

- 1 1. This Court has jurisdiction of the subject matter and of the parties.
- 2 2. The Complaint states a claim upon which relief may be granted against Defendant
- 3 under Sections 5(a), 5(l), 12, 13(b) and 16(a) of the Federal Trade Commission Act, 15
- 4 U.S.C. §§ 45(a), 45(l), 52, 53(b) and 56(a).
- 5 3. The following definitions shall apply to this Consent Decree:
- 6 A. "Commission's Order" shall mean the Federal Trade Commission Order
- 7 issued in Commission Docket No. C-3716, *Body Wise International, Inc.*
- 8 (September 25, 1995), a copy of which is attached hereto as Appendix A
- 9 and made a part of this Consent Decree.
- 10 B. "Competent and reliable scientific evidence" shall mean tests, analyses,
- 11 research, studies, or other evidence based on the expertise of professionals
- 12 in the relevant area, that has been conducted and evaluated in an objective
- 13 manner by persons qualified to do so, using procedures generally accepted
- 14 in the profession to yield accurate and reliable results.

15 **I. MONETARY PAYMENT**

16 **IT IS ORDERED** that Defendant Body Wise International, Inc., its successors or

17 assigns, shall pay to Plaintiff a civil penalty, pursuant to Section 5(l) of the Federal Trade

18 Commission Act, 15 U.S.C. § 45(l), in the amount of two million dollars (\$2,000,000.00)

- 19 A. Within ten (10) days of Defendant's execution of this Order, Defendant
- 20 shall pay the entire payment required by this Part into an interest-bearing
- 21 escrow account to be established and held by an escrow agent approved by
- 22 the undersigned Commission attorneys. Within ten (10) days after the date
- 23 of entry of this Order, the escrow agent shall transfer the entire amount in ten (-entimissu
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1 accrued interest), and agrees that all legal and equitable title to said monies
2 is vested in Plaintiff, for appropriate disposition. In the event the
3 Commission does not approve this Order or the Court does not enter this
4 Order, all monies in the escrow account shall be returned to Defendant
5 (including accrued interest).

6 B. In the event of any default in payment, which default continues for ten days
7 beyond the due date of payment, the entire unpaid penalty, together with
8 interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default
9 to the date of payment, shall immediately become due and payable.

10 **INJUNCTION**

11 **II. PROHIBITION AGAINST VIOLATIONS OF THE COMMISSION’S ORDER**

12 **IT IS FURTHER ORDERED** that Defendant Body Wise International, Inc, its
13 successors, assigns, agents, representatives, employees and all other persons or entities
14 within the scope of Fed R. Civ. P. 65, and all persons in active concert or participation
15 with it who receive actual notice of this Consent Decree by personal service or otherwise,
16 are hereby permanently enjoined from ever violating, directly or through any corporation,
17 subsidiary, division, or other device, any provision of the Commission’s Order. In the
18 event that the Commission’s Order is hereafter modified, Defendant’s compliance with
19 such Order as so modified shall not be deemed a violation of this injunction.

20 **III. PROHIBITIONS AGAINST ADVERTISING UNLESS SUBSTANTIATED**

21 **IT IS FURTHER ORDERED** that Defendant Body Wise International, Inc., its
22 successors, assigns, agents, representatives, employees and all other persons or entities
23 within the scope of Fed R. Civ. P. 65, and all persons in active concert or participation
24 with them who receive actual notice of this Consent Decree by personal service or
25 otherwise, directly or through any corporation, subsidiary, division, or other device, in
26 connection with the manufacturing, labeling, advertising, promotion, offering for sale,
27 sale or distribution of any product or service for the immune system or weight control, or
28 any health-related service or therapy, dietary supplement, food, drug, or device, as

1 “food,” “drug” and “device” are defined in Sections 12 and 15 of the Federal Trade
2 Commission Act, 15 U.S.C. §§ 52 and 55, in or affecting commerce, as “commerce” is
3 defined in the Federal Trade Commission Act, shall not represent or assist others in
4 representing, in any manner, directly or by implication, including through the use of
5 consumer or expert endorsements, that any such product, service or therapy:

- 6 A. prevents, mitigates, treats, cures or improves the symptoms of any disease
7 or health-related condition including but not limited to: Allergies; AIDS;
8 Asthma; Cancer; Candida; Canker Sores; Chronic Fatigue Syndrome; Cold;
9 Colon Disease; Crohn’s Disease; Epstein Barr; Fibromyalgia; Flu; Heart
10 Disease; Hepatitis B; Hepatitis C; HIV; Hyperactive Thyroid; Infection;
11 Irritable Bowel Syndrome; Lupus; Mononucleosis; Poison Ivy; Rheumatoid
12 Arthritis; Shingles; Sinusitis; Toenail Fungus; and Ulcerative Colitis;
- 13 B. triggers or activates the immune system to prevent or treat diseases or
14 health- related conditions;
- 15 C. increases the activity and/or the production of natural killer (NK) or other
16 immune blood cells to prevent or treat diseases or health-related conditions;
- 17 D. gives the immune system specific, coded information on how to respond to
18 prevent or treat diseases or health-related conditions;
- 19 E. improves immune system function to prevent or treat diseases or health-
20 related conditions; or
- 21 F. provides, can provide, or helps provide any other health benefit;

22 unless, at the time of making such representation, Defendant possesses and relies upon
23 competent and reliable scientific evidence that substantiates the representation.

24 **IV. PROHIBITIONS AGAINST MISREPRESENTATIONS AS TO THE**
25 **EXISTENCE OR RESULTS OF TESTS, STUDIES OR RESEARCH**

26 **IT IS FURTHER ORDERED** that Defendant Body Wise International, Inc., its
27 successors, assigns, agents, representatives, employees and all other persons or entities
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1 **VI. DISTRIBUTION OF ORDER**

2 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of
3 entry of this Order, Defendant Body Wise International, Inc. shall:

4 A. Deliver a copy of this Consent Decree to:

5 (1) All principals, officers, directors, managers, employees, agents and
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1 (a) A n y c h a n g e s i n D e f e n
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3 c h a n g e s ;

4 (b) A n y c h a n g e s i n D e f e n
5 d a y s o f t h e

6 (c) A n y c h a n g e i n D
7 f i c t i t i o u s n a m e s ; a n d

8 (2) D e f e n d a n t s h a l l n o t
9 s t r u c t u r e t h a t m a y a

10 Consent Decree, including but not limited to a dissolution,

11 a s s i g n m e n t , s a l e , m e r g e r

12 e m e r g e n c e o f

13 s u b s i d i a r y , p a r e n t , o r

14 s u b j e c t t o t h i s C o n s

15 a t l e a s t t h i r t y (3 0)

16 *p r , o v h i d t e h d t e w i t h e r e s p*

17 c o r p o r a t i o n a b o u t w h i

18 p r i o r t o t h e d a t e s u c

19 t h e C o m m i s s i o n a s s o

20 k n o w l e d g e .

21 B . O n e h u n d r e d e i g h t y (1

22 D e c r e e , D e f e n d a n t s h a l l

23 t o u n d e r p e n a l t y o f p e r

24 w h i c h i t h a s c o m p l i e d a

25 r e p o r t s h a l l a l s o i n c l u

26 a c k n o w l e d g m e n t o f r e c e

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1 (2) posing as consumers, consultants or prospective consultants, and
2 suppliers to Defendant, its employees, or any other entity managed
3 or controlled in whole or in part by Defendant, without the necessity
4 of identification or prior notice;

5 *Provided, however,* that nothing in this Consent Decree shall limit the
6 Commission's lawful use of compulsory process, pursuant to Sections 9 and
7 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary
8 material, tangible things, testimony, or information relevant to unfair or
9 deceptive acts or practices in or affecting commerce (within the meaning of
10 15 U.S.C § 45(a)(1)).

11 C. Defendant shall permit representatives of the Commission to interview, any
12 employer, consultant, independent contractor, representative, agent, or
13 employee who has agreed to such an interview, relating in any way to any
14 conduct subject to this Consent Decree. The person interviewed may have
15 counsel present if he or she chooses.

16 **X. COOPERATION WITH UNITED STATES AND COMMISSION**

17 **IT IS FURTHER ORDERED** that Defendant Body Wise International, Inc., and
18 its corporations, subsidiaries, successors and assigns, shall, in connection with this action
19 or any subsequent action, proceeding or investigation related to or associated with the
20 transactions or the occurrences that are the subject of this Complaint, designate one or
21 more officers, directors, managing agents, or other persons who consent to testify on
22 Defendant's behalf, who shall cooperate in good faith with the United States and the
23 Commission and produce such documents and appear at such places and times as the
24 United States or the Commission shall reasonably request, after written notice, for
25 interviews, conferences, pretrial discovery, review of documents, and for such other
26 matters as may be reasonably requested by the United States or the Commission. If
27 requested in writing by the United States or the Commission, Defendant's designee or
28 designees hereunder shall appear and provide documents and truthful testimony in any

1 trial, deposition, or other proceeding related to or associated with the transactions or the
2 occurrences that are the subject of the Complaint, without the service of a subpoena.

3 **XI. TAXPAYER IDENTIFICATION NUMBER**

4 **IT IS FURTHER ORDERED** that Defendant is hereby required, in accordance
5 with 31 U.S.C. § 7701, to furnish to the Federal Trade Commission its taxpayer
6 identifying numbers (employer identification number), which shall be used for purposes
7 of collecting and reporting on any delinquent amount arising out of Defendant's
8 relationship with the government.

9 **XII. RETENTION OF JURISDICTION**

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1 FOR THE UNITED STATES OF
2 AMERICA:
3 PETER D. KEISLER
4 Assistant Attorney General
5 Civil Division
6 U.S. Department of Justice

7 DEBRA W. YANG
8 United States Attorney

9 By: _____
10 GARY PLESSMAN
11 Assistant United States Attorney
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FOR THE DEFENDANT:

BODY WISE INTERNATIONAL INC.

STEPONOVICH & ASSOCIATES
701 South Parker Street, Suite 7500
Orange, California 92868-4762

By: _____