

FEDERAL CLERK'S OFFICE
U.S. DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA

DEC 13 2007

By *[Signature]*
S. HATTEN, Clerk
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Civil Action No. 06-CV-1692

~~PROPOSED~~
**STIPULATED JUDGMENT
AND ORDER FOR
PERMANENT
INJUNCTION AS TO**

Defendants

ALEXANDER MCLAIN

This matter comes before the Court on a stipulation of Plaintiff Federal Trade Commission ("Commission" or "FTC") and Defendant Alexander L. McLain ("Defendant").

On July 18, 2006, the FTC filed a Complaint for a Permanent Injunction and Other Relief (Doc. 1), including rescission of contracts, restitution to consumers, and disgorgement pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b(a), and applied *ex parte*

for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of

Commission's Rule entitled Disclosure Requirements and Prohibitions Concerning Franchise and Business Opportunity Ventures (the "Franchise Rule"), 16 C.F.R. Part 436, in the marketing and sale of a business opportunity to become an affiliate in a healthcare network and a provider of healthcare services. On July 18, 2006 - the same day the Complaint was filed - the Court issued a Temporary Restraining Order ("TRO") (Doc. 7) with an asset freeze, appointment of a Receiver, and other ancillary equitable relief. On August 2, 2006, upon stipulation of the parties, the Court entered an Extended TRO (Doc. 21). In addition to continuing the relief in the TRO, the Extended TRO prohibited Defendants from making misrepresentations regarding the sale of herbal tea products. On September 13, 2006, upon stipulation of the parties, the Court entered a Preliminary Injunction continuing the relief contained in the Extended TRO (Doc. 24). The Commission has filed an Amended Complaint concurrently with this proposed Stipulated Judgment.

The Commission and Defendant hereby stipulate to the entry of, and request the Court to enter, this Stipulated Judgment and Order for Permanent Injunction.

IT IS THEREFORE STIPULATED, AGREED, AND ORDERED,

jurisdiction over the Defendant

releases any claim he may have against the Commission, its employees, representatives, or agents.

8. Defendant agrees that this Final Order does not entitle Defendant to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to

Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863.

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A. the right or means to offer, sell, or distribute goods or services
(regardless of whether identified by a trademark, service mark,

trade name, advertising, or other commercial symbol); and

B. more than nominal assistance to any person or entity in
connection with or incident to the establishment, maintenance,
or operation of a new business or the entry by an existing
business into a new line or type of business;

5. "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

charts, photographs, audio and video recordings, computer records, and other data

through detection devices into reasonably usable form. A draft or non-identical

copy is a computer document within the meaning of the term:

12 "Individual Defendant" and "Defendant" means Alexander I. McLain.

13 "Named Defendants" means Alexander I. McLain, Victor McLain

Jeffrey W. McLain, Prophet 3H, Inc.; Prophet 3H, LLC; Georgia Home Health
Care License and Certification Institute, Inc.; Healthcare State License and
Certification Institute, Inc.; M3 Holdings, LLC; and any affiliates, fictitious names,

persons or entities in active concert or participation with him who receive actual notice of this Order, by personal service or otherwise, are hereby permanently restrained and enjoined from making any material misrepresentation or assisting others in making any material misrepresentation, either expressly or by implication, to any prospective purchaser of a business venture or healthcare business venture, including, but not limited to, the following:

A. That the Defendant's healthcare business ventures do not violate federal or state laws regarding:

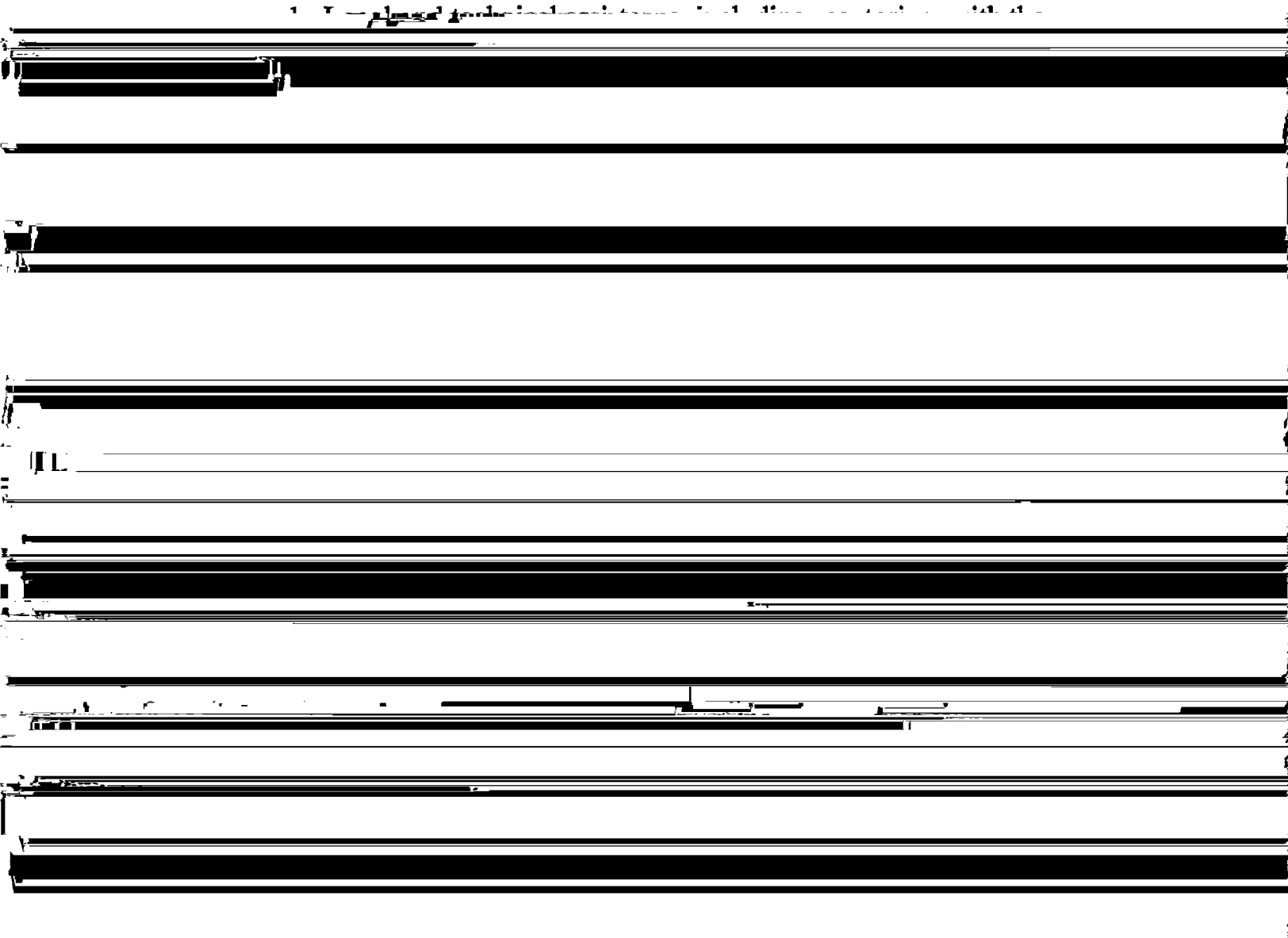
1. The filing of false or misleading information;
2. The use of a non-profit entity under Section 501(c)(3) of the

Internal Revenue Service tax code;

3. The offering of inducements to Medicaid beneficiaries to influence

B. That consumers who purchase a business venture will earn substantial income; or

C. That consumers who purchase a business venture will receive significant assistance in the operation of their business, including, but not limited to:



absolute or comparative health benefits, or efficacy of such product, including any

~~representation that such product prevents, treats, or cures any disease or condition~~

including, but not limited to, arthritis, high blood pressure, diabetes, stroke, glaucoma, cataracts, kidney problems, bladder problems, cancer, AIDS, heart disease or other cardiovascular problems, poor circulation or other vascular problems, infections, lupus, obesity, menopause, or impotency, unless the claim is true, non-misleading, and, at the time it is made, Defendant possesses and relies

Administration pursuant to the National Labeling and Education Act of 1990.

