

Miriam R. Lederer, Attorney
Joshua S. Millard, Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW CC-9528
Washington, DC 20580
Phone: (202) 326-2975 (Lederer) -2454 (Millard)
Fax: (202) 326-3197
Email: mlederer@ftc.gov; jmillard@ftc.gov

Attorneys for Plaintiff Federal Trade Commission

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SPRINGTECH 77376, LLC, et al.,

Defendants.

) Case No. C 12-4631 PJH

) **[PROPOSED]**

) **STIPULATED MODIFIED ORDER FOR**
) **PERMANENT INJUNCTION,**
) **MONETARY JUDGMENT, AND**
) **COMPENSATORY CONTEMPT**
) **RELIEF AS TO DEFENDANT**
) **CHEMICAL FREE SOLUTIONS LLC**

Plaintiff, Federal Trade Commission (“FTC” or “Commission”), filed a complaint against Chemical Free Solutions LLC (“CFS” or “Defendant”) in this Court on September 5, 2012, seeking relief for alleged violations of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in connection with the advertising, marketing, and sale of various pest-control products, which purportedly treat and prevent bed bug infestations. This Court entered a Stipulated Order for Permanent Injunction and Monetary Judgment as to Defendant Chemical Free Solutions LLC (“2013 Order”), on July 18, 2013 (DE 72). The Commission and CFS now stipulate to the entry of this Stipulated Modified Order for Permanent Injunction, Monetary Judgment, and

1 Compensatory Contempt Relief as to Defendant Chemical Free Solutions LLC (“Order”), to
2 supercede the 2013 Order.

3 THEREFORE, IT IS ORDERED as follows:

4 **FINDINGS**

5 1. This Court has jurisdiction over this matter.

6 2. The Complaint charges that Defendant participated in deceptive acts or practices in
7 violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in the advertising of
8 pest-control products.

9 3. Defendant continues to neither admit nor deny any of the allegations in the Complaint in
10 the underlying action.

11 4. Defendant admits that it violated Section I of the 2013 Order by representing that the
12 Specified Product is effective at stopping and preventing bed bug infestations without possessing
13 or relying upon competent and reliable scientific evidence as defined in the 2013 Order.

14 5. Defendant admits that it violated Section IV of the 2013 Order by misrepresenting the
15 existence, contents, validity, results, conclusions, or interpretations of tests, studies, or research
16 of the Specified Product with respect to bed bugs.

17 6. Defendant waives any claim it may have under the Equal Access to Justice Act, 28
18 U.S.C. § 2412, concerning the prosecution of this action, and agrees to bear its own costs and
19 attorney fees.

20 7. The parties waive all rights to appeal or otherwise challenge or contest the validity of this
21 Order.
22

23 **DEFINITIONS**

24 For the purposes of this Order, the following definitions apply:

25 A. “Defendant” means Chemical Free Solutions LLC.

26 B. “Pesticide” means any product intended to prevent, destroy, repel, or mitigate any pest.
27

1 C. “Specified Product” means the Best Yet! product line, regardless of the name under
2 which the product is sold.

3 D. “2013 Order” means the Stipulated Order for Permanent Injunction and Monetary
4 Judgment as to Defendant Chemical Free Solutions LLC, entered on July 18, 2013, in *FTC v.*
5 *Springtech 77376, LLC, et al.*, No. 4:12-cv-4631-PJH (DE 72).

6 **I. BAN ON BED BUG PRODUCTS**

7 IT IS ORDERED that Defendant is permanently restrained and enjoined from
8 advertising, marketing, promoting, offering for sale, or assisting others in advertising, marketing,
9 promoting, or offering for sale, any product as killing bed bugs.

10 **II. PROHIBITION ON DECEPTIVE PERFORMANCE AND EFFICACY CLAIMS**

11 IT IS FURTHER ORDERED that Defendant, its officers, agents, servants, employees,
12 and attorneys, and all other persons in active concert or participation with any of them, who
13 receive actual notice of this Order by personal service or otherwise, whether acting directly or
14 indirectly, in connection with the advertising, marketing, promoting or offering for sale of any
15 other Pesticide, are permanently restrained and enjoined from making, or assisting others in
16 making, expressly or by implication, including through the use of a product name, endorsement,
17 depiction, or illustration, any representation, other than activities covered under Sections I and III
18 of this Order, about the performance or efficacy of such product, unless the representation is
19 non-misleading, and, at the time such representation is made, Defendant possesses and relies
20 upon competent and reliable scientific evidence that is sufficient in quality and quantity based on
21 standards generally accepted in the field of Pesticides, when considered in light of the entire
22 body of relevant and reliable scientific evidence, to substantiate that the representation is true.
23 For purposes of this Section, competent and reliable scientific evidence means tests, analyses,
24 research, or studies that have been conducted and evaluated in an objective manner by experts in
25 the field of Pesticides and that are generally accepted by such experts to yield accurate and
26 reliable results.
27
28

1 **III. PROHIBITION ON HEAD LICE INFESTATION CLAIMS**

2 IT IS FURTHER ORDERED that Defendant, its officers, agents, servants, employees,
3 and attorneys, and all other persons in active concert or participation with any of them, who
4 receive actual notice of this Order by personal service or otherwise, whether acting directly or
5 indirectly, in connection with the advertising, marketing, promoting or offering for sale of the
6 Specified Product, or any other drug or Pesticide intended for the treatment of head lice in
7 humans, are permanently restrained and enjoined from making, or assisting others in making,
8 expressly or by implication, including through the use of a product name, endorsement,
9 depiction, or illustration, any representation that such product is effective in the treatment of
10 head lice infestations unless the representation is non-misleading and such product:

- 11 A. is subject to a final OTC drug monograph promulgated by the Food and Drug
12 Administration (FDA) for such use, and conforms to the conditions of such use;
- 13 B. remains covered by a tentative final OTC drug monograph for such use and adopts the
14 conditions of such use; or
- 15 C. is the subject of a new drug application for such use approved by FDA, and conforms to
16 the conditions of such use.
17

18 **IV. PROHIBITION ON MISREPRESENTING ENDORSEMENTS OR**
19 **AFFILIATIONS**

20 IT IS FURTHER ORDERED that Defendant, its officers, agents, servants, employees,
21 and attorneys, and all other persons in active concert or participation with any of them, who
22 receive actual notice of this Order by personal service or otherwise, whether acting directly or
23 indirectly, in connection with the advertising, marketing, promoting or offering for sale of any
24 product or service are permanently restrained and enjoined from misrepresenting, or assisting
25 others in misrepresenting, expressly or by implication, including through the use of a product
26 name, endorsement, depiction, or illustration:
27
28

1 A. that such product or service is endorsed or approved by, or otherwise connected to a
2 government entity, third-party organization, or any other person;

3 B. that any person is affiliated with a government entity, third-party organization, or any
4 other person; or

5 C. the existence or contents of any statement made by any government entity.

6 **V. PROHIBITION ON MISREPRESENTING TESTS OR STUDIES**

7 IT IS FURTHER ORDERED that Defendant, its officers, agents, servants, employees,
8 and attorneys, and all other persons in active concert or participation with any of them who
9 receive actual notice of this Order by personal service or otherwise, whether acting directly or
10 indirectly, in connection with the advertising, marketing, promoting or offering for sale of any
11 product or service are permanently restrained and enjoined from misrepresenting, or assisting
12 others in misrepresenting, expressly or by implication, including through the use of a product
13 name, endorsement, depiction, or illustration, the existence, contents, validity, results,
14 conclusions, or interpretations of any test, study, or research.

15 **VI. MONETARY JUDGMENT AND SUSPENSION**

16 IT IS FURTHER ORDERED that:

17 A. Judgment in the amount of One Hundred and Eighty Five Thousand, Two Hundred and
18 Six Dollars (\$185,206) is entered in favor of the Commission against the Defendant as equitable
19 monetary relief. The judgment shall be suspended subject to the Subsections below.

20 B. The Commission's agreement to the suspension of the judgment is expressly premised
21 upon the truthfulness, accuracy, and completeness of Defendant's sworn financial statement and
22 related documents (collectively, "financial representations") submitted to the Commission,
23 namely:
24

25 1. the Financial Statement of Defendant signed by Neil Goldstein, Chief Financial
26 Officer, on September 11, 2012, including the attachments;
27
28

1 2. the additional documentation submitted by email from Defendant’s counsel
 2 Travis B. Vargo to Commission counsel Kerry O’Brien and Linda Badger dated January 9, 2013,
 3 attaching all sales transactions relating to Best Yet! between April 1, 2012, and August 31, 2012.

4 C. The suspension of the judgment will be lifted as to the Defendant if, upon motion by the
 5 Commission, the Court finds that Defendant failed to disclose any material asset, materially
 6 misstated the value of any asset, or made any other material misstatement or omission in the
 7 financial representations identified above.

8 D. If the suspension of the judgment is lifted, the judgment becomes immediately due in the
 9 amount specified in Subsection A. above (which the parties stipulate only for purposes of this
 10 Section represents the consumer injury alleged in the Complaint between April 1, 2012, and
 11 August 31, 2012), less any payments made to the Commission by Defendant and other
 12 defendants subsequent to the entry of this Order, plus interest computed from the date of entry of
 13 the 2013 Order.

14
 15 **VII. COMPENSATORY CONTEMPT RELIEF**

16 IT IS FURTHER ORDERED that judgment in the amount of Two Hundred Twenty-Four
 17 Thousand Three Hundred and Fifty-Six Dollars (\$224,356), is entered in favor of the
 18 Commission against Defendant, as compensatory contempt relief. Defendant is ordered to pay to
 19 the Commission Two Hundred Twenty-Four Thousand Three Hundred and Fifty-Six Dollars
 20 (\$224,356), which, as Defendant stipulates, its undersigned counsel holds in escrow for no
 21 purpose other than payment to the Commission. Such payment must be made within 7 days of
 22 entry of this Order by electronic fund transfer in accordance with instructions previously
 23 provided by a representative of the Commission.

24
 25
 26
 27
 28

VIII. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

A. 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 for return of the funds, directly or indirectly, through counsel or otherwise.

B. 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 or money judgment 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 by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall have collateral estoppel effect for such purposes.

C. Unless they have already done so, Defendant is required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission its respective Taxpayer Identifying Number (Employer Identification Number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendant's relationship with the government.

D. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money 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 money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement.

1 Defendant has no right to challenge any actions the Commission or its representatives may take
2 pursuant to this Subsection.

3 **IX. LIST OF CUSTOMERS**

4 IT IS FURTHER ORDERED that, with respect to customer information acquired prior to
5 the entry of the 2013 Order, Defendant, its officers, agents, servants, employees, and attorneys,
6 and all other persons in active concert or participation with any of them who receive actual
7 notice of this Order by personal service or otherwise, are permanently restrained and enjoined
8 from directly or indirectly:

9 A. disclosing, using, or benefitting from customer information, including the name, address,
10 telephone number, email address, social security number, other identifying information, or any
11 data that enables access to a customer's account (including a credit card, bank account, or other
12 financial account), that any defendant obtained prior to entry of this Order in connection with the
13 purchase of any Specified Product; and

14 B. failing to dispose of such customer information in all forms in their possession, custody,
15 or control within 30 days after entry of this Order. Disposal must be by means that protect
16 against unauthorized access to the customer information, such as by burning, pulverizing, or
17 shredding any papers, and by erasing or destroying any electronic media, to ensure that the
18 customer information cannot practicably be read or reconstructed.

19 Provided, however, that customer information need not be disposed of, and may be
20 disclosed, to the extent requested by a government agency or required by law, regulation, or
21 court order.

22 **X. COOPERATION**

23 IT IS FURTHER ORDERED that Defendant must in good faith cooperate with
24 representatives of the Commission in this case and in any investigation related to or associated
25 with the transactions or the occurrences that are the subject of the Complaint. Defendant must
26 appear, at such places and times as the FTC shall reasonably request, upon ten (10) days written
27

1 notice, for interviews, conferences, pretrial discovery, review of documents, and for such other
2 matters as may be reasonably requested by the FTC. If requested in writing by the FTC,
3 Defendant shall appear and provide truthful testimony in any trial, deposition, or other
4 proceeding related to or associated with the transactions or the occurrences that are the subject of
5 the Complaint, without the service of a subpoena.

6 **XI. ORDER ACKNOWLEDGMENT**

7 IT IS FURTHER ORDERED that Defendant obtain acknowledgments of receipt of this
8 Order:

9 A. Defendant, within 7 days of entry of this Order, must submit to the Commission an
10 acknowledgment of receipt of this Order sworn under penalty of perjury.

11 B. For 3 years after entry of this Order, Defendant must deliver a copy of this Order to: (1)
12 all principals, officers, directors, and managers; (2) all employees, agents, and representatives
13 who participate in conduct related to the subject matter of this Order; and (3) any business
14 resulting from any change in structure as set forth in the Section titled Compliance Reporting.
15 Delivery must occur within 7 days of entry of this Order for current personnel. To all others,
16 delivery must occur before they assume their responsibilities.

17 C. From each individual or entity to which