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JS-6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

KEYVIEW LABS, INC.,
BRAIN RESEARCH LABS, LLC,
20/20 BRAIN POWER PARTNERS, LLC,
20/20 BRAIN POWER FOUNDERS, LLC,
MEDHEALTH DIRECT, INC.,
GEORGE REYNOLDS, a/k/a Josh
Reynolds and Joshua Reynolds, and
JOHN ARNOLD,

Defendants.

Docket No.: 8:15-cv-1047

**STIPULATED FINAL
JUDGMENT AND ORDER
FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF AS TO
KEYVIEW LABS, INC.**

1 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its
2 Complaint in this matter, pursuant to Section 13(b) of the Federal Trade
3 Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The Commission and Defendant
4 KeyView Labs, Inc. (“KeyView”) agreed in the Stipulation to Enter Final
5 Judgment and Order For Permanent Injunction and Other Equitable Relief
6 (“Order”) to entry of this Order, and requested that the Court enter the same to
7 resolve all matters in dispute in this action.

8 **THEREFORE, IT IS ORDERED** as follows:

9 **FINDINGS**

10 1. This Court has jurisdiction over this matter.

11 2. The Complaint charges that Defendants participated in deceptive acts
12 or practices and false advertisements in violation in violation of Sections 5 and 12
13 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in connection with the labeling,
14 advertising, marketing, distribution, and sale of Procera AVH, a dietary
15 supplement.

16 3. Defendant KeyView neither admits nor denies any of the allegations
17 in the Complaint, except as specifically stated in this Order. Only for purposes of
18 this action, Defendant KeyView admits the facts necessary to establish jurisdiction.

19 4. Defendant KeyView waives any claim that it may have under the
20 Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this
21 action through the date of this Order, and agrees to bear its own costs and attorney
22 fees.

23 5. Defendant KeyView waives all rights to appeal or otherwise challenge
24 or contest the validity of this Order. This action and the relief awarded herein are
25 in addition to, and not in lieu of, other remedies as may be provided by law.

26 6. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of
27 this Order are binding upon Defendant KeyView, and its officers, agents,
28 representatives, employees, and all other persons or entities in active concert or

1 participation with such Defendant, who receive actual notice of this Order by
2 personal service or otherwise.

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

6 **ORDER**

7 **DEFINITIONS**

8 For the purpose of this Order:

9 1. “Advertising” and “promotion” mean any written or verbal statement,
10 illustration, or depiction designed to effect a sale or create interest in the
11 purchasing of products or services, whether it appears in a brochure, newspaper,
12 magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert,
13 letter, catalogue, poster, chart, billboard, public transit card, point of purchase
14 display, packaging, package insert, label, film, slide, radio, television or cable
15 television, audio program transmitted over a telephone system, program-length
16 commercial (“infomercial”), the Internet, email, press release, video news release,
17 or in any other medium.

18 2. “Commerce” means as defined in Section 4 of the FTC Act, 15 U.S.C.
19 § 44.

20 3. “Covered Product” means any dietary supplement, food, or drug,
21 including, but not limited to, Procera AVH.

22 4. “Defendant KeyView” means Keyview Labs, Inc. and its successors
23 and assigns.

24 5. “Defendants” means all of the Defendants, individually, collectively,
25 or in any combination.

26 6. “Endorsement” means as defined in 16 C.F.R. § 255.0(b).

27 7. “Essentially Equivalent Product” means a product that contains the
28 identical ingredients, except for inactive ingredients (e.g., binders, colors, fillers,

1 excipients), in the same form and dosage, and with the same route of
2 administration (e.g., orally, sublingually), as the Covered Product; provided that
3 the Covered Product may contain additional ingredients if reliable scientific
4 evidence generally accepted by experts in the relevant field indicates that the
5 amount and combination of additional ingredients is unlikely to impede or inhibit
6 the effectiveness of the ingredients in the Essentially Equivalent Product.

7 8. “Food” and “drug” mean as defined in Section 15 of the FTC Act, 15
8 U.S.C. § 55.

9 9. “Person” means a natural person, an organization, or other legal
10 entity, including a corporation, partnership, sole proprietorship, limited liability
11 company, association, cooperative, or any other group or combination acting as an
12 entity.

13 10. “Pre-existing Procera AVH Continuity Program” means any
14 continuity program, such as Defendant KeyView’s Procera Autoship Program, in
15 which KeyView automatically ships Procera AVH to a consumer or automatically
16 renews an agreement to purchase Procera AVH, and charges the consumer, that is
17 or was in effect prior to the date of this Order.

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

22 12. The term “including” in this Order means “including without
23 limitation.”

