

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.

FEDERAL TRADE COMMISSION,

Plaintiff

v.

GARDEN OF LIFE, INC. AND
JORDAN S. RUBIN,

Defendants.

**STIPULATED FINAL ORDER AND JUDGMENT FOR
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”) filed a Complaint for Permanent Injunction and Other Equitable Relief against defendants Garden of Life, Inc. and Jordan S. Rubin (“defendants”) pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), alle

3. The acts and practices of defendants were and are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The Commission and defendants stipulate and agree to this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from defendants' course of conduct related to the sale of dietary supplements up to the date of entry of this Order. By entering this stipulation, defendants do not admit or deny any of the allegations set forth in the complaint, other than jurisdictional facts. Nothing in this stipulation shall be considered or construed to be an admission of liability by defendants.

5. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claim that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.

6. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding upon defendants, and their officers, agents, servants, representatives, employees, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise.

7. Nothing in this Order obviates defendants' obligation to comply with Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52.

8. This Order was drafted jointly by plaintiff and defendants and reflects the negotiated agreement of the parties.

9. The paragraphs of this Order shall be read as the necessary requirements for compliance and not as alternatives for compliance and no paragraph serves to modify another paragraph unless expressly so stated.

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7. The term “including” in this Order shall mean “without limitation.”
8. The terms “and” and “or” in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

CONDUCT PROHIBITIONS

I. REPRESENTATIONS CONCERNING COVERED PRODUCTS

IT IS HEREBY ORDERED that defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product, in or affecting commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, directly or by implication, including through the use of any trade name or endorsement, any representation:

- A. That such product treats immune system disorders, asthma, irritable bowel syndrome, chronic fatigue syndrome, arthritis, lupus, colds, flu, or Crohn’s disease;
- B. That such product reduces or helps lower users’ blood cholesterol levels;
- C. That such product treats cancer;
- D. That such product prevents or treats cardiovascular disease;
- E. That such product reduces the risk factors for diabetes or prevents diabetic-related syndromes;

F. That such product reduces the risk of age-related neuro-degeneration;

III.
FDA APPROVED CLAIMS

IT IS FURTHER ORDERED that:

A. Nothing in this Order shall prohibit defendants from making any representation for any drug that is permitted in labeling for such drug under any te

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 defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Part. Defendants shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

C. Defendants relinquish all dominion, control, and title to the funds paid into the account established pursuant to this Order, and all legal and equitable title to the funds shall vest in the Treasurer of the United States unless and until such funds are disbursed to consumers. Defendants shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any defendant, defendants acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

D. Defendants Garden of Life and Jordan S. Rubin agree that, if they fail to timely and completely fulfill the payment and other obligations set forth in this Order, the facts as alleged in the complaint filed in this matter shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including but not limited to a non-dischargeability complaint in any bankruptcy case.

E. In accordance with 31 U.S.C. § 7701, defendants are hereby required, unless they

have done so already, to furnish to the Commission their taxpayer identifying numbers and/or social security numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of defendants' relationship with the government.

F. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

**V.
RIGHT TO REOPEN**

IT IS FURTHER ORDERED that the Commission's agreement to the monetary judgment set forth in Part IV is expressly premised on the truthfulness, accuracy, and completeness of the financial statements submitted to the Commission by defendants dated April 12, September 27, and October 21, 2004, and April 22, May 13, June 1, August 1, August 3, and November 11, 2005. Such financial statements contain material information upon which the Commission relied in negotiating and agreeing to the monetary judgment. If, upon motion by the Commission, the Court finds that such financial statement of any such defendant contains any material misrepresentation or omission, the Court shall enter judgment for consumer redress against such defendant, in favor of the Commission, in the amount of Forty-Seven Million, Five Hundred and Seventy-One Thousand, Three Hundred and Five Dollars (\$4

this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further*, that proceedings 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 but not limited to contempt proceedings, or any other proceedings that the Commission or the United States may initiate to enforce this Order. For purposes of this Part, and any subsequent proceedings to enforce payment, including but not limited to a non-dischargeability complaint filed in a bankruptcy proceeding, defendants agree not to contest any of the allegations in the Commission's complaint.

VI.
ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that each defendant, within seven (7) business days after receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement in the form shown on Appendix A, acknowledging receipt of this Order.

VII.
NOTICE TO AND MONITORING OF RESELLERS AND DISTRIBUTORS

IT IS FURTHER ORDERED that defendants Garden of Life and Jordan S. Rubin, in his capacity as director, officer, or other control-person of a business, shall:

A. Within twenty (20) days of the date this Order becomes final, send an exact copy of the notice attached hereto as Appendix B, showing the date of mailing, to each reseller or distributor who purchased any covered product manufactured by or purchased from defendants, between January 1, 2001 and the date of entry of this Order. This mailing shall not include any other document, information, or enclosures. The notice shall be sent as follows:

1. By first class mail, postage prepaid and return receipt requested, to the

resellers and distributors who together comprise ninety percent (90%) of Garden of Life's total sales revenue; and

2. By electronic mail in a non-alterable digital form to the remaining resellers and distributors, *provided*, that if this method does not produce a return receipt for a particular reseller or distributor, the notice must be resent to that reseller or distributor by first class mail, return receipt requested;

B. Institute a reasonable program of surveillance adequate to reve

A. Take reasonable steps sufficient to monitor and ensure that all employees and agents engaged in sales, order verification, or other customer service functions comply with Parts I and II of this Order. Such steps shall include adequate monitoring of all advertisements, promotions, sales presentations, and other oral and written communications with customers regarding such products. Defendants, at a minimum, shall:

1. Conduct periodic monitoring of representations concerning any covered product made by persons engaged in sales or other customer service functions, including representations made orally or through electronic communications, on behalf of defendants; and
2. Conduct periodic monitoring of representations made about any covered product on all Internet websites operated and maintained by defendants or their agents.

B. Terminate any employee or agent who knowingly engages in any conduct prohibited by Parts I and II of this Order once defendants know or should know that such person is or has been engaging in such conduct.

**IX.
COMPLIANCE MONITORING BY THE COMMISSION**

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

A. Within twenty (20) days of receipt of written notice to Garden of Life and within forty-five (45) days of receipt of written notice to Jordan S. Rubin from a representative of the Commission, each defendant 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 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

X.
COMPLIANCE REPORTING BY DEFENDANTS

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

- A. For a period of five (5) years from the date of entry of this Order,
1. Jordan S. Rubin shall notify the Commission of the following:
 - a. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of such change;
 - b. Any changes in his employment status (including self-employment) and any change in his ownership in any business entity, within ten (10) days of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, creates or forms, 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 or employment; and
 - c. Any changes in his name or use of any aliases or fictitious names; and
 2. Defendants shall notify the Commission of any changes in the corporate structure of Garden of Life or any business entity that Jordan S. Rubin directly or indirectly control(s), or has an ownership interest in, 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 entity; 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 the defendant(s) learns less than thirty (30) days prior to the date such action is to take place, the defendant(s) shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. Sixty (60) days after the date of entry of this Order, defendants Garden of Life and Jordan S. Rubin each shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. For Jordan S. Rubin:
 - a. His then-current residence addresses, mailing addresses, and telephone numbers;
 - b. His then-current employment and business addresses and telephone numbers; a description of the business activities of each such employer or business, and his title and responsibilities, for each such employer or business; and
 - c. Any other changes required to be reported under Subpart A of this Part.

the accuracy of any claim therein or to the efficacy of any covered product, including, but not limited to, all tests, reports, studies, demonstrations, or other evidence that confirm, contradict, qualify, or call into question the accuracy or efficacy of each such product;

G. Records accurately reflecting the name, address, and telephone number of each manufacturer or laboratory engaged in the development or creation of any testing obtained for the purpose of manufacturing, labeling, advertising, marketing, promoting, offering for sale, selling, or distributing any covered product;

H. Copies of all contracts concerning the manufacturing, labeling, advertising, marketing, promotion, offering for sale, sale, or distribution of any covered product; and

I. All records and documents necessary to demonstrate full compliance with each provision of the Order, including but not limited to, copies of acknowledgments of receipt of this Order and all reports submitted to the Commission pursuant to this Order.

XII.

DISTRIBUTIO

B. Individual Defendant as Control Person: For any business that defendant Jordan S. Rubin controls, directly or indirectly, or in which he has a majority ownership interest, he must deliver a copy of this Order to all principals, officers, directors, and managers of that business. He also must deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of this Order. For current personnel, delivery shall be within seven (7) days of service of this Order upon the defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

C. Individual Defendant as Employee or Non-Control Person: For any business where Jordan S. Rubin is not a controlling person of the business but otherwise engages in conduct related to the subject matter of this Order, he must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. Defendants must secure a signed and dated written statement, or legally-binding electronically signed and dated receipt, acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Part.

**XIII.
RETENTION OF JURISDICTION**

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

SO STIPULATED:

KAREN M. MUOIO
MICHAEL OSTHEIMER
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, NW
Mail Drop NJ-3212
Washington, D.C. 20580
Tel.: (202) 326-2491(KM), -2699(MO)
Fax: (202) 326-3259
Email: kmuoio@ftc.gov,
mostheimer@ftc.gov

Attorneys for Plaintiff Federal Trade
Commission

GARDEN OF LIFE, INC.
By: Gre

SO ORDERED:

UNITED STATES DISTRICT JUDGE

APPENDIX A
[ACKNOWLEDGMENT OF RECEIPT]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.

FEDERAL TRADE COMMISSION,

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_____ /

AFFIDAVIT OF DEFENDANT [NAME OF DEFENDANT]

[*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 in *FTC v. Garden of Life, Inc., et al.*, Civil Action No. _____ (S.D. Fla.).

3. On [*date*], I received a copy of the Stipulated Final Order and Judgment for Permanent Injunction and Other Equitable Relief which was signed by the Honorable [*name of U.S. District Judge*] 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].

[Full name of defendant]

State of _____, City of _____

Subscribed and sworn to before me
this ____ day of _____, 2005.

Notary Public
My Commission Expires:

acknowledging receipt of this Order.

APPENDIX B
GOVERNMENT-ORDERED DISCLOSURE
[on Garden of Life Letterhead]

[Insert Date]

Dear Garden of Life Reseller or Distributor,
