb and Buckhead Marketing Group, LLC;

WHEREAS, the Complaint alleges that the Defendants violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Section 12 of the FTC Act, 15 U.S.C. § 52;

WHEREAS, the Commission's agreement to this Stipulated Final Judgment and Order for Permanent Injunction and Monetary Settlement as to Defendants Advanced Patch Technologies, Inc., Salomon Btsh, Jesse Starkman, and Relief Defendant Bernard Silverfarb ("Order") is expressly premised upon the agreement of Defendants Advanced Patch Technologies, Inc., ("APT"), Salomon Btsh ("Btsh"), and Jesse Starkman ("Starkman") (collectively, the "Settling Defendants") and Relief Defendant Bernard Silverfarb ("Relief Defendant Silverfarb") to cooperate with the FTC and its attorneys by voluntarily providing truthful testimony, documents and information related to this action or

IT IS HEREBY ORDERED ADJUDGED, AND DECREED as follows:

FINDINGS

1. The Commission has the authority under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to seek the relief it has requested.

2. This Court has jurisdiction over the subject matter of this action and has jurisdiction over the Settling Defendants and Relief Defendant Silverfarb.

3. Venue in the Northern District of Georgia, Atlanta Division, is proper.

4. The Complaint states a claim upon which relief may be granted against the Settling Defendants and Relief Defendant Silverfarb.

5. By entering into this Stipulation, the Settling Defendants and Relief Defendant Silverfarb do not admit to the allegations of the Complaint, other than the jurisdictional facts.

6. This Order does not constitute, nor shall it be interpreted to constitute, either an admission by the Settling Defendants and Relief Defendant Silverfarb of any wrongdoing or a finding by the Court that the Settling Defendants and Relief Defendant Silverfarb have engaged in any violations of law.

7. The activities of the Settling Defendants, as alleged

in the Complaint, are or were in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

8. The Settling Defendants and Relief Defendant Silverfarb have waived all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.

9. The Settling Defendants and Relief Defendant Silverfarb have waived service of a summons and have waived all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order.

10. Each party to this Order shall bear its own costs and attorneys' fees incurred in connection with this action.

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

DEFINITIONS

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

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

2. "Competent and reliable scientific evidence" means 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.

3. "Covered product or service" means any product, service, or program that purportedly provides health benefits, including weight loss, inch loss, fat loss, or exercise or fitness benefits.

4. "Endorsement" means as defined in 16 C.F.R. § 255.0(b).

5. "Food," "drug," "device," and "cosmetic," mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

6. "Pound A Patch" means the Pound A Patch transdermal patch and any substantially similar product containing fucus vesiculosus and/or garcinia cambogia.

7. "Transdermal product" means any product applied to the skin to deliver the product's ingredients into the body.

8. The term "including" in this Order means "including, without limitation."

CONDUCT PROHIBITIONS

PROHIBITED FALSE REPRESENTATIONS

I.

IT IS ORDERED that Defendants APT and Btresh, their successors and assigns, and their officers, agents, servants, employees, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or

through any corporation, subsidiary, division, trade name, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Pound A Patch, or any other transdermal product, are hereby permanently enjoined from making any representation, expressly or by implication, including through the use of endorsements, that such product will cause substantial weight loss.use of endorsements, thatP7

- G. That any such product or service reduces fat cell production;
- H. About the efficacy, safety, side effects, or the health performance or benefits, including weight loss, inch loss, fat loss, or exercise or fitness benefits, of such product or service; or
- I. That any such product or service makes a material contribution to any system, program, or plan that produces any of the results referenced in subparts A-G above,

unless, at the time the representation is made, they possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Provided, that for any representation made by Defendant Starkman as an expert endorser, he must possess and rely upon competent and reliable scientific evidence, and an actual exercise of his represented expertise, in the form of an examination or testing of the product or service that is at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the representation.

PROHIBITED REPRESENTATIONS ABOUT TESTS, STUDIES, AND RESEARCH

IV.

IT IS FURTHER ORDERED that the Settling Defendants, their

successors and assigns, and their officers, agents, servants, employees, and all persons and entities in active concert or participation with them who receive actual notice of this Order

- B. Nothing in this Order shall prohibit the Settling 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.

MONETARY RELIEF

VI.

IT IS FURTHER ORDERED that judgment is hereby entered against the Settling Defendants and Relief Defendant Silverfarb as follows:

- A. Within five (5) days of the date of entry of this Order, the Settling Defendants and Relief Defendant Silverfarb, jointly and severally, shall pay the sum of \$175,000 (the "Settlement Amount") to the Commission by wire transfer or certified cashier's check made payable to the Federal Trade Commission.
- B. 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. In the event 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 the Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. The Settling Defendants and Relief Defendant Silverfarb shall have no right to challenge the Commission's choice of remedies under this Part. The Settling Defendants and Relief Defendant Silverfarb shall have no right to contest the manner of distribution chosen by the Commission.

- C. The judgment entered pursuant to this Part VI is equitable monetary relief and not a fine, penalty, punitive assessment or forfeiture.

COOPERATION, WAIVER OF INDEMNIFICATION, AND RIGHT TO REOPEN

VII.

IT IS FURTHER ORDERED that:

- A. The Settling Defendants and Relief Defendant Silverfarb, in connection with this action or any concurrent or subsequent civil investigations related

to or associated with the transactions or the occurrences that are the subject of the Complaint, must cooperate in good faith with the Commission, and upon request from the Commission, make available, in a reasonably expeditious manner, for the Commission's inspection and copying, to the extent not already provided, all documents, materials, and information within their possession, custody, or control relevant to the subject matter of the Complaint or related claims and contentions, and appear at such places and times as the Commission reasonably requests, after written notice, and upon payment of reasonable travel fees, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the Commission. If requested by the Commission, and upon payment of reasonable travel fees, the Settling Defendants and Relief Defendant Silverfarb must appear and provide truthful testimony in any civil trial, deposition or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the necessity of a civil investigative demand, subpoena or other court order.

Provided that nothing in this Part VII constitutes or will be deemed to constitute a waiver by the Settling Defendants or Relief Defendant Silverfarb of their constitutional rights under the Fifth Amendment. If the Commission determines that the Settling Defendants or Relief Defendant Silverfarb have not complied with the requirements of this Part VII (A), the Commission may move the Court to reopen and request modification of this Order, including, but not limited to, additional injunctive relief, rescission of contracts and restitution, and disgorgement of ill-gotten gains. If, however, the Settling Defendants or Relief Defendant Silverfarb exercise their constitutional rights under the Fifth Amendment and thereby refuse to provide truthful testimony as provided herein, the Court, upon motion by the Commission, will reopen this matter to allow the Commission to request modification of the Order, including, but not limited to, additional injunctive relief, rescission of contracts and restitution, and disgorgement of ill-gotten gains. Proceedings to reopen instituted under this Part would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law,

to the Commission for the Settlement Amount set forth in Part VI(A). If the Commission has reason to believe that the Settling Defendants or Relief Defendant Silverfarb have not complied with the requirements of this Part VII (B), the Commission may move the Court to reopen and request modification of this Order, including, but not limited to, additional injunctive relief, rescission of contracts and restitution, and disgorgement of ill-gotten gains. Proceedings to reopen instituted under this provision would be in addition to and not in lieu of any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

COMPLIANCE MONITORING

VIII.

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, each of the Settling Defendants shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for

deposition; and/or provide entry during normal business hours to any business location in such Settling Defendant's possession or direct or indirect control to inspect the business operation.

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

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, and 45; and
2. posing as consumers and suppliers to Settling Defendants, Settling Defendants' employees, or any other entity managed or controlled in whole or in part by Settling Defendants, without the necessity of identification or prior notice.

Provided 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)).

- C. Settling Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or

address of each business that he is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business; and

c. Any changes in his name or use of any aliases or fictitious names; and

2. Defendant APT shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed

change in the corporation about which APT learns less than thirty (30) days prior to the date such action is to take place, APT 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, each Settling Defendant shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which the Defendant has complied and is

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Re: FTC v. Advanced Patch Technologies, Inc., et
al.

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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, indirectly or through any third party) and any responses to those complaints or requests;
- E. Copies of all advertisements, promotional materials, sales scripts, training materials, or other marketing materials utilized in the advertising, marketing, promotion, offering for sale, distribution, or sale of any covered product or service;
- F. All materials that were relied upon in making any

representations contained in the materials identified in Subpart (E);

- G. All other documents evidencing or referring to the accuracy of any claim therein or to the safety or efficacy of any covered product or service, including, but not limited to, all tests, reports, studies, demonstrations, or other evidence that confirm, contradict, qualify, or call into question the safety or efficacy of such covered product or service; and
- H. Records accurately reflecting the name, address, and telephone number of each manufacturer, laboratory, or other entity engaged in the development or creation of any testing obtained for the purpose of advertising, marketing, promoting, offering for sale, distributing, or selling any covered product or service.

RECORD KEEPING PROVISIONS AS TO DEFENDANT STARKMAN

XI.

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendant Starkman is hereby restrained and enjoined from failing to create and retain, unless otherwise specified:

- A. Copies of all advertisements, promotional materials, sales scripts, training materials, or other marketing

materials utilized in the advertising, marketing, promotion, offering for sale, distribution or sale of any covered product or service, which Starkman prepares, approves, or disseminates, or in which he makes an endorsement;

B.

APT shall also deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current employees, agents and representatives, delivery shall be within (30) days of service of this Order upon APT. For new employees, agents and representatives, delivery shall occur within thirty (30) days after the commencement of the employee, agent or representative relationship.

B. Settling Defendants Btresh or Starkman as Control

Person: For any business that Btresh or Starkman controls, directly or indirectly, or in which Btresh or Starkman has a majority ownership interest, Btresh or Starkman, as the case may be, shall deliver a copy of this Order to all principals, officers, directors, and managers of that business. Btresh and Starkman shall also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current employees, agents and representatives of that business, delivery shall be within (30) days of service of this Order upon Btresh or Starkman, as the case may be. For new personnel of that business,

delivery shall occur within thirty (30) days after the commencement of the employment, agent or representative relationship.

- C. **Defendants Btsh and Starkman as employee or non-control person:** For any business where Btsh or Starkman is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant Btsh or Starkman, as the case may be, shall deliver a copy of this Order to all principals and managers of such business within thirty (30) days of engaging in such conduct.
- D. The Settling Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to this Part.

**ACKNOWLEDGMENT OF RECEIPT OF ORDER BY SETTLING
DEFENDANTS AND RELIEF DEFENDANT SILVERFARB**

XIII.

IT IS FURTHER ORDERED that each of the Settling Defendants and Relief Defendant Silverfarb, within five (5) business days of receipt of this Order as entered by the Court, must submit to the

Commission a truthful sworn statement acknowledging receipt of this Order in the form attached as Appendix A.

RETENTION OF JURISDICTION

XIV.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SCOPE OF ORDER

XV.

IT IS FURTHER ORDERED that this Order resolves only claims against the Settling Defendants and against Relief Defendant Silverfarb and does not preclude the Commission from initiating further action or seeking any remedy against any other persons or entities, including without limitation persons or entities who may be subject to portions of this Order by virtue of actions taken in concert or participation with Settling Defendants or Relief Defendant Silverfarb, and persons or entities in any type of indemnification or contractual relationship with Settling Defendants or Relief Defendant Silverfarb.

SO STIPULATED:

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LAURA KOSS
YAEL WEINMAN
Federal Trade Commission
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Washington, D.C. 20580
(202) 326-3237 (voice)
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ADVANCED PATCH TECHNOLOGIES, INC.
By: Salomon Btesh, President

SALOMON BTESH, individually

JESSE STARKMAN, individually

JAMES T. ROHRER
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(202) 861-1783 (fax)
Attorney for Salomon Btesh

IT IS SO ORDERED.

This ___ day of _____, _____
(Month) (Year)

UNITED STATES DISTRICT JUDGE

APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
(Atlanta Division)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
(Atlanta Division)

| | | |
|--------------------------------|---|------------------|
| FEDERAL TRADE COMMISSION, |) | |
| |) | Hon. |
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| MARKETING AND DISTRIBUTION, |) | |
| LLC, PAP SYSTEMS, LLC, RALF |) | |
| LESZINSKI, NANCY DUITCH, and |) | |
| JESSE STARKMAN, |) | |
| |) | |
| Defendants, and |) | |
| |) | |
| BERNARD SILVERFARB, and |) | |
| BUCKHEAD MARKETING GROUP, LLC, |) | |
| |) | |
| |) | |
| Relief Defendants. |) | |

[Name of defendant], being duly sworn, hereby states and affirms as follows:

1. My name is_____. My current residence address is _____.

I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant (or relief defendant with respect to Relief Defendant Silverfarb) in FTC v. Advanced Patch Technologies, Inc., et al. (United States District Court for the Northern District of Georgia, Atlanta Division).

3. On [date], I received a copy of the **Stipulated Final Judgment and Order For Permanent Injunction and Monetary Settlement as to Defendants Advanced Patch Technologies, Inc., Salomon Btesh, Jesse Starkman and Relief Defendant Bernard Silverfarb** which was signed by the Honorable _____ and entered by the Court on [date of entry of Order]. A true and correct copy of the Order I 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 [date], at [city and state].

[

State of _____, City of _____

Subscribed and sworn to before me

this ____ day of _____, 2003.

Notary Public

My Commission Expires:
