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11 IN THE UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 FEDERAL TRADE COMMISSION,)
14 Plaintiff,)
15 v.)
16 FIBERTHIN, LLC,)
OBESITY RESEARCH INSTITUTE, LLC,)
17 HENNY DEN UIJL,)
BRYAN CORLETT,)
18 JAMES AYRES, and)
DR. JONATHAN M. KELLEY,)
19 Defendants.)

Case No.

STIPULATED FINAL JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION, MONETARY AND
OTHER EQUITABLE RELIEF

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22 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”) filed a Complaint for
23 Permanent Injunction and Other Equitable Relief (“Complaint”) against Defendants FiberThin,
24 LLC, Obesity Research Institute, LLC, Henny den Uijl, Bryan Corlett, James Ayres, and Dr.
25 Jonathan M. Kelley (collectively, “Defendants”) pursuant to Section 13(b) of the Federal Trade
26 Commission Act (“FTC Act”), 15 U.S.C. § 53(b). Defendants have denied, and do not admit
27 liability for, the allegations in the Complaint, except jurisdictional facts, but agree to the entry of
28 the following Stipulated Final Order for Permanent Injunction, Monetary and Other Equitable

1 Relief (“Order”). The Court, being advised in the premises, finds as follows:

2 FINDINGS

3 1. In its Complaint, the Commission alleged that the Defendants violated Sections 5(a) and
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1 unless expressly so stated.

2 11. Each party shall bear its own costs and attorneys' fees.

3 12. Entry of this Order is in the public interest.

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ORDER

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D. Causes substantial weight loss through blocking the absorption of fat or calories.

II.

IT IS FURTHER ORDERED that Defendants, directly or through any corporation, partnership, subsidiary

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1 **Representations Regarding Tests or Studies**

2 **III.**

3 IT IS FURTHER ORDERED that Defendants, directly or through any partnership,
4 corporation, subsidiary, division, trade name, or other device, and their officers, agents, servants,
5 representatives, employees, and all persons or entities in active concert or participation with them
6 who receive actual notice of this Order, by personal service or otherwise, in connection with the
7 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any
8 covered product or service, in or affecting commerce, shall not misrepresent, in any manner,
9 directly or by implication, the existence, contents, validity, results, conclusions, or interpretations
10 of any test or study.

11 **FDA Approved Claims**

12 **IV.**

13 IT IS FURTHER ORDERED that:

- 14 A. Nothing in this Order shall prohibit Defendants from making any representation
15 for any drug that is permitted in labeling for such drug under any tentative final or
16 final standard promulgated by the Food and Drug Administration, or under any
17 new drug application approved by the Food and Drug Administration; and
18 B. Nothing in this Order shall prohibit Defendants from making any representation
19 for any product that is specifically permitted in labeling for such product by
20 regulations promulgated by the Food and Drug Administration pursuant to the
21 Nutrition Labeling and Education Act of 1990.
22 C. Nothing in this order shall prohibit Defendants from making any representation
23 for any device that is permitted in labeling for such device under any new medical
24 device application approved by the Food and Drug Administration.
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1 return of the funds, directly or indirectly, through counsel or otherwise; and in the
2 event of bankruptcy of any Defendant, Defendants acknowledge that the funds are
3 not part of the debtor's estate, nor does the estate have any claim or interest
4 therein.

5 D. Proceedings instituted under this Paragraph are in addition to, and not in lieu of,
6 any other civil or criminal remedies that may be provided by law
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1 payment, including but not limited to a non-dischargeability complaint filed in a bankruptcy
2 proceeding, Defendants agree not to contest any of the allegations in the Commission's
3 Complaint.

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5 **Consumer Lists**

6 **VII.**

7 IT IS FURTHER ORDERED that:

- 8 A. Defendants FiberThin, Obesity Research Institute, Henny den Uijl, and Bryan
9 Corlett shall within seven (7) calendar days after service of this Order upon
10 Defendants, deliver to the Commission a searchable electronic file of all
11 consumers who purchased FiberThin, MetaboUp, Propolene, and/or Excelerene
12 on or after January 1, 2002 through the date of entry of this Order. Such file shall
13 include each consumer's name and address, the product(s) purchased, the quantity
14 and the amount paid, including shipping and handling charges, and if available,
15 the consumer's telephone number and email address.
- 16 B. Defendants FiberThin, Obesity Research Institute, Henny den Uijl, and Bryan
17 Corlett, and their officers, agents, servants, employees, and attorneys and all other
18 persons or entities who receive actual notice of this Order by personal service or
19 otherwise, are permanently restrained and enjoined from selling, renting, leasing,
20 transferring, or otherwise disclosing the name, address, telephone number, credit
21 card number, bank account number, e-mail address, or other identifying
22 information of any person who paid any money at any time prior to entry of this
23 Order, in connection with the purchase of FiberThin, MetaboUp, Propolene, or
24 Excelerene. *Provided, however,* that Defendants FiberThin, Obesity Research
25 Institute, Henny den Uijl, and Bryan Corlett may disclose such identifying
26 information as required in Subparagraph A above, to any law enforcement agency,
27 or as required by any law, regulation, or court order.

Acknowledgment and Receipt of Order

VIII.

IT IS FURTHER ORDERED that within five (5) business days of receipt of this Order as entered by

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1 C. **Individual Defendants as Employee or Non-Control Person:** For any business
2 where Defendants Henny den Uijl or Bryan Corlett is not a controlling person of
3 the business but otherwise engages in conduct related to the subject matter of this
4 Order, the Defendant must deliver a copy of this Order to all principals and
5 managers of such business before engaging in such conduct.

6 D. Defendants FiberThin, Obesity Research Institute, Henny den Uijl, and Bryan
7 Corlett must secure a signed and dated statement acknowledging receipt of the
8 Order, within thirty (30) days of delivery, from all persons receiving a copy of the
9 Order pursuant to this Paragraph.

10 **Compliance Reporting**

11 **X.**

12 IT IS FURTHER ORDERED that, in order that compliance with the provisions of this
13 Order may be monitored:

- 14 A. For a period of five (5) years from the date of entry of this Order,
- 15 1. Individual Defendants Henny den Uijl, Bryan Corlett, James Ayres, and
16 Dr. Jonathan M. Kelley each shall notify the Commission of the following:
- 17 a. Any changes in residence, mailing addresses, and telephone
18 numbers of the Individual Defendant, within ten (10) days of such
19 change;
- 20 b. Any changes in employment status (including self-employment) of
21 the Individual Defendant, and any change in the Individual
22 Defendant's ownership in any business entity, within ten (10) days
23 of such change. Such notice shall include the name and address of
24 each business that the Individual Defendant is affiliated with,
25 employed by, creates or forms, or performs services for; a
26 statement of the nature of the business; and a statement of the
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1 Individual Defendant's duties and responsibilities in connection
2 with the business or employment; and

3 c. Any changes in the Individual Defendant's name or use of any
4 aliases or fictitious names; and

5 2. Individual Defendants Henny den Uijl and Bryan Corlett and Corporate
6 Defendants FiberThin and Obesity Research Institute shall notify the
7 Commission of any changes in corporate structure of the Corporate
8 Defendant(s) or any business entity that an Individual Defendant(s)
9 directly or indirectly control(s), or has an ownership interest in, that may
10 affect compliance obligations arising under this Order, including but not
11 limited to a dissolution, assignment, sale, merger, or other action that
12 would result in the emergence of a successor entity; the creation or
13 dissolution of a subsidiary, parent, or affiliate that engages in any acts or
14 practices subject to this Order; the filing of a bankruptcy petition; or a
15 change in the corporate name or address, at least thirty (30) days prior to
16 such change, *provided that*, with respect to any proposed change in the
17 corporation about which the Defendant(s) learns less than thirty (30) days
18 prior to the date such action is to take place, the Defendant(s) shall notify
19 the Commission as soon as is practicable after obtaining such knowledge.

20 B. Sixty (60) days after the date of entry of this Order, Defendants FiberThin,
21 Obesity Research Institute, Henny den Uijl, Bryan Corlett, James Ayres, and Dr.
22 Jonathan M. Kelley each shall provide a written report to the Commission, sworn
23 to under penalty of perjury, setting forth in detail the manner and form in which
24 they have complied and are complying with this Order. This report shall include,
25 but not be limited to:

26 1. For each Individual Defendant:

27 a. The then-current residence addresses, mailing addresses, and
28 telephone numbers of the Individual Defendant;

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- b. The then-current employment and business addresses and telephone numbers of the Individual Defendant; a description of the business activities of each such employer or business, and the title and responsibilities of the Individual Defendant, for each such employer or business; and
 - c. Any other changes required to be reported under Subparagraph A of this Section.
2. For Defendants FiberThin, Obesity Research Institute, Henny den Uijl, and Bryan Corlett:
- a. A copy of each acknowledgment of receipt of this Order obtained pursuant to Paragraph VIII;
 - b. A statement describing the manner in which Defendant has complied and is complying with Paragraphs I through III, including identification of all products that they advertise or sell, and copies of all their current advertising; and
 - c. Any other changes required to be reported under Subparagraph A of this Section.
3. For Defendants Ayres and Kelley:
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1 D. For purposes of the compliance reporting and monitoring required by this Order,
2 the Commission is authorized to communicate directly with Defendants.
3 Defendants may have counsel present.
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5 **Compliance Monitoring**

6 **XI.**

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

9 A. Within ten (10) days of receipt of written notice from a representative of the
10 Commission, Defendants FiberThin, Obesity Research Institute, Henny den Uijl,
11 Bryan Corlett, James Ayres, and Dr. Jonathan M. Kelley each shall submit
12 additional written reports, sworn to under penalty of perjury; produce documents
13 for inspection and copying; appear for deposition; and/or provide entry during
14 normal business hours to any business location in such Defendant's possession or
15 direct or indirect control to inspect the business operation;

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

18 1. obtaining discovery from any person, without further leave of court, using
19 the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

20 and

21 2. posing as consumers and suppliers to: FiberThin, Obesity Research
22 Institute, Henny den Uijl, and Bryan Corlett, their employees, or any other
23 entity that they manage or control in whole or in part, without the necessity
24 of identification or prior notice.00000 0.00000 1.00000 0.0000 0.0000 cm0.00 0.00 0.00 r

1 conduct subject to this Order. The person interviewed may have counsel
2 present.

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

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9 **Record Keeping Provisions**

10 **XII.**

11 IT IS FURTHER ORDERED that:

- 12 A. For a period of six (6) years from the date of entry of this Order, in connection
13 with any business involved in the advertising, marketing, promotion, offer for
14 sale, distribution, or sale of any covered product or service operated by
15 Defendants FiberThin, Obesity Research Institute, Henny den Uijl, and/or Bryan
16 Corlett, or where any such Defendant is a majority owner of the business or
17 directly or indirectly manages or controls such a business, such Defendant(s) and
18 their agents, employees, officers, corporations, successor

- 1 3. Customer files containing the names, addresses, phone numbers, dollar
2 amounts paid, quantity of items or services purchased, and description of
3 items or services purchased, to the extent such information is obtained in
4 the ordinary course of business;
- 5 4. Complaints and refund requests (whether received directly, indirectly or
6 through any third party), including but not limited to reports of adverse
7 incidents claimed to be associated with the use of any covered product or
8 service, and any responses to those complaints or requests;
- 9 5. Copies of all advertisements, promotional materials, sales scripts, training
10 materials, Websites, or other marketing materials utilized in the
11 advertising, marketing, promotion, offering for sale, sale, or distribution of
12 any covered product or service;
- 13 6. All materials that were relied upon in making any representations
14 contained in the materials identified in Subparagraph A(5) of this
15 Paragraph, including all documents evidencing or referring to the accuracy
16 of any claim therein or to the efficacy of any covered product or service,
17 including, but not limited to, all tests, reports, studies, demonstrations, or
18 other evidence that confirm, contradict, qualify, or call into question the
19 accuracy or efficacy of each such product or service;
- 20 7. Records accurately reflecting the name, address, and telephone number of
21 each manufacturer or laboratory engaged in the development or creation of
22 any testing obtained for the purpose of manufacturing, labeling,
23 advertising, marketing, promoting, offering for sale, selling, or distributing
24 any covered product or service;
- 25 8. Copies of all contracts concerning the manufacturing, labeling,
26 advertising, marketing, promotion, offering for sale, sale, or distribution of
27 any covered product or service; and
- 28 9. All records and documents necessary to demonstrate full compliance with

1 each provision of the Order, including but not limited to, copies of
2 acknowledgments of receipt of this Order and all reports submitted to the
3 FTC pursuant to this Order;

4 B. For a period of six (6) years from the date of entry of this Order, in connection
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Retention of Jurisdiction

XIII.

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ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,)	
Plaintiff,)	
v.)	
FiberThin, LLC,)	
OBESITY RESEARCH INSTITUTE, LLC,)	
HENNY DEN UIJL,)	
BRYAN CORLETT,)	
JAMES AYRES, and)	
DR. JONATHAN M. KELLEY,)	
Defendants.)	

Case No. _____

Judge

AFFIDAVIT OF DEFENDANT _____

_____, being duly sworn, hereby states and affirms:

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

~~is~~ is _____. I am a citizen of the United

States and am over the age of 18. I have been a resident of the Southern District of California for _____ years.

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(Defendant's full name)

STATE OF _____
COUNTY OF _____

BEFORE ME this day personally appeared _____, who being first duly sworn, deposes and says that s/he has read and understands the foregoing statement and that s/he has executed the same for the purposes contained therein.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2005 by _____
presented (state identification) _____ as identification.

(print name)
NOTARY PUBLIC
Commission Number
Affix Seal