IV. PROHIBITION AGAINST VIOLATION OF THE FRANCHISE RULE AND BUSINESS OPPORTUNITY RULE

IT IS FURTHER ORDERED that Defendant, and his agents, employees, officers, corporations, successors, assigns, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from violating or assisting others to violate any provisions of the Franchise Rule or Business Opportunity Rule by, including, but not limited to:

A. Failing to provide a prospective franchisee or business opportunity purchaser with a complete, accurate, and up-to-date disclosure document as prescribed by the Franchise Rule or Business Opportunity Rule;

~~B. Failing to provide each prospective franchisee or business~~

~~opportunity purchaser with complete and accurate documentation for any earnings or financial performance representations as required by the Franchise Rule or~~

C. Failing to have a reasonable basis for any earnings or financial

performance representation at the time such representation is made as required by

[REDACTED]

the Franchise Rule or Business Opportunity Rule; or

D. Failing to disclose in a clear and conspicuous manner in

[REDACTED]

supplied by him or his attorney to the Receiver and FTC, and all findings of the Receiver with respect to the frozen assets of the Defendant (collectively, "Asset Information"). The Commission has expressly relied on the Asset Information in negotiating and consenting to this Final Order. If, upon motion by the Commission, this Court finds that the Defendant, in executing his financial statement, providing financial information to the Receiver or the FTC, or testifying at his deposition, has (i) materially misrepresented the value of any asset that should have been disclosed in the statement that the Individual Defendant

~~materially misrepresented his financial condition by failing to~~

F. The Defendant agrees that the facts as alleged in the Complaint and Amended Complaint filed in this action shall be taken as true solely for the purpose of a nondischargeability complaint in any bankruptcy proceeding.

~~G. Defendant is not liable for the Commission's costs in this litigation.~~

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.

VI. COMMISSION'S USE OF MONETARY JUDGMENT

IT IS FURTHER ORDERED that all funds paid to the Commission or its

~~agents pursuant to Court Order in this litigation shall be deposited into a fund~~

VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that for a period of five (5) years from the

of this Order as entered by the Court, the Individual Defendant shall submit to the Commission a truthful sworn statement that shall acknowledge receipt of this Order.

IT IS FURTHER ORDERED that for a period of five (5) years from the

this Order to all principals and managers of such business before engaging in such conduct.

¶ ~~The Defendant 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~~

X. COMPLIANCE REPORTING BY DEFENDANT

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. The Defendant shall notify the Commission of the following:
 - a. Any changes in residence, mailing addresses, and

2. The Defendant shall notify the Commission of any changes in

structure of any business entity that occurs in any state or

2. The then-current employment and business addresses and telephone numbers of the Defendant, a description of the business activities of each such employer or business, and the title and responsibilities of the Defendant, for each such employer or business;
3. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Section IX.C of this Order; and
4. Any other changes required to be reported under subparagraph A of this Section.

~~C For the purposes of this Order, the Defendant shall, unless otherwise~~

directed by a representative of the Commission, identify all written notifications to
~~the FTC as provided in reference to FTC v. Prochet 211 F.3d 1011, 1014 (United States~~

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

XII. RECORD-KEEPING PROVISIONS

~~IT IS FURTHER ORDERED~~ that for a period of eight (8) years from the

date of entry of this Order, in connection with any business covered by the

provisions of this Order that the Defendant directly or indirectly manages (other
~~than as a manager of a single retail unit, wholesale unit, or warehouse owned and~~

D. Copies of any complaints and refund requests (whether received

directly, indirectly or through any third party) and any responses to those

complaints or requests;

E. Copies of any sales scripts, training materials, advertisements, or other marketing materials, including e-mail and Internet websites or web pages, regarding any good, service, company or web site, which are disseminated by Defendant to any person; and

F. All records and documents necessary to demonstrate fully their compliance with each provision of this Order including but not limited to copies

of acknowledgments of receipt of this Order, required by Section IX.C of this Order, and all reports submitted to the FTC pursuant to Section X of this Order.

XIV. COOPERATION WITH RECEIVER

IT IS FURTHER ORDERED, that Defendant shall cooperate fully with the Receiver in: (A) pursuing any and all claims by the receivership against third parties; (B) assisting the Receiver in defending any and all actions or claims brought against the receivership by third parties; and (C) executing any documents necessary to transfer assets or ownership interests to the Receiver pursuant to the terms of this Order.

XV. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that all claims, actions, suits, and proceedings

this matter for purposes of construction, modification and enforcement of this Order.

XVI. COMPLETE SETTLEMENT

The parties hereby consent to entry of the foregoing Order which shall

STIPULATED BY:

[REDACTED]