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1 have agreed to entry of this Order and have requested that the Court enter the same
2 to resolve all matters in dispute in this action.

3 **FINDINGS**

4 1. This Court has jurisdiction over the subject matter of this action and all
5 parties hereto. Venue in the Central District of California is proper.

6 2. The activities of Defendants are in or affecting commerce, as defined
7 herein.

8 3. The Complaint states a claim upon which relief may be granted against
9 Defendants under Sections 5(a), 12, and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a),
10 52, and 53(b), and Sections 907

1 7. Entry of this Order is in the public interest.

2 **DEFINITIONS**

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

4 1. **“Billing Information”** means any data that enables any person to
5 access a consumer’s account, such as a credit card, checking, savings, share, or
6 similar account, utility bill, mortgage loan account, or debit card.

7 2. **“Clearly and Conspicuously”** means:

8 a. in print communications, the message shall be in a type size and
9 location sufficiently noticeable for an ordinary consumer to read and comprehend it,
10 in print that contrasts with the background against which it appears;

11 b. in communications disseminated orally, the message shall be
12 delivered in a volume and cadence sufficient for an ordinary consumer to hear and
13 comprehend it;

14 c. in communications made through an electronic medium (such as
15 television, video, radio, and interactive media such as the Internet, online services
16 and software), the message shall be presented simultaneously in both the audio and
17 visual portions of the communication. In any communication presented solely
18 through visual or audio means, the message may be made through the same means
19 in which the communication is presented. In any communication disseminated by
20 means of an interactive electronic medium such as software, the Internet, or online
21 services, a disclosure must be unavoidable and presented prior to the consumer
22 incurring any financial obligation. Any audio message shall be delivered in a
23 volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

24 Any visual message shall be of a size and shade, with a degree of contrast to the
25 background against which it appears and shall appear on the screen for a duration
26 and in a location, sufficiently noticeable for an ordinary consumer to read and
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1 comprehend it; and

2 d. regardless of the medium used to disseminate it, the message
3 shall be in understandable language and syntax. Nothing contrary to, inconsistent
4 with, or in mitigation of the message shall be used in any communication.

5 3. **“Commerce”** means commerce among the several States or with
6 foreign nations, or in any Territory of the United States or in the District of
7 Columbia, or between any such Territory and another, or between any such
8 Territory and any State or foreign nation, or between the District of Columbia and
9 any State or Territory or foreign nation.

10 4. **“Competent and Reliable Scientific Evidence”** means tests, analyses,
11 research, studies, or other evidence based on the expertise of professionals in the
12 relevant area, that has been conducted and evaluated in an objective manner by
13 persons qualified to do so, using procedures generally accepted in the profession to
14 yield accurate and reliable results.

15 5. **“Defendants”** means JAB Ventures, LLC, its successors and assigns,
16 and Jason Brailow.

17 6. **“Endorsement”** means any advertising message (including verbal
18 statements, demonstrations, or depictions of the name, signature, likeness, or other
19 identifying personal characteristics of an individual or the name or seal of an
20 organization) that consumers are likely to believe reflects the opinions, beliefs,
21 findings, or experiences of a party other than the Defendants, even if the views
22 expressed by that party are identical to those of the Defendants.

23 7. **“Food”** means:

- 24 a. articles used for food or drink for man or other animals;
- 25 b. chewing gum; and
- 26 c. articles used for components of any such article.

1 8. **“Drug”** means:

2 a. articles recognized in the official United States Pharmacopeia,
3 official Homoeopathic Pharmacopeia of the United States, or official National
4 Formulary, or any supplement to any of them;

5 b. articles intended for use in the diagnosis, cure, mitigation,
6 treatment, or prevention of disease in man or other animals;

7 c. articles (other than food) intended to affect the structure or any
8 function of the body of man or other animals; and

9 d. articles intended for use as a component of any article specified
10 in clause (a), (b), or (c); but does not include devices or their components, parts, or
11 accessories.

12 9. **“Device”** means an instrument, apparatus, implement, machine,
13 contrivance, implant, in vitro reagent, or other similar or related article, including
14 any component, part, or accessory, which is:

15 a. recognized in the official National Formulary, or the United
16 States Pharmacopeia, or any supplement to them;

17 b. intended for use in the diagnosis of disease or other conditions,
18 or in the cure, mitigation, treatment, or prevention of disease, in man or other
19 animals, or

20 c. intended to affect the structure or any function of the body of
21 man or other animals, and which does not achieve any of its principal intended
22 purposes through chemical action within or on the body of man or other animals
23 and which is not dependent upon being metabolized for the achievement of any of
24 its principal intended purposes.

25 10. **“JAB Ventures”** means JAB Ventures, LLC and its successors and
26 assigns.

1 11. **“Negative Option Feature”** means, in an offer or agreement to sell or
2 provide any product or service, a provision under which the consumer’s silence or
3 failure to take an affirmative action to reject products or services or to cancel the
4 agreement is interpreted by the seller or provider as acceptance of the offer.
5 Agreements with negative option features include, but are not limited to: (i) free or

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1 product or service by means of a negative option feature, are hereby permanently
2 restrained and enjoined from misrepresenting, or assisting others in
3 misrepresenting, expressly or by implication, any material fact, including but not
4 limited to:

5 A. That a product or service is offered on a “free,” “trial,” or “no
6 obligation” basis, or words of similar import, denoting or implying the absence of
7 any obligation on the part of the recipient of the offer to affirmatively act in order to
8 avoid charges if, in fact, a charge will be assessed pursuant to the offer unless the
9 consumer takes affirmative action to cancel;

10 B. The amount that a consumer will be charged or billed;

11 C. That a consumer will not be charged or billed;

12 D. The timing or manner of any charge or bill (including but not limited
13 to the date of the charge and whether it will be a credit card charge or a checking
14 account debit);

15 E. The length of any trial period that consumers receive before being
16 charged or billed; and

17 F. Through, among other things, mailings, email, billings, credit card
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1 connection with the advertising, promoting, offering for sale, or sale of any product
2 or service, are hereby permanently restrained and enjoined from failing to clearly
3 and conspicuously disclose, before consumers are asked to pay money, submit
4 consideration, or reveal billing information: all fees and costs; all material
5 restrictions, limitations, or conditions applicable to the purchase, receipt, or use of
6 the product or service that is the subject of the offer (including any promotion
7 associated with free products or services, or products or services available on a trial
8 basis); and all material terms and conditions of any offer with a negative option
9 feature, including but not limited to:

10 A. The dollar amount of the first payment and when it will be charged,
11 withdrawn, or become due; the dates or frequency (*e.g.*, monthly, quarterly) of all
12 subsequent charges or payment(s); and the dollar amount or range of costs of all
13 subsequent charges or payments;

14 B. If a withdrawal will be made or a charge assessed at the end of a trial
15 period unless the consumer cancels: this fact; when the trial period begins; the
16 length of the trial period; the specific steps and means by which a cancellation
17 request must be submitted; and the date by or time period within which a
18 cancellation request must be received to avoid a charge;

19 C. If products are automatically shipped to a consumer or a membership,
20 subscription, or agreement for products or services that are offered on a periodic
21 basis is automatically renewed unless the consumer provides notification within a
22 certain time not to ship or renew: this fact; the length of the subsequent renewal
23 period; the manner in which a notice not to ship or renew must be submitted; the
24 date by or time period within which a notice not to ship or renew must be received
25 to avoid shipment or renewal (*e.g.*, two weeks after the consumer is advised of an
26 upcoming shipment); and the telephone number, email address, or street address to

1 which such a notice must be directed; and

2 D. All material conditions, limitations and restrictions on the ability of the

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1 A. One of the following means must be used to evidence that the
2 consumer has given express informed consent:

3 1. Obtaining the consumer's express written authorization to
4 purchase the product or service that is the subject of the transaction and the
5 consumer's authorization to assess a charge against a specified account for
6 payment. Such authorization must include the consumer's signature (the term
7 "signature" includes a verifiable electronic or digital form of signature, to the extent
8 such form of signature is recognized as a valid signature under applicable federal
9 law or state contract law); or

10 2. Obtaining the consumer's express oral authorization to purchase
11 the product or service that is the subject of the transaction and the consumer's
12 authorization to assess a charge against a specified account for payment that is
13 audio-recorded, as follows:

- 14 a. the recording must evidence that the consumer, during
15 that transaction, at a minimum, has provided the last four
16 (4) digits of the account number to be charged;
- 17 b. the recording must evidence that the disclosure
18 requirements of Section II, above, have been complied
19 with;
- 20 c. the recording must include the entirety of the transaction;
- 21 d. the recording can be identified and located by either the
22 consumer's name or telephone number; and
- 23 e. a copy of the recording is provided upon request to the
24 consumer, the consumer's bank, credit or debit card
25 company or other billing entity, state attorney general or
26 consumer protection agency, and the Commission.

1 B. For any transaction involving a service, within the lesser of ten days
2 after the date of the transaction or half the time of any trial period, the consumer
3 must be sent written confirmation of the transaction, identified in a clear and
4 conspicuous manner on the outside of the envelope, via first class mail that includes
5 all the information that is required toati921.1133 0 TD.0008 Tc-.0019 T(disclosirepursuasend tS

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1 who receive actual notice of this Order by personal service or otherwise, in
2 connection with the advertising, promoting, offering for sale, or sale of any product
3 or service, are hereby permanently restrained and enjoined:

4 A. From failing to disclose, clearly and conspicuously, before consumers
5 are asked to pay money, submit consideration, or reveal billing information: (1) if
6 a representation is made about a refund or cancellation policy, all material terms
7 and conditions of such policy; or (2) if there is a policy of not making refunds or
8 cancellations, this fact;

9 B. If a policy allowing consumers to cancel or obtain a refund has been
10 disclosed to the consumer, from failing to honor any request that complies with
11 such policy; and

12 C. From misrepresenting, or assisting others in misrepresenting, expressly
13 or by implication, the terms and conditions of any refund or cancellation policy or
14 policies, including but not limited to, that consumers who accept an offer can easily
15 cancel to avoid the assessment of a charge.

16 **V. COMPLIANCE WITH THE ELECTRONIC FUND TRANSFER ACT**

17 **IT IS FURTHER ORDERED** that Defendants and their agents, servants,
18 salespersons, employees, and those persons in active concert or participation with
19 them, whether acting directly or through any sole proprietorship, partnership,
20 limited liability company, corporation, subsidiary, branch, division, or other entity,
21 who receive actual notice of this Order by personal service or otherwise, in
22 connection with the advertising, promoting, offering for sale, or sale of any product
23 or service, are hereby permanently restrained and enjoined, in connection with any
24 consumer who purchases any product or service subsequent to the date of this Order
25 and who uses a debit card or other means of electronic funds transfer, from:

26 A. Failing to obtain written authorization for preauthorized electronic
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1 fund transfers from a consumer's account before initiating any preauthorized
2 electronic fund transfer, as required by Section 907(a) of the Electronic Funds
3 Transfer Act, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12
4 C.F.R. § 205.10(b), as more fully set out in Section 205.10(b) of the Federal
5 Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205,
6 Supp. I, or as they may hereafter be amended; and

7 B. Failing to maintain procedures reasonably adapted to avoid an
8 unintentional failure to obtain written authorization for a preauthorized electronic
9 fund transfer, as set forth in Section 205.10(b) of the Federal Reserve Board's
10 Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I, or as it may
11 hereafter be amended.

12 **VI. FALSE WEIGHT LOSS REPRESENTATIONS PROHIBITED**

13 **IT IS FURTHER ORDERED** that Defendants and their agents, servants,
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**VII. REPRESENTATIONS PROHIBITED UNLESS TRUE AND
SUBSTANTIATED**

IT IS FURTHER ORDERED that Defendants and their agents, servants, salespersons, employees, and those persons in active concert or participation with them, whether acting directly or through any sole proprietorship, partnership, limited liability company, corporation, subsidiary, branch, division, or other entity, who receive actual notice of this Order by personal service or otherwise, in connection with the advertising, labeling, manufacturing, promoting, offering for sale, or sale of any dietary supplement, food, drug, device, or health-related program or service, are hereby permanently restrained and enjoined from making any representation, expressly or by implication, including through the use of endorsements or product names:

A. That any such product, service, or program:

1. causes weight loss or any specified amount of weight loss, including but not limited to weight loss with little effort;
2. reduces or eliminates fat;
3. reduces or curbs appetite;
4. increases metabolism;
5. causes permanent weight loss; or
6. does not contain stimulants;

or

B. Regarding the health benefits, performance, efficacy, safety, or side effects of any such product, service, or program;

unless, the representation is true, not misleading, and, at the time the representation is made, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

1 **VIII. FDA APPROVED CLAIMS**

2 **IT IS FURTHER ORDERED** that:

3 A. Nothing in this Order shall prohibit Defendants from making any
4 representation for any drug that is permitted in labeling for such drug under any
5 tentative final or final standard promulgated by the Food and Drug Administration,
6 or under any new drug application approved by the Food and Drug Administration;

7 B. Nothing in this Order shall prohibit Defendants from making any
8 representation for any product that is specifically permitted in labeling for such
9 product by regulations promulgated by the Food and Drug Administration pursuant
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1 including but not limited to consumer redress and any attendant expenses for the
2 administration of any redress funds. In the event that direct redress to consumers is
3 wholly or partially impracticable or funds remain after redress is completed, the
4 FTC may apply any remaining funds for such other equitable relief, including, but
5 not limited to, consumer information remedies, as the FTC determines to be
6 reasonably related to the practices alleged in the Complaint. Any funds not used for
7 such equitable relief shall be deposited to the U.S. Treasury as equitable
8 disgorgement. Defendants shall have no right to challenge the FTC's choice of
9 remedies or the manner of distribution.

