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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TANNER GARRETT VAUGHN, individually  
and doing business as Lead Expose, Inc., and  
Uptown Media, Inc.,

Defendant.

Case No. 2:11-cv-630-RAJ

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

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) against Defendant, alleging deceptive acts or practices and false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

Defendant, having been represented by counsel, and acting by and through said counsel, has



1 Drug, sold alone or in combination with companion products, that is advertised, marketed, promoted,  
2 offered for sale, distributed, or sold with express or implied representations that the product contains  
3 acai berries or the extract thereof.

4 2. **“Adequate and Well-Controlled Human Clinical Study”** means a human clinical study that  
5 is randomized, double-blind, placebo-controlled, and conducted by persons qualified by training and  
6 experience to conduct such a study.

7 3. **“Assisting Others”** includes, but is not limited to: (a) arranging for the dissemination or  
8 publication of advertisements; (b) assisting in the formulation, drafting, or revision of advertisements;

1 Inc., and Uptown Media, Inc., and by whatever name he may be known.

2 6. **“Device”** means an instrument, apparatus, implement, machine, contrivance, implant, in vitro  
3 reagent, or other similar or related article, including any component, part, or accessory, which is:  
4 (a) recognized in the official National Formulary, or the United States Pharmacopeia, or any  
5 supplement to them; (b) intended for use in the diagnosis of disease or other conditions, or in the cure,  
6 mitigation, treatment, or prevention of disease, in man or other animals; or (c) intended to affect the  
7 structure or any function of the body of man or other animals; and which does not achieve any of its  
8 principal intended purposes through chemical action within or on the body of man or other animals and  
9 which is not dependent upon being metabolized for the achievement of any of its principal intended  
10 purposes.

11 7. **“Dietary Supplement”** means: (a) any product labeled as a dietary supplement or otherwise  
12 represented as a dietary supplement; or (b) any pill, tablet, capsule, powder, softgel, gelcap, liquid, or  
13 other similar form containing one or more ingredients that are a vitamin, mineral, herb or other  
14 botanical, amino acid, probiotic, or other dietary substance for use by humans to supplement the diet  
15 by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination  
16 of any ingredient described above that is intended to be ingested, and is not represented to be used as a  
17 conventional Food or as a sole item of a meal or the diet.

18 8. **“Document” or “Documents”** is equal in scope and synonymous in meaning to the terms  
19 “document” and “electronically stored information,” as described and used in Federal Rule of Civil  
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1 article specified in clause (a), (b), or (c); but

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1 through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with  
2 the advertising, marketing, promotion, offering for sale, or sale of any product, service, or program, are  
3 hereby permanently restrained and enjoined from:

4 A. Misrepresenting, or assisting others in misrepresenting, any material fact, expressly or  
5 by implication, including, but not limited to:

- 6 1. That any website or other publication is an objective news report;
- 7 2. That objective news reporters have performed independent tests of any product,  
8 service, or program, including but not limited to Acai Berry Products, any other  
9 Dietary Supplement, Food, Drug, or Device, and penny or surplus auctions;
- 10 3. That independent tests demonstrate the effectiveness of any product, service, or  
11 program featured in any website or other publication, including but not limited  
12 to Acai Berry Products, any other Dietary Supplement, Food, Drug, or Device,  
13 and penny or surplus auctions;
- 14 4. That comments posted on websites express the views of independent consumers;
- 15 5. The total cost to purchase, receive, or use the product, service, or program;
- 16 6. Any material restrictions, limitations, or conditions to purchase, receive, or use  
17 the product, service, or program;
- 18 7. Any material aspect of the performance, efficacy, nature, or central  
19 characteristics of the product, service, or program; and
- 20 8. Any material aspect of the nature or terms of a refund, cancellation, exchange,  
21 or repurchase policy for the product, service, or program; and
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- 23

24 B. Failing to disclose, clearly and prominently:

- 25 1. Any material connection, when one exists, between any user or endorser of any  
26 product, service, or program and Defendant or any other person manufacturing,  
27 advertising, labeling, promoting, offering for sale, selling or distributing such  
28 product, service, or program; and

1           2.     If applicable, that the content of any website or other publication has not been  
2                     authored by an objective journalist but is in fact an advertisement placed for  
3                     compensation.

4                     **II. PROHIBITED REPRESENTATIONS: WEIGHT LOSS CLAIMS**

5                     **IT IS FURTHER ORDERED** that Defendant and his officers, agents, servants, employees  
6     and attorneys, and all other persons in active concert or participation with any of them, who receive  
7     actual notice of this Order by personal service or otherwise, whether acting directly or through any  
8     trust, corporation, subsidiary, division, or other device, or any of them, in connection with the  
9     advertising, marketing, promotion, offering for sale, or sale of any Dietary Supplement, Food, or Drug,  
10    are hereby permanently restrained and enjoined from making, or Assisting Others in making, directly  
11    or by implication, including through the use of a product name, Endorsement, depiction, or illustration,  
12    any representation that such product:

- 13                     A.     Causes or helps cause weight loss;  
14                     B.     Causes or helps cause rapid weight loss; or  
15                     C.     Causes or helps cause substantial weight loss;  
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17    unless the representation is non-misleading and, at the time of making such representation, Defendant  
18    possesses and relies upon competent and reliable scientific evidence that substantiates that the  
19    representation is true. For purposes of this Section, competent and reliable scientific evidence shall  
20    consist of at least two Adequate and Well-Controlled Human Clinical Studies of any Dietary  
21    Supplement, Food, or Drug or of an Essentially Equivalent Product, conducted by different  
22    researchers, independently of each other, that conform to acceptable designs and protocols and whose  
23    results, when considered in light of the entire body of relevant and reliable scientific evidence, are  
24    sufficient to substantiate that the representation is true. Defendant shall have the burden of proving  
25    that a product satisfies the definition of Essentially Equivalent Product.  
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1 performance, or efficacy of any products, services, or programs, unless the representation is not  
2 misleading, and, at the time of making such representation, Defendant possesses and relies upon  
3 competent and reliable evidence that substantiates that the representation is true. For the purposes of  
4 this Section, competent and reliable evidence means tests, analyses, research, studies, or other  
5 evidence based on the expertise of professionals in the relevant area, that have been conducted and  
6 evaluated in an objective manner by individuals qualified to do so, using procedures generally  
7 accepted in the profession to yield accurate and reliable results.

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9 **V. PROHIBITED REPRESENTATIONS: TESTS OR STUDIES**

10 **IT IS FURTHER ORDERED** that Defendant, and his officers, agents, servants, employees,  
11 and attorneys and all other Persons in active concert or participation with any of them, who receive  
12 actual notice of this Order by personal service or otherwise, whether acting directly or through any  
13 trust, corporation, subsidiary, division, or other device, or any of them, in connection with the  
14 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Dietary  
15 Supplement, Food, Drug, or Device, or any other product, service, or program, in or affecting  
16 commerce, are hereby permanently restrained and enjoined from misrepresenting, in any manner,  
17 expressly or by implication, including through the use of any product name or Endorsement, the  
18 existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, in  
19 connection with any representations covered by Sections II, III, and IV of this Order.

20 **VI. FDA-APPROVED CLAIMS**

21 **IT IS FURTHER ORDERED** that nothing in this Order shall prohibit Defendant from  
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- 1 A. Judgment is entered in favor of the Commission and against Defendant for equitable  
2 monetary relief in the amount of two hundred and three thousand, one hundred and  
3 sixty nine dollars (\$203,169), *provided, however*, that the judgment relief shall be  
4 suspended upon satisfaction of the obligations imposed by this Section;
- 5 B. Defendant shall pay to the Commission seventy nine thousand, three hundred and nine  
6 dollars (\$79,309) in installments as follows:
- 7 1. Defendant shall pay three thousand five hundred dollars (\$3,500) within ten (10)  
8 days of the date of entry of this Order;
  - 9 2. After the initial payment of \$3,500, Defendant shall pay to the Commission the  
10 remaining balance of seventy five thousand, eight hundred and nine dollars  
11 (\$75,809) in thirty-four monthly installments of two thousand, one hundred  
12 sixty five dollars and ninety seven cents (\$2,165.97) and an additional, final  
13 payment of two thousand, one hundred sixty six dollars and two cents  
14 (\$2,166.02);
  - 15 3. These monthly payments shall begin on the first day of the second month  
16 following the date of entry of this Order, and shall be made on the first day of  
17 every month thereafter until complete; and
  - 18 4. All payments required by this Order shall be made by electronic fund transfer in  
19 accordance with instructions previously provided by a representative of the  
20 Commission;
- 21 C. Time is of the essence for the payments specified above. In the event of any default by  
22 Defendant on the initial payment or on any installment payment imposed under this  
23 Section, where default continues for ten (10) days beyond the due date of payment:
- 24 1. The judgment imposed herein will not be suspended as to Defendant, and the  
25 full amount of that Judgment (\$203,169) shall immediately become due and  
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payable, plus interest from the date of entry of this Order pursuant to 28 U.S.C. § 1961, as amended, less any amounts already paid; and

2. The Commission shall be entitled to exercise immediately any and all rights and remedies against Defendant and his assets to collect the full amount of the judgment and interest thereon, less any amounts already paid;

D. All money paid to the Commission under this Order shall be deposited into a fund administered by the Commission or its representatives to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any

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**PROPOSED**

FEDERAL TRADE COMMISSION  
915 Second Ave., Su. 2896  
Seattle, Washington 98174  
(206) 220-6350

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2. Additionally, Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which Defendant performs services whether as an employee or otherwise and any entity in which Defendant has any ownership interest, and identify its name, physical address, and Internet address, if any.

C. Defendant must submit to the Commission notice of the filing of any bankruptcy

- 1 B. Personnel records showing, for each person providing services, whether as an employee  
2 or otherwise, that person's: name, addresses, and telephone numbers; job title or  
3 position; dates of service; and, if applicable, the reason for termination;
- 4 C. Customer files showing the names, addresses, telephone numbers, dollar amounts paid,  
5 and the quantity and description of goods or services purchased;
- 6 D. Complaints and refund requests, whether received directly or indirectly, such as through  
7 a third party, and any response;
- 8 E. All records necessary to demonstrate full compliance with each provision of this Order,  
9 including all submissions to the Commission; and
- 10 F. A copy of each advertisement or other marketing material.

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12 **XII. COMPLIANCE MONITORING**

13 **IT IS FURTHER ORDERED** that, for the purpose of monitoring Defendant's compliance  
14 with this Order, including the financial representations upon which part of the judgment was suspended  
15 and any failure to transfer any assets as required by this Order:

- 16 A. Within 14 days of receipt of a written request from a representative of the Commission,  
17 Defendant must: submit additional compliance reports or other requested information,  
18 which must be sworn under penalty of perjury; appear for depositions; and produce  
19 documents, for inspection and copying. The Commission is also authorized to obtain  
20 discovery, without further leave of court, using any of the procedures prescribed by  
21 Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34,  
22 36, 45, and 69.
- 23 B. For matters concerning this Order, the Commission is authorized to communicate  
24 directly with Defendant. Defendant must permit representatives of the Commission to  
25 interview any employee or other person affiliated with Defendant who has agreed to  
26 such an interview. The person interviewed may have counsel present.
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C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendant or any individual or entity affiliated with Defendant, without the necessity of identification

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