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12 ATTORNEYS FOR PLAINTIFF

13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 WINDOW ROCK ENTERPRISES, INC.,
20 also d/b/a WINDOW ROCK HEALTH
LABORATORIES, also d/b/a
21 CORTISLIM, INFINITY
ADVERTISING, INC., STEPHEN F.
22 CHENG, SHAWN M. TALBOTT, and
GREGORY S. CYNAUMON,
23 PINNACLE MARKETING CONCEPTS,
INC., also d/b/a PMC HEALTH
24 PRODUCTS, AND THOMAS F. CHENG

25 Defendants.

CIVIL NUMBER

CV-04-8190-DSF (JTLx)

**STIPULATED FINAL
AGREEMENT AND
ORDER FOR
PERMANENT
INJUNCTION AND
SETTLEMENT OF
CLAIMS FOR
MONETARY RELIEF
AS TO DEFENDANT
SHAWN M. TALBOTT**

1 **DEFINITIONS**

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

3 1. Unless otherwise specified, “Stipulating Defendant” shall mean
4 Defendant Shawn M. Talbott.

5 2. “Advertising” and “promotion” shall mean any written or verbal
6 statement, illustration or depiction designed to effect a sale or create interest in the
7 purchasing of goods, whether it appears in a brochure, newspaper, magazine,
8 pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter,
9 catalogue, poster, chart, billboard, public transit card, point of purchase display,
10 packaging, package insert, label, film, slide, radio, television or cable television,
11 audio program transmitted over a telephone system, program-length commercial
12 (“infomercial”), the Internet, email, press release, video news release, or in any
13 other medium.

14 3. “Assisting others” shall mean knowingly providing any of the
15 following services to any person or entity engaged in conduct related to the subject
16 matter of this Order, including the sale or marketing of a Target Product or a
17 Covered Product: (a) serving as an owner, partner, officer, director or manager of
18 a business e

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1. Reduces the risk of or prevents serious health conditions, including osteoporosis, obesity, diabetes, Alzheimer’s disease, cancer, and cardiovascular disease;
2. Causes weight loss of 10 to 50 pounds or more for virtually all users;
3. Causes users to lose as much as 4 to 10 pounds per week over multiple weeks;
4. Causes users to lose weight specifically from the abdomen, stomach, and thighs;
5. Causes rapid and substantial weight loss;
6. Causes long-term or permanent weight loss;
7. Causes weight loss without the need for diet or exercise; or
8. Has been demon

1 **II.**

2 **PROHIBITED REPRESENTATIONS REGARDING**
3 **ANY COVERED PRODUCT**

4 That Stipulating Defendant Talbott, directly or through any corporation,
5 partnership, subsidiary, division, trade name, or other entity, and all persons and
6 entities in active concert or participation with him who receive actual notice of this
7 Order by personal service, facsimile, or otherwise, in connection with the
8 manufacturing, labeling, advertising, promotion, offering for sale, sale, or
9 distribution of any Covered Product, in or affecting commerce, are hereby
10 permanently restrained and enjoined from making, or assisting others in making,
11 directly or by implication, including through the use of endorsements or product
12 names, any representation about the weight effect, other health benefits,
13 performance, or efficacy of any Covered Product unless the representation is true
14 and non-misleading, and, at the time it is made, Talbott possesses and relies upon
15 competent and reliable scientific evidence that substantiates the representation.

16 **2400**

1 names, any misrepresentation about the existence, contents, validity, results,
2 conclusions, or interpretations of any test or study including, but not limited to, the
3 CortiSlim Study.

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5 **IV.**

6 **FORMATTING AND DISCLOSURES FOR BROADCAST MEDIA**

7 That Stipulating Defendant Talbott, directly or through any corporation,
8 partnership, ~~That Stipulating De~~ That Sti

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V.

FDA-APPROVED CLAIMS

That nothing in this Order shall prohibit Stipulating Defendant Talbott from making any representation:

A. 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; or

B. 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.

C. For any medical device that is permitted in labeling of such medical device under any medical device-specific regulation promulgated by the Food and Drug Administration, under any Federal Food, Drug and Cosmetic Act Section 510(k) premarket notification substantial equivalence determination by the Food and Drug Administration, or under any premarket approval application approved by the Food and Drug Administration.

VI.

MONETARY JUDGMENT AND CONSUMER REDRESS

A. That judgment for equitable monetary relief is hereby entered against Stipulating Defendant Talbott in the amount of \$1,120,000. The judgment for equitable monetary relief shall be satisfied as follows:

1. By transferring \$225,000 cash, which amount was placed in escrow by Talbott on or before the day this agreement was forwarded by the Bureau to the Commission for its review, and which amount is to be released by

1 the escrow agent to the Federal Trade Commission by wire transfer not later than
2 five (5) days after the date of entry of this Order and in accordance with directions
3 provided by the Commission;

4 2. By transferring \$350,000 from the real property in Centerville,
5 Massachusetts or by transferring title to the property to the Commission not later
6 than ninety (90) days after the date of entry of this Order and in accordance with
7 directions provided by the Commission;

8 3. By transferring cash from the real property in Lisbon, Ohio in
9 an amount equal to eighty (80) percent of the current independently appraised
10 value or by transferring title to the property to the Commission not later than
11 ninety (90) days after the date of entry of this Order and in accordance with
12 directions provided by the Commission; and

13 4. By transferring \$38,700 cash from the sale of the timeshare
14 property in Oahu, Hawaii or by transferring title to the property to the Commission
15 not later than ninety (90) days after the date of entry of this Order and in
16 accordance with directions provided by the Commission;

17 B. That Stipulating Defendant Talbott hereby assigns to the Federal
18 Trade Commission, without any

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1 assignment includes, but is not limited to, Stipulating Defendant Talbott's claim to
2 royalties allegedly owed to him by Defendant Window Rock Enterprises, Inc. in
3 the amount of approximately \$1.4 million.

4 C. That, if a Related Party later assigns to the Federal Trade Commission
5 rights of recovery and claims to money or other assets purportedly owed as of the
6 date of entry of this Order by Stipulating Defendant Talbott, the Commission shall
7 not exercise any such rights and claims in a manner that would allow it to recover
8 additional funds from Stipulating Defendant Talbott; *provided, however*, that this
9 paragraph shall cease to apply upon occurrence of any of the events described
10 under Part VII.

11 D. That all funds paid pursuant to this Order shall be deposited into an
12 account administered by the Commission or its agent to be used for equitable
13 relief, including but not limited to consumer redress for nationwide sales of
14 CortiSlim and CortiStress from the time those products were first advertised up to
15 and including September 30, 2004, and any attendant expenses for the
16 administration of such equitable relief. In the event that direct redress to
17 consumers is wholly or partially impracticable or funds remain after redress is
18 completed, the Commission may apply any remaining funds for such other
19 equitable relief (including consumer information remedies) as it determines to be
20 reasonably related to Stipulating Defendant Talbott's practices alleged in the
21 Complaint. Any funds not used for such equitable relief shall be deposited to the
22 United States Treasury as disgorgement. Talbott shall have no right to challenge
23 the Commission's choice of remedies under this Part. Talbott shall have no right
24 to contest the manner of distribution chosen by the Commission. No portion of
25 any payments under the judgment herein shall be deemed a payment of any fine,
26 penalty, or punitive assessment.

1 E. That Stipulating Defendant Talbott relinquishes all dominion, control
2 and title to the funds paid into the account established pursuant to this Order, and
3 all legal and equitable title to the funds shall vest in the Treasurer of the United
4 States unless and until such funds are disbursed to consumers. Talbott shall make
5 no claim to or demand for the return of the funds, directly or indirectly, through
6 counsel or otherwise; and in the event of bankruptcy, he acknowledges that the
7 funds are not part of the debtor's estate, nor does the estate have any claim or
8 interest therein.

9 F. That Stipulating Defendant Talbott shall provide to the Commission a
10 sworn statement setting forth i) the amount of 2003 and 2004 state and federal
11 taxes, if any, he paid on or before the day this agreement was signed; ii) the
12 amount of 2005 estimated state and federal tax payments, if any, he paid on or
13 before the day this agreement was signed; and iii) a statement of the date(s) on
14 which each tax payment to a state or federal tax authority was made. All 2003 or
15 2004 tax payments reported to the Commission as being owed to a state or federal
16 tax authority must be paid in full no later than sixty (60) days from t

1 truthfulness, accuracy, and completeness of the financial statements and
2 supporting documents that Talbott submitted to the Commission, namely:

- 3 1. Federal Trade Commission Financial Statement of Individual
4 Defendant dated December 2, 2004, with accompanying United
5 States income tax returns for 2001, 2002, and 2003;
- 6 2. United States income tax return for 2004;
- 7 3. June 2, 2005 Ullman, Shapiro & Ullman memo with attached
8 Shawn M. Talbott Updated Financials as of 5/31/05 and
9 attached May 25, 2005 letter from Towne & Suburban Realty
10 regarding Lisbon, Ohio property;
- 11 4. Ullman, Shapiro & Ullman transmittal of financial spreadsheets
12 regarding Shawn Talbott and royalty checks received in
13 January 2005; and
- 14 5. Joint Venture Agreement dated June 10, 2003 by and between
15 Window Rock Enterprises, Inc. and Shawn Talbott.

16 If, upon motion by the Commission, this Court finds that Talbott failed to disclose
17 any material asset, or materially misrepresented the value of any asset, or made
18 any other material misrepresentation in or omission from the Financial Statements
19 or other supporting documents listed in this Part, the Court shall enter judgment
20 against Talbott and for the Commission in the amount of \$3,500,000, less any
21 amount already paid by or on behalf of Talbott to the Commission; *provided,*
22 *however,* that in all other respects this Order shall remain in full force and effect
23 unless otherwise ordered by the Court; and *provided further,* that proceedings
24 instituted under this Part would be in addition to, and not in lieu of, any other civil
25 or criminal remedies as may be provided by law, including any other proceedings
26 that the Commission may initiate to enforce this Order. Solely for purposes of this
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1 Part, Talbott waives any right to contest any of the allegations in the
2 Commission's Complaint. Except for the amount of the judgment, the financial
3 information and documents referenced in this Part shall be designated as
4 confidential.

5 B. That, in agreeing to this Order, the Commission has specifically relied
6 on the representations that Stipulating Defendant Talbott has made regarding the
7 amount of federal and state taxes he has paid or will pay for tax years 2003 and
8 2004 and the amount of estimated federal and state taxes, if any, that he has paid
9 toward estimated taxes for tax year 2005, including but not limited to
10 representations in the sworn statements referenced in Part VI, above, and in the
11 documents listed in paragraph A of this Part. It shall be a violation of this Part for
12 Talbott to file any federal or state tax return seeking a cash refund of some or all
13 of the amounts previously reported to the Commission as taxes owed and paid for
14 tax years 2003 and 2004, or a cash refund of some or all of the amounts paid
15 toward estimated taxes for tax year 2005. *Provided however*, that seeking such a
16 cash refund shall not be deemed to be a violation of this Part if Talbott promptly
17 remits to the Commission the full amount of any such cash refund within ten (10)
18 days of D(tly)TjEcpInA of this

1 **IX.**

2 **DISTRIBUTION OF ORDER**

3 That, for a period of three (3) years from the date of entry of this Order,
4 Stipulating Defendant Talbott shall deliver copies of the Order as directed below:

5 A. Stipulating Defendant Talbott as Control Person: For each business
6 that is controlled, directly or indirectly, by Talbott, and for each business in which
7 Talbott has a majority ownership interest, he must deliver a copy of this Order to
8 all principals, officers, directors, and managers of each such business and also to
9 all supervisory employees, agents, and representatives of each such business who
10 engage in conduct related to the marketing of Target or Covered Products. For
11 current personnel, delivery shall be within ten (10) business days of entry of this
12 Order. For new personnel, delivery shall occur prior to their assuming their
13 position or responsibilities;

14 B. Stipulating Defendant Talbott not as Control Person: For each
15 business that is not controlled, directly or indirectly, by Talbott, he must deliver a
16 copy of this Order to all principals and managers of each such business before
17 engaging in conduct related to the marketing of Target or Covered Products.

18 1. *Provided however*, that Talbott must deliver a copy of this
19 Order to all principals and managers of each such business subject to this
20 paragraph B before engaging in any conduct relating directly or indirectly to any
21 Related Party.

22 2. *Provided further*, that this paragraph B shall not apply if the
23 conduct engaged in by Talbott consists solely of product development, research,
24 testing, or similar activities relating to a Covered Product, as long as the conduct is
25 not performed for or on behalf of any Related Party and as long as the conduct
26 does not include assisting others in marketing or advertising a Covered Product.

1 C. Stipulating Defendant Talbott shall create, maintain, and update as
2 necessary a declaration identifying the dates, names, titles, addresses, and
3 telephone numbers of the persons and entities that he has provided with a copy of
4 this Order as required by this Part; and

5 D. Stipulating Defendant Talbott shall maintain, for a period of three (3)
6 years, and upon reasonable notice make available to the Commission, a signed
7 declaration regarding distribution of copies of this Order as required by this Part.
8

9 **X.**

10 **COMPLIANCE MONITORING**

11 That, for the purpose of monitoring and investigating compliance with any
12 provision of this Order:

13 A. Within thirty (30) days of receipt of written notice from a
14 representative of the Commission, Stipulating Defendant Talbott shall submit
15 additional written reports, sworn to under penalty of perjury; produce documents
16 for inspection and copying; appear for deposition; and/or provide entry during
17 normal business hours to any business location in his possession or under his
18 direct or indirect control to inspect the business operation. Copies of any such
19 notice shall also be provided by the Commission to undersigned counsel for
20 Talbott or to any other counsel whose identity has been furnished to the
21 Commission;

22 B. In addition, the Commission is authorized to monitor Stipulating
23 Defendant Talbott's compliance with this Order by all other lawful means,
24 including but not limited to the following:

- 25 1. obtaining discovery from any person, without further leave of
26 court, using the procedures prescribed by Federal Rules of
27 Civil Procedure 30, 31, 33, 34, 36, and 45; and
28

1 5. a description of each employer's activities; and

2 6. a description of his duties and responsibilities for each
3 employer;

4 B. For a period of three (3) years from the date of entry of this Order,
5 Stipulating Defendant Talbott shall notify the Commission of the
6 following:

7 1. Any changes in his residence, mailing addresses, and telephone
8 numbers, within ten (10) days of the date of such change;

9 2. Any changes in his employment status (including self-
10 employment), any change in his ownership in any business
11 entity, and any change in the corporate structure of any
12 business entity in which he has an ownership interest in that
13 may affect compliance obligations arising under this Order,
14 within ten (10) days of the date of such change. Such notice
15 shall include the name and address of each business that he is
16 affiliated with, employed by, create, miat

1 as required by Part IX.D; and, to the extent that he is involved in advertising or
2 marketing any Covered Product, a copy of all advertising and promotional
3 materials in use at any point from the date of entry of the Order until submission
4 of the written report required by this paragraph;

5 D. Stipulating Defendant Talbott shall provide to the Commission, no
6 more than 10 days after submitting it to a state or federal tax authority, a complete
7 copy of any submission seeking a cash refund of some or all of the taxes reported
8 under Part VI as owed in tax years 2003 and 2004 or as paid toward estimated
9 2005 tax;

10 E. For purposes of the compliance reporting and monitoring required by
11 this Order, the Commission is authorized to communicate directly with Stipulating
12 Defendant Talbott, with contemporaneous notice to undersigned counsel or to any
13 other counsel whose identity has been furnished to the Commission; and

14 F. The information and documents referenced in paragraphs A, B, and D
15 of this Part shall be designated as confidential information.

16 17 **XII.**

18 **RECORD-KEEPING PROVISIONS**

19 That, for a period of five (5) years from the date of entry of this Order,
20 Stipulating Defendant Talbott and those persons in active concert or participation
21 with him who receive actual notice of this Order by personal service or otherwise,
22 if engaging or assisting others engaged in the advertising, marketing, promotion,
23 offering for sale, distribution or sale of any Covered Product, in or affecting
24 commerce, and any business where (1) he is a me or otherwise,

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1 G. Records accurately reflecting the name, address, and telephone
2 number of each manufacturer or laboratory engaged in the development or
3 creation of any testing obtained for the purpose of advertising, marketing,
4 promoting, offering for sale, distributing, or selling any Covered Product; and

5 H. All records and documents necessary to demonstrate full compliance
6 with each provision of this Order, including but not limited to copies of
7 acknowledgments of receipt of this Order, required by Part VIII, and all reports
8 submitted to the Commission pursuant to Part X.

9
10 **XIII.**

11 **COOPERATION WITH COMMISSION COUNSEL**

12 That Stipulating Defendant Talbott must in connection with the property-
13 related transactions identified in Part VI.A, and in cooperation with the
14 Commission: remain current on all mortgage, tax, and other property-related
15 paym

1 **XIV.**

2 **RETENTION OF JURISDICTION**

3 That this Court shall retain jurisdiction over Stipulating Defendant Talbott
4 for purposes of construction, modification, and enforcement of this Order and for
5 issues relating to the Complaint and to non-settling Defendants.

6
7 **IT IS SO ORDERED**, this ___ day of _____, 2005.

8
9
10 UNITED STATES DISTRICT JUDGE

11 **SO STIPULATED:**

12 WILLIAM BLUMENTHAL
13 General Counsel

14
15 _____
16 SHAWN M. TALBOTT

17 _____
18 PETER B. MILLER
19 KIAL YOUNG
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