UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Terrell McSweeny

In the Matter of	**FILE NO. 132 3095**
WACOAL AMERICA, INC. **a corporation.**	**AGREEMENT CONTAINING CONSENT ORDER**

The Federal Trade Commission has conducted an investigation of certain acts and practices of Wacoal America, Inc., a corporation ("Proposed Respondent"). Proposed Respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY

5. Proposed respondent neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in this agreement. Only for purposes of this action, proposed respondent admits the facts necessary to establish jurisdiction.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to Proposed Respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed Respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the fo, thEMC /P <</MCID 184th, th(or)3(01-r)3( )]]TJ 0 Tc f 2(a)-of the

6. "Reliably Reported," for a human clinical test or study ("test"), means a report of the test has been published in a peer-reviewed journal, and such published report provides sufficient information about the test for experts in the relevant field to assess the reliability of the results.

I.

IT IS ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that use of such product causes substantial weight or fat loss or a substantial reduction in unclad body size.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product or any drug or cosmetic, in or affecting commerce, shall not make any

evidence means tests, analyses, research, or studies (1) that have been conducted and evaluated in an objective manner by qualified persons; (2) that are generally accepted in the profession to yield accurate and reliable results; and (3) as to which, when they are human clinical tests or studies, all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of such testing as set forth in Part IX of this Order are available for inspection and production to the Commission.

IV.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not misrepresent, or assist others in misrepresenting, in any manner, expressly or by implication, including through the use of any product name or endorsement:

A. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; or

B. That the benefits of the product are scientifically proven.

V.

IT IS FURTHER ORDERED that

A. Nothing in this order shall prohibit Respondent from making any representation 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 permitted under Sections 303-304 of the Food and Drug Administration Modernization Act of 1997; and

B. Nothing in this order shall prohibit Respondent from making any representation for any product that is permitted in the labeling for such product under any tentative final or final monograph promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VI.

IT IS FURTHER ORDERED that Respondent shall, within thirty (30) days after the date of entry of this order, provide to the Commission a searchable electronic file containing the name and contact information of all consumers who purchased any Covered Product from January 1, 2011, through the date of entry of this order, to the extent it has such information in its possession or control, including information available upon request from franchisees or others.

Code, 11 U.S.C. § 523(a)(2)(A), and that this order shall have collateral estoppel effect for such purposes.

F. In accordance with 31 U.S.C. § 7701, Respondent

XII.

IT IS FURTHER ORDERED that Respondent Wacoal America, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation 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; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; t

had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

WACOAL AMERICA, INC.

Date: _____ By: _____
Robert Vitale, President and
Co-Chief Executive Officer
Wacoal America, Inc.

Date: _____ _____
D. REED FREEMAN, JR.
Morrison & Foerster LLP
2000 Pennsylvania Ave., NW, Suite 6000
Washington, DC 20006-1888

Date: _____ _____
SHERMAN W. KAHN
Mauriel Kapouytian Woods LLP
27 W. 24th Street, Suite 302
New York, NY 10010
Attorneys for Respondent

Date: _____ _____
DAVID M. NEWMAN
ERIC EDMONDSON
Counsel for the Federal Trade Commission

APPROVED:

_____
THOMAS N. DAHDOUH
Director
Western Region

_____
JESSICA L. RICH
Director
Bureau of Consumer Protection

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APPENDIX A

CONSUMER REDRESS PROGRAM

I. The Commission shall apply funds received from Respondent pursuant to this order to a consumer redress program. Any funds required to administer the consumer redress program shall be taken from the sum provided by Respondent in Part VII of this order.

II.

VII. Following the completion of the redress program described in Part VII of this Order and in this Appendix A, the Commission or its designated agent shall provide to Respondent a report containing the name and address of each consumer to whom redress was paid pursuant to this Order and, for each consumer, the Covered Product(s) for which such claim was made, the total dollar volume of such claim and the redress paid. Respondent shall have no right to contest the validity of any claim submitted pursuant to th

EXHIBIT 1 – [USA Today**Notice]**

Did you buy a Wacoal iPant product? You may be eligible for a refund.

The Federal Trade Commission (FTC), the nation's consumer protection agency, sued Wacoal, alleging that Wacoal's advertising about iPant products was not adequately supported by scientific data

EXHIBIT 3 – [Email or letter to online buyers]

[date]

Name of Consumer
Address
City/State/ZIP

RE: Refunds for people who bought Wacoal iPant products

Dear Consumer:

We're writing because according to the records of Wacoal America, you bought iPant product(s) from the company's website. The Federal Trade Commission (FTC), the nation's consumer protection agency, sued Wacoal, alleging that Wacoal's advertising about iPant products was not adequately supported by scientific data. The FTC says Wacoal made misleading claims that wearing iPant products would reduce cellulite and reduce thigh size.

To settle the lawsuit, the company is offering money back to people who bought iPant products since January 1, 2011. You don't need your receipt and you don't have to send the product back.

There are two ways to apply for a refund:

1) Complete the attached form and mail it back by [date certain-- sixty (60) days after the last online notice or publication of the USA Today notice], or
2) Apply online at [URL] by [date certain-- sixty (60) days after the last online notice or publication of the USA Today notice].

How much you get back will depend on how many people apply.

If you have questions, visit [URL] or call [toll-free number].

Sincerely,

[name]

[Attach same Refund Application form.]

REFUND APPLICATION

EXHIBIT 4 – [Letter to accompany redress payment]

[date]