10 B. While Defendants do not admit any of the facts alleged in the
11 Complaint other than jurisdictional facts, Defendants agree that the facts as alleged
12 in the Complaint filed in this action shall be taken as true without further proof in
13 any bankruptcy case or subsequent civil litigation pursued by the Commission to
14 enforce its rights pursuant to this Order, including but not limited to a
15 nondischargeability complaint in any bankruptcy case. Defendants further stipulate
16 and agree that the facts alleged in the Complaint establish all elements necessary to
17 sustain an action pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.
18 C. § 523(a)(2)(A).

19 C. The judgment entered pursuant to this Section IX is equitable monetary
20 relief, solely remedial in nature, and not a fine, penalty, punitive assessment or
21 forfeiture.

22 D. Defendants acknowledge and agree that any money paid pursuant to
23 this Order is irrevocably paid to the FTC for purposes of settlement between the
24 FTC and Defendants, and Defendants relinquish all rights, title, and interest to such
25 money.

26 E. Upon request, Defendants are hereby required, in accordance with 31
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1 U.S.C. § 7701, to furnish to the FTC their tax identification numbers, which shall be
2 used for purposes of collecting and reporting on any delinquent amount arising out
3 of this Order.

4 F. Pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C.
5 § 1681b(1), any consumer reporting agency may furnish a consumer report
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1 FTC, which are identified in Attachment A to this Order. The Defendants have
2 previously attested to the truth, accuracy, and completeness of those financial
3 statements and supporting documents. If, upon motion by the FTC, the Court finds
4 that the financial statements or supporting documents of any Defendant contain any
5 material misrepresentation or omission, then the suspension of the judgment set
6 forth in Section IX shall be vacated and the full amount of the judgment shall
7 immediately become due and payable, less any payments already made; *provided*,
8 *however*, that in all other respects this Order shall remain in full force and effect
9 unless otherwise ordered by the Court; and, *provided further*, that proceedings
10 instituted under this provision would be in addition to, and not in lieu of, any other
11 civil or criminal remedies as may be provided by law, including any other
12 proceedings that the FTC may initiate to enforce this Order. For purposes of this
13 Section X, Defendants waive any right to contest any of the allegations in the
14 Complaint.

15 **XI. MONITORING TO ENSURE COMPLIANCE WITH THE ORDER**

16 **IT IS FURTHER ORDERED** that Defendants and their agents, servants,
17 salespersons, employees, and those persons in active concert or participation with
18 them, whether acting directly or through any sole proprietorship, partnership,
19 limited liability company, corporation, subsidiary, branch, division, or other entity,
20 who receive actual notice of this Order by personal service or otherwise, in
21 connection with the advertising, promoting, offering for sale, or sale of any product
22 or service, are hereby permanently restrained and enjoined from failing to take all
23 reasonable steps sufficient to monitor and ensure that all Defendants' agents,
24 representatives, employees, and contract telemarketers comply with the
25 requirements of this Order. Such reasonable steps shall include, but are not limited
26 to:

1 A. Establishing and following a procedure for receiving and responding to
2 consumer complaints that allege conduct th

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1 the purported authorization for such order occurred prior to the effective date of this
2 Order; and

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1 C. JAB Ventures and Jason Brailow shall permit representatives of the
2 Commission to interview any employer,
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1 any changes in the corporate structure of JAB Ventures or any business entity that
2 Jason Brailow directly or indirectly controls, or has an ownership interest in, that
3 may affect compliance obligations arising under this Order, including but not
4 limited to a dissolution, assignment, sale, merger, or other action that would result
5 in the emergence of a successor entity; the creation or dissolution of a subsidiary,
6 parent, or affiliate that engages in any acts or practices subject to this Order; the
7 filing of a bankruptcy petition; or a change in the corporate name or address, at least
8 thirty (30) days prior to such change, provided that, with respect to any proposed
9 change in the corporation about which Defendants learn of less than thirty (30) days
10 prior to the date such action is to take place, Defendants shall notify the
11 Commission as soon as is practicable after obtaining such knowledge;