24 **I.**

25 **PROHIBITED REPRESENTATIONS: MEMORY- AND**
26 **COGNITION-RELATED CLAIMS**

27 **IT IS ORDERED** that Defendant KeyView, its officers, agents, and
28 employees, and all other persons in active concert or participation with it, who

1 receive actual notice of this Order, whether acting directly or indirectly, in
2 connection with the manufacturing, labeling, advertising, promotion, offering for
3 sale, sale, or distribution of any Covered Product are hereby permanently
4 restrained and enjoined from making, or assisting others in making, expressly or by
5 implication, including through the use of a product or program name, endorsement,
6 depiction, or illustration, any representation that such product:

7 A. Improves or restores memory, mental clarity, focus, concentration,
8 mood, or other cognitive or mental function; or

9 B. Stops or reverses cognitive or mental decline;

10 unless the representation is non-misleading and, at the time of making such
11 representation, Defendant KeyView possesses and relies upon competent and
12 reliable scientific evidence to substantiate that the representation is true. For
13 purposes of this Section, competent and reliable scientific evidence shall consist of
14 human clinical testing of the Covered Product or of an Essentially Equivalent
15 Product that is sufficient in quality and quantity, based on standards generally
16 accepted by experts in memory or cognitive function, when considered in light of
17 the entire body of relevant and reliable scientific evidence, to substantiate that the
18 representation is true. Such testing shall be randomized, double-blind, and
19 placebo-controlled; and be conducted by researchers qualified by training and
20 experience to conduct such testing. In addition, all underlying or supporting data
21 and documents generally accepted by experts in memory or cognitive function as
22 relevant to an assessment of such testing as described in the Section entitled
23 Preservation of Records Relating to Competent and Reliable Human Clinical Tests
24 or Studies must be available for inspection and production to the Commission.
25 Defendant KeyView shall have the burden of proving that a product satisfies the
26 definition of an Essentially Equivalent Product.

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II.
PROHIBITED REPRESENTATIONS: OTHER HEALTH-RELATED CLAIMS

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1 in whole or in part (1) by any Defendant; (2) any Defendant's officers, agents,
2 representatives, or employees; (3) any other person or entity in active concert or
3 participation with any Defendant; (4) any person or entity affiliated with or acting
4 on behalf of any Defendant; (5) any supplier of any ingredient contained in the
5 product at issue to any of the foregoing or to the product's manufacturer; or (6) the

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V.

FDA APPROVED CLAIMS

IT IS FURTHER ORDERED that nothing in this Order shall prohibit Defendant KeyView from:

A. Making any representation for any drug that is permitted in labeling for such drug under any tentative or final monograph promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and

B. 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.

VI.

PROHIBITED REPRESENTATIONS ABOUT THE EXPERTISE OF ENDORSERS

IT IS FURTHER ORDERED that Defendant KeyView, its officers, agents, and employees, and all other persons in active concert or participation with it, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, in any manner, expressly or by implication, including through the use of any product or program name, endorsement, depiction, or illustration, that any person is an expert with respect to the endorsement message provided by that person.

1 **VII.**

2 **CANCELLATION OF PRE-EXISTING CONTINUITY PROGRAMS**

3 **IT IS FURTHER ORDERED** that Defendant KeyView, its officers,
4 agents, and employees, and all other persons in active concert or participation with
5 it, who receive actual notice of this Order, whether acting directly or indirectly, in
6 connection with the manufacturing, labeling, advertising, promotion, offering for
7 sale, sale, or distribution of Procera AVH are hereby permanently restrained and
8 enjoined from continuing to cause any charges to be made or any payments to be
9 billed to any consumer, or to cause collection of, or attempts to collect, payment,
10 directly or indirectly, from any consumer through any Pre-existing Procera
11 Continuity Program.

12 **VIII.**

13 **MONETARY JUDGMENT**

14 **IT IS FURTHER ORDERED** that:

15 A. Judgment in the amount of Sixty-One Million One Hundred Thousand
16 Dollars (\$61,100,000) is entered in favor of the Commission against Defendant
17 KeyView as equitable monetary relief.

18 B. In partial satisfaction of the judgment, One Million Four Hundred
19 Thousand Dollars (\$1,400,000) currently held in escrow funds under the Escrow
20 Agreement dated April 14, 2014 between KeyView Labs, Inc. and Brain Research
21 Labs, LLC, and Escrow Agent Blalock Walters P.A. (“Blalock Escrow
22 Agreement”) and under the Escrow Agreement dated December 28, 2012 between
23 KeyView Labs, Inc., Brain Research Labs, LLC, and Escrow Agent Trenam,
24 Kemker, Scharf, Barkin, Frye, O’Neill, and Mullis (“TK Escrow Agreement”)
25 shall be used as follows:

26 1. Within seven days of entry of this Order, Defendant Keyview
27 shall pay to the Commission One Million Dollars (\$1,000,000) or provide written
28 notice to Escrow Agent Blalock Walters P.A. directing that all Escrow Funds in the

1 Blalock Escrow Agreement shall be immediately paid to the Commission, as
2 provided for in Article 1 of the Blalock Escrow Agreement. Such payment shall be
3 made by electronic fund transfer in accordance with instructions previously
4 provided by a representative of the Commission.

5 2. Subject to Subparagraph VIII.B.3, below, the remaining Four
6 Hundred Thousand Dollars (\$400,000) shall be reserved exclusively for payment
7 to the Office of the District Attorney Santa Cruz County, Santa Cruz, California
8 (“Santa Cruz”) pursuant to any judgment that is entered in *People of the State of*
9 *California v. Brain Research Labs, LLC and Joshua Reynolds a/k/a George*
10 *Reynolds*.

11 3. If, for any reason, such payment is not made within seven days
12 of entry of this Order to Santa Cruz pursuant to *People of the State of California v.*
13 *Brain Research Labs, LLC, and Joshua Reynolds a/k/a George Reynolds*,
14 Defendant Keyview shall, within 15 days of entry of this Order, pay the
15 Commission Four Hundred Thousand Dollars (\$400,000) or provide written notice
16 to Escrow Agent Trenam, Kemker, Scharf, Barkin, Frye, O’Neill, and Mullis that
17 all Escrow Funds under the TK Escrow Agreement shall be immediately paid to
18 the Commission, as provided for in Article 1 of the TK Escrow Agreement. Such
19 payment shall be made by electronic fund transfer in accordance with instructions
20 previously provided by a representative of the Commission.

21 C. Upon completion of Section VIII. B, the remainder of the monetary
22 judgment is suspended, subject to Section VIII. D, below.

23 D. The Commission’s agreement to the suspension of part of the
24 judgment is expressly premised upon the truthfulness, accuracy, and completeness
25 of Defendants’ sworn financial statements and related documents (collectively
26 “financial attestations”) submitted to the Commission, namely:

27 1. the Financial Statement of Defendant KeyView Labs, Inc.
28 signed on June 5, 2014, including the attachments [collectively bates numbered

1 bankruptcy case.

2 I. The facts alleged in the Complaint establish all elements necessary to
3 sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the
4 Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral
5 estoppel effect for such purposes.

6 J. Defendant KeyView acknowledges that its Taxpayer Identification
7 Number (Social Security Number or Employer Identification Number), which
8 Defendant KeyView must submit to the Commission, may be used for collecting
9 and reporting on any delinquent amount arising out of this Order, in accordance
10 with 31 U.S.C. § 7701.

11 K. All money paid to the Commission pursuant to this Order may be
12 deposited into a fund administered by the Commission or its designee to be used
13 for equitable relief, including consumer redress and any attendant expenses for the
14 administration of any redress fund. If a representative of the Commission decides
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1 complete information, evidence, and testimony. Defendant KeyView
2 acknowledges, understands, and agrees that such cooperation shall include, but not
3 be limited to, the following:

4 A. Causing its officers, employees, representatives, or agents to appear
5 for interviews as may reasonably be requested by a Commission representative;

6 B. Responding to all reasonable inquiries by a Commission
7 representative;

8 C. Providing all documents, records, or other tangible evidence
9 reasonably requested by a Commission representative;

10 D. Providing truthful declarations, affidavits, certifications, and written
11 testimony that may be reasonably requested by the Commission;

12 E. Causing its officers, employees, representatives, or agents to appear
13 and provide truthful testimony at any trial, deposition, or other proceeding without
14 the service of a subpoena; and

15 F. Releasing any KeyView current or former employees, representatives,
16 or agents from any confidentiality or other agreements that might limit their ability
17 to appear for interviews, provide truthful declarations, affidavits, certifications, and
18 written testimony, or appear and provide truthful testimony at any trial, deposition,
19 or other proceeding.

20 **X.**

21 **CUSTOMER INFORMATION**

22 **IT IS FURTHER ORDERED** that Defendant KeyView, its officers,
23 agents, employees, and all other persons in active concert or participation with it,
24 who receive actual notice of this Order, are permanently restrained and enjoined
25 from directly or indirectly:

26 A. Failing to provide sufficient consumer information to enable the
27 Commission to efficiently administer consumer redress. If a representative of the
28 Commission requests in writing any information related to redress, Defendant

1 KeyView must provide it, in the form prescribed by the Commission, within 14
2 days;

3 B. Selling, renting, leasing, transferring, or otherwise disclosing the
4 name, address, telephone number, credit card number, e-mail address, or other
5 identifying information of any consumer who paid any money to Defendant
6 KeyView in connection with the purchase of Procera AVH and was obtained prior
7 to entry of this Order, *Provided, however*, that this subsection does not prohibit the
8 transfer of such customer information to any successor and assign,

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1 C. From each individual or entity to which Defendant KeyView
2 delivered a copy of this Order, Defendant must obtain, within 30 days, a signed
3 and dated acknowledgment of receipt of this Order.

4 **XII.**

5 **COMPLIANCE REPORTING**

6 **IT IS FURTHER ORDERED** that Defendant KeyView make timely
7 submissions to the Commission:

8 A. One hundred and eighty (180) days after entry of this Order,
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1 C. Defendant KeyView must submit to the Commission notice of the
2 filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding
3 by or against such Defendant within 14 days of its filing.

4 D. Any submission to the Commission required by this Order to be
5 sworn under penalty of perjury must be true and accurate and comply with 28
6 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under
7 the laws of the United States of America that the foregoing is true and correct.

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XV.

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 ORDERED:

DATED July 09, 2015



UNITED STATES DISTRICT JUDGE