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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DAVID J. ROMEO, individually, and in his capacity as an officer of Stella Labs, LLC, and Nutraceuticals International, LLC; **STELLA LABS, LLC**, a limited liability company; **NUTRACEUTICALS INTERNATIONAL, LLC**, a limited liability company; **DEBORAH B. VICKERY**, individually, and as an employee of Stella Labs, LLC and Nutraceuticals International, LLC; **V. CRAIG PAYTON**, individually, and in his capacity as an officer of Stella Labs, LLC; and **ZOLTAN KLIVINYI**, individually, and in his capacity as an officer of Nutraceuticals International, LLC,

Defendants.

CASE NO. 2:09-1262 (WJM)

**SETTLEMENT AGREEMENT AND FINAL ORDER AS TO DEFENDANT
DEBORAH B. VICKERY**

Plaintiff, the Federal Trade Commission (FTC or Commission), filed a Complaint for Injunctive and Other Equitable Relief against Defendants David J. Romeo, Stella Labs, LLC, Nutraceuticals International, LLC, Deborah B. Vickery, V. Craig Payton, and Zoltan Klivinyi pursuant to Section 13(b) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 53(b), 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.

The Commission and Defendant Deborah B. Vickery (Defendant) have stipulated to entry of the following Settlement Agreement and Final Order in settlement of the Commission's allegations against Defendant.

The Court, having been presented with this Settlement Agreement and Final Order (Order), finds as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over Defendant. Venue in the District of New Jersey is proper.
2. The acts and practices of Defendant are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

3. The Complaint states a claim upon which relief can be granted under Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and the Commission has the authority to seek the relief it has requested.

4. Defendant waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendant also waives any claim that she may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.

5. This Order reflects the negotiated agreement of the Commission and Defendant, and Defendant has entered into this Order freely and without coercion.

6. The Commission and Defendant stipulate and agree to entry of this Order under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), without trial or final adjudication of any issue of fact or law. By entering into this stipulation, Defendant does not admit or deny any of the allegations set forth in the Complaint, other than jurisdictional facts.

7. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law.

8. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding upon Defendant, and her officers, agents, servants, representatives, employees, and all other persons or entities in active concert or

participation with her, who receive actual notice of this Order by personal service or otherwise.

9. Nothing in this Order obviates the obligation of Defendant to comply with Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52.

10. The Commission's action against Defendant is an exercise of the Commission's police or regulatory power as a governmental unit.

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

12. Each party shall bear its own costs and attorneys' fees.

13. Entry of this Order is in the public interest.

ORDER

DEFINITIONS

1. "Advertising" and "promotion" mean any written or verbal statement, illustration, or depiction designed to effect a sale or create interest in the purchasing of goods, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, packaging, package insert, label, film, slide, radio, television or cable television,

audio program transmitted over a telephone system, program-length commercial (“infomercial”), the Internet, email, press release, video news release, or in any other medium.

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

3. “Competent and reliable scientific evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

4. “Covered product” shall mean:

- a. Any dietary supplement, food, or drug;
- b. Any vitamin, mineral, herb or other botanical, or amino acid; or
- c. Any concentrate, metabolite, constitute, extract, or combination of any ingredient described in Paragraph 4(b).

5. “Defendant” shall mean Deborah B. Vickery, individually, and as an employee of Stella Labs, LLC and Nutraceuticals International, LLC.

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

7. “Food” and “drug” mean as defined in Section 15 of the FTC Act,

15 U.S.C. § 55.

8. The terms “and” and “or” in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable sentence or phrase inclusive rather than exclusive.

9. The term “including” in this Order means “including without limitation.”

I.

**PROHIBITED REPRESENTATIONS REGARDING
COVERED PRODUCTS**

IT IS HEREBY ORDERED that Defendant, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and her agents, servants, employees, and all persons or entities in active concert or participation with her who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, directly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation:

A. That such product:

1. causes weight loss;

2. causes users to reduce daily caloric intake;
3. reduces or curbs appetite; or
4. treats obesity; or

B. About the health benefits, performance, efficacy, identity, or safety of any Covered Product;

unless the representation is true, non-misleading, and, at the time it is made, Defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

PROHIBITED REPRESENTATIONS REGARDING TESTS OR STUDIES

IT IS FURTHER ORDERED that Defendant, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and her officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with her who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, are hereby permanently restrained and enjoined from misrepresenting, in any manner, expressly or by implication, including through the use of any product name or endorsement, the existence, contents,

validity, results, conclusions, or interpretations of any test or study.

III.

MEANS AND INSTRUMENTALITIES

IT IS FURTHER ORDERED that Defendant, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and her agents, servants, employees, and all persons or entities in active concert or participation with her who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, are hereby permanently restrained and enjoined from providing the means and instrumentalities with which to make, directly or by implication, any false or misleading statement of material fact, including but not limited to the representations contained in Sections I and II above. For purposes of this Section, "means and instrumentalities" mean any information, document, or article referring or relating to any Covered Product, including but not necessarily limited to any advertising, labeling, promotional, or purported substantiation materials, for use by trade customers in their marketing of any Covered Product in or affecting commerce.

IV.

FDA-APPROVED CLAIMS

IT IS FURTHER ORDERED that:

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

B. Nothing in this Order shall prohibit Defendant 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.

V.

MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Defendant shall pay to the Commission the sum of four million dollars (\$4,000,000.00) as equitable monetary relief, which payment shall be suspended subject to the provisions of Section VI.

B. Defendant relinquishes all dominion, control and title to the funds paid, to the fullest extent permitted by law. Defendant shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise.

C. Defendant agrees that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment pursuant to this Order, including, but not limited to, a nondischargeability complaint in any bankruptcy case. Defendant further stipulates and agrees that the facts alleged in the Complaint establish all elements necessary to sustain an action pursuant to, and that this Order shall have collateral estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S. C. § 523(a)(2)(A).

D. In accordance with 31 U.S.C § 7701, Defendant is hereby required, unless she has done so already, to furnish to the Commission her taxpayer identifying number and/or social security number, which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of Defendant's relationship with the government.

E. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

VI.

RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

A. The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of the certified financial statement and supporting documents submitted to the Commission by the Defendant signed and dated June 10, 2009. Defendant stipulates that all of the materials she submitted are truthful, accurate, and complete. These documents contain material information upon which the Commission relied in negotiating and agreeing to the terms of this Order.

B. If, upon motion by the Commission, a Court determines that Defendant made a material misrepresentation or omitted material information concerning her financial condition, then the Court shall lift the suspension described in Section V and order that Defendant pay the Commission the sum of four million dollars (**\$4,000,000.00**) as equitable monetary relief, which amount shall become immediately due and payable by Defendant, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance, *provided, however*, that in all other respects this

Order shall remain in full force and effect unless otherwise ordered by the Court; and *provided*, further, that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including but not limited to contempt proceedings, or any other proceedings that the Commission may initiate to enforce this Order.

C. All funds paid to the Commission pursuant to this Order shall be deposited into an account administered by the Commission or its agents to be used for equitable relief, including, but not limited to, consumer redress, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after the redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Section. Defendant shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payment ordered herein shall be deemed a payment of any fine, penalty, or punitive assessment.

VII.

COMPLIANCE MONITORING BY THE COMMISSION

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control to inspect the business operation, *provided* that, Defendant, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order including one or more of the protections set forth in Fed. R. Civ. P. 26(c);

B. In addition, the Commission is authorized to use all other lawful means, including, but not limited to:

1. Obtaining discovery from any person, without further leave of court, using the procedures described in Fed. R. Civ. P. 30, 31, 33, 34, 36, 45, and 69; and

2. Posing as consumers, marketers, manufacturers, suppliers, wholesalers, retailers, distributors, or other product-related entities to Defendant, her employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice; and

C. Defendant shall permit representatives of the Commission to interview any employee, employer, consultant, independent contractor, representative, or agent who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit 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, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VIII.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that in order that compliance with the provisions of this Order may be monitored:

A. For a period of three (3) years from the date of entry of this Order,

1. Defendant shall notify the Commission in writing of the following:

- a. Any changes in Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of such change;
- b. Any changes in Defendant's employment status (including self-employment) and any change in Defendant's ownership in any business entity, within ten (10) days of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of Defendant's duties and responsibilities in connection with the business or employment; and
- c. Any changes in Defendant's name or use of any aliases or fictitious names within ten (10) days of the date of such change; and

2. Defendant shall notify the Commission in writing of any changes in structure of any business entity that Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the business entity about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. Sixty (60) days after the date of entry of this Order, and annually thereafter for a period of three (3) years, Defendant shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which she has complied and is complying

with this Order. This report shall include, but not be limited to:

1. Defendant's then-current residence address, mailing addresses, and telephone numbers;
2. Defendant's then-current employment status (including self-employment), including the name, addresses and telephone numbers of each business that Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of Defendant's duties and responsibilities in connection with the business or employment;
3. Any other changes required to be reported under Subsection A of this Section; and
4. A copy of each acknowledgment of receipt of this Order obtained pursuant to the Section titled "Distribution of Order."

C. Defendant shall notify the Commission of the filing of a bankruptcy petition by Defendant within fifteen (15) days of filing.

D. For purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the

following address:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room NJ-2122
Washington, DC 20580
Attn: *FTC v. Romeo, et al.*, (D. N.J.), Case No. 2:09-1262 (WJM)

Provided that, in lieu of overnight courier, Defendant may send such reports or notifications by first-class mail, but only if Defendant contemporaneously sends an electronic version of such report or notification to the Commission at: DEBrief@ftc.gov.

E. For purposes of compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendant.

IX.

RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, Defendant, for any business which she is the majority owner or directly or indirectly controls, is hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of Covered Products sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting the name, address, and

telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

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

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

E. Copies of all advertisements, promotional materials, sales scripts, training materials, websites, or other marketing materials utilized in the advertising, marketing, promotion, offering for sale, sale, or distribution of any Covered Product;

F. All materials that were relied upon in making any representations contained in the materials identified in Subsection E of this Section, including all documents evidencing or referring to the accuracy of any claim therein or to the efficacy of any Covered Product, including, but not limited to, all tests, reports, studies, demonstrations, or other evidence that confirm, contradict, qualify, or call

into question the efficacy of each such product, including complaints and other communications with consumers or with governmental or consumer protection agencies;

G. Records accurately reflecting the name, address, and telephone number of each manufacturer or laboratory engaged in the development or creation of any testing obtained for the purpose of manufacturing, labeling, advertising, marketing, promoting, offering for sale, selling, or distributing any Covered Product;

H. Copies of all contracts concerning the manufacturing, labeling, advertising, marketing, promotion, offering for sale, sale, or distribution of any Covered Product; and

I. All records and documents necessary to demonstrate full compliance with each provision of the Order, including but not limited to, copies of acknowledgments of receipt of this Order and all reports submitted to the Commission pursuant to this Order.

X.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendant shall deliver copies of the Order as directed

below:

A. Defendant Vickery as Control Person, including, but not limited to, a brokerage business operated by Defendant: For any business that Defendant controls, directly or indirectly, or in which Defendant has a majority ownership interest, Defendant shall deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of Section VIII titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities or engaging in conduct related to the subject matter of this Order. For any business entity resulting from any change in structure set forth in Subsection A.2 of Section IX titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

B. Defendant Vickery as Non-Control Person or Employee: For any business in which Defendant is not a controlling person of the business but otherwise engages in conduct related to the subject matter of this Order, Defendant shall deliver a copy of this Order to all principals and managers of such business

before engaging in such conduct.

C. Defendant shall obtain a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

XI.

COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Defendant shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendant shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

XII.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that Defendant, within seven (7) business days

of receipt of this Order as entered by the Court, shall submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XIII.

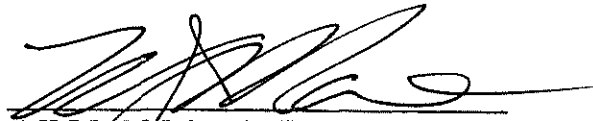
~~RETENTION OF JURISDICTION~~

~~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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IT IS SO ORDERED.

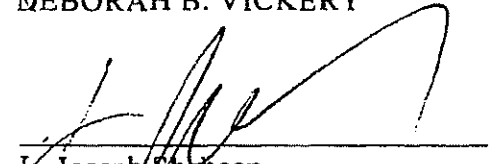
Dated Aug. 2, 2010

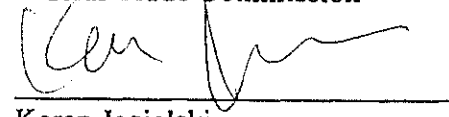

WILLIAM J. MARTINI
UNITED STATES DISTRICT JUDGE

SO STIPULATED:


DEBORAH B. VICKERY


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Federal Trade Commission


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