12 B. One hundred eighty (180) days after the date of entry of this Order, JAB
13 Ventures and Jason Brailow each shall provide a written report to the FTC, sworn to
14 under penalty of perjury, setting forth in detail the manner and form in which they
15 have complied and are complying with this Order. This report shall include, but not
16 be limited to:

17 1. for Jason Brailow:
18 a. his then-current residence address, mailing addresses, and
19 telephone numbers;
20 b. his then-current employment and business addresses and
21 telephone numbers, a description of the business activities of each such employer or
22 business, and his title and responsibilities for each such employer or business; and
23 c. any other changes required to be reported under
24 subparagraph A of this Section XIV;

25 2. for all Defendants:
26 a. a copy of each acknowledgment of receipt of this Order
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1 upon which the person commenced work; and the date and reason for the person's
2 termination, if applicable;

3 C. Customer files containing the names, addresses, phone numbers, dollar
4 amounts paid, quantity of items or services purchased, and description of items or
5 services purchased, to the extent such information is obtained in the ordinary course
6 of business;

7 D. Complaint and refund requests (whether received directly, indirectly or
8 through any third party) and any responses to those complaints or requests;

9 E. Copies of all sales scripts, training materials, advertisements, or other
10 marketing materials; and

11 F. All records and documents necessary to demonstrate full compliance
12 with each provision of this Order, including but not limited to, copies of all
13 procedures for receiving and responding to consumer complaints, all documents
14 relating to investigations of consumer complaints, and all documents demonstrating
15 how each consumer complaint was responded to or addressed, as required by
16 Section XI; acknowledgments of receipt of this Order, as required by Section XVI;
17 and all reports submitted to the FTC pursuant to Section XIV.

18 **XVI. DISTRIBUTION OF ORDER BY DEFENDANTS**

19 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the
20 date of entry of this Order, Defendants shall deliver copies of the Order as directed
21 below:

22 A. JAB Ventures must deliver a copy of this Order to all principals,
23 officers, directors, and managers. JAB Ventures also must deliver copies of this
24 Order to all of its employees, agents, and representatives who engage in conduct
25 related to the subject matter of the Order. For current personnel, delivery shall be
26 within five (5) days of service of this Order upon JAB Ventures. For new
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1 personnel, delivery shall occur prior to them assuming their responsibilities;

2 B. Jason Brailow as control person: For any business entity that Jason
3 Brailow controls, directly or indirectly, or in which he has a majority ownership
4 interest, Jason Brailow must deliver a copy of this Order to all principals, officers,
5 directors, and managers. Jason Brailow must also deliver copies of this Order to all
6 employees, agents, and representatives who engage in conduct related to the subject
7 matter of the Order. For current personnel, delivery shall be within five (5) days of
8 service of this Order upon Jason Brailow. For new personnel, delivery shall occur
9 prior to them assuming their responsibilities;

10 C. Jason Brailow as employee or non-control person: For any business
11 where Jason Brailow is not a controlling person of a business but otherwise engages
12 in conduct related to the subject matter of the Order, Jason Brailow must deliver a
13 copy of this Order to all principals and managers of such business before engaging
14 in such conduct; and

15 D. JAB Ventures and Jason Brailow must secure a signed and dated
16 statement acknowledging receipt of the Order, within thirty (30) days of delivery,
17 from all persons receiving a copy of the Order pursuant to this Section XVI.

18 **XVII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY**
19 **DEFENDANTS**

20 **IT IS FURTHER ORDERED** that JAB Ventures and Jason Brailow, within
21 five (5) business days of receipt of this Order as entered by the Court, must submit
22 to the Commission a truthful sworn statement acknowledging receipt of this Order.

23 **XVIII. COSTS AND ATTORNEYS' FEES**

24 **IT IS FURTHER ORDERED** that each party shall bear its own costs and
25 attorneys' fees incurred in connection with this action.

XIX. 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.

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Date:

Mark Morelli
Attorney for Plaintiff
FEDERAL TRADE COMMISSION

Date:

Jason Brailow, individually, and as an officer of Defendant JAB Ventures, LLC

APPROVED AS TO FORM:

Date:

William I. Rothbard
Attorney for Defendants

IT IS SO ORDERED.

Date: August 20, 2008


Honorable Stephen V. Wilson
United States District Judge