



THEREFORE, IT IS ORDERED as follows:

**FINDINGS**

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive acts or practices in violation of Sections 5(a) and 12 of the FTC Act, §§ 45(a) and 52, in the labeling, advertising, marketing, distribution, and sale of indoor tanning systems.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for the purposes of this action, Defendants admit the facts necessary to establish jurisdiction.
4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.
5. The Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Order.
6. Entry of this Order is in the public interest.

**ORDER DEFINITIONS**

a. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication, even if the representation requiring the disclosure is made in only one means.

b. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

c. An audible disclosure, including by telephone or streaming video, must be delivered TJ ( )Tu8jD1(ol)-u4(m)-2(e)1(, s)-p(d)-10(e)4(e)4(d a)4(ndn)-10(c)2(a)4(de)2(n)-10(c)(he)4

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3. “Close Proximity” means that the disclosure is very near the triggering representation. A disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering representation.
4. “Corporate Defendants” means Mercola.com, LLC, and Mercola.com Health Resources, LLC, and their successors and assigns.
5. “Defendants” means the Individual Defendant and the Corporate Defendants,



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**V.**

**PRESERVATION OF RECORDS RELATING TO COMPETENT AND RELIABLE  
HUMAN CLINICAL TESTS OR STUDIES**





- C. Upon compliance with Section VII, below, the remainder of the judgment is suspended, subject to the Subsections below.
- D. If, upon motion by the Commission, the Court finds that Defendants failed to fully comply with Section VII, the monetary judgment will be deemed unsatisfied and the entire judgment amount (\$5,334,067) (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), less any amount previously paid by Defendants, shall immediately become due and payable by Defendants. Interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance.
- E. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.
- F. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
- G. Defendants are required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission their respective Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

## **VII.**

### **REDRESS PROGRAM**

**IT IS FURTHER ORDERED** that Defendants shall provide redress to eligible

purchasers of Indoor Tanning Systems in accordance with the provisions of this part:

A. Within ten (10) days after entry of this Order, Defendants shall deliver to the Commission a Customer Database as described herein, in either Microsoft Excel, Microsoft Access, or Microsoft SQL format, providing records for all purchasers of Mercola brand Indoor Tanning Systems from January 1, 2012, through the date of entry of this Order, to the extent that such customers are known to Defendants through a diligent search of their records, including computer files, sales records, and invoices. Defendants shall identify the version and software programs used to create the Customer Database. The Customer Database shall be encrypted and forwarded using an overnight delivery service or the FTC's secured file transfer protocol. The Customer Database shall be formatted to include in separate fields the following: each customer's First Name, Middle Name, Last Name, Alias-Surname; and address recorded as Address 1, Address 2, City, State, Zip Code and Country; along with a total quantity of Mercola brand Indoor Tanning Systems purchased; the dates of the purchases and any refunds; the total amount of moneys paid less any amount credited for

C. The parameters of the refund program are as follows: Redress Eligibility Notices in the form set forth in Appendix A (subject to formatting and coding modifications appropriate to conducting the redress program), containing the Claim Form set forth in Appendix B (also subject to formatting and coding modifications appropriate to conducting the redress program), shall be issued to the purchasers in the Consumer Database by the Redress Administrator; Defendants have no right to challenge any aspect of the administration of the redress program. Purchasers in the Consumer Database who return signed Claim Forms within fifteen days after the time set forth on the Redress Eligibility Notice are Participating Purchasers who shall be paid a refund based on their payments for Indoor Tanning Systems. If complete payments to Participating Purchasers plus the costs of administration for the redress program exceeds the Five Million, Three Hundred and Thirty-Four Thousand, and Sixty-Seven Dollars (\$5,334,067) judgment set forth in Part VI, redress will be provided on a pro rata basis, after deducting the costs for the administration of the redress program.

D. Defendants shall not engage in efforts to dissuade purchasers in the Consumer Database from participating in the refund program.

E. The Defendants shall fund the redress program as follows:

1. Within five (5) days after entry of this Order, Defendants, jointly and severally, shall pay to the FTC by electronic funds transfer the sum of One Million Dollars (\$1,000,000), which, as Defendants stipulate, their undersigned counsel holds in escrow for no purpose other than payment to the Commission. The FTC, or its Redress Administrator, shall pay this fund into a Redress Account to be used to pay redress to Participating Purchasers and the costs for administration of the redress program. If, after the completion of the claims process in subsection C of this Section VII, the amount of

complete redress payments to Participating Purchasers plus the costs of administration for the redress program is less than the funds in the Redress Account, then any remaining funds shall be



compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, Individual Defendant must: (a) identify all of his telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all of his business activities, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest; and (c) describe in detail his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For ten years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that

interest, and identify the name, physical address, and any Internet address of the business or entity.

- C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within fourteen days of its filing.



any other Defendants, is a majority owner or controls directly or indirectly, must create and

- B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

**XII.**

**RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this      day of                      , 201\_.

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UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFF FEDERAL TRADE  
COMMISSION:

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/s/ \_\_\_\_\_ Date: 4.14.16

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**IMPORTANT REFUND INFORMATION**

[FTC logo]

**FTC v. Mercola.com, LLC and Others**

Claims Administration Center

[address]

Bar Code with information regarding Claims Administer Center

[date]

Sample A Sample

Address 1

Address 2

«City» «State» «Zip»

Dear [Customer]:

We're writing because you may be eligible for a refund for an indoor tanning system you bought from Mercola.com. The Federal Trade Commission (FTC), the nation's consumer protection agency, sued Mercola.com and others for deceptive advertising. According to the FTC, Mercola.com made false and unsupported claims that their indoor tanning systems are safe and don't increase the risk of skin cancer, including melanoma; and can reduce wrinkles.

To settle the case, Mercola.com has agreed to pay refunds to consumers who aren't satisfied with the product. **To apply for a refund, fill out the enclosed Claim Form, sign it, and return it to the address above by [add date certain].** The amount of your refund will depend on the price you paid for the indoor tanning system and the number of consumers who request a refund.

The FTC never requires you to pay upfront fees to cash a refund check. If someone contacts you about a refund and insists on money – or asks for your Social Security number, bank account or credit card number, or other sensitive information – it's probably a scam.

If you have questions, please contact the Claims Administration Center at 1-877-690-7102. If the person who received this notice is deceased, please call 1-877-690-7102.

For more information about the FTC's case, visit [www.ftc.gov/refunds](http://www.ftc.gov/refunds). Click the Recent FTC Cases Resulting in Refunds link at the bottom.

Sincerely,

Claims Administration Center

[FTC logo]

**Claims Administrator  
FTC v. Mercola.com, LLC and Others  
[address]**

**Complete and Sign this  
Form and Return No Later Than  
[date]**

Sample A Sample  
Address 1  
Address 2  
«City» «State» «Zip»

If the address we have for you is incorrect, please add  
the correct address below

Name  
Address 1  
Address 2  
«City» «State» «Zip»  
«City» «State» «Zip»

I bought a Mercola brand indoor tanning system and I'm not satisfied with the product. Please send me a refund in connection with the Federal Trade Commission's settlement with Mercola.com.

[blocks for inserting area code and phone number]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

**PRIVACY ACT NOTICE**

Section 5 of the Federal Trade Commission Act permits us to collect this information so that we can process your refund request. Your response is voluntary, but we cannot send you a refund without it. To process your request, we may share your information with court receivers, FTC contractors, auditors, or other government agencies. We may share your information for other reasons, as permitted by the Privacy Act of 1974. A complete list of routine uses is available in our Nonpublic Investigational and Other Nonpublic Legal Program Records, which you can find at <http://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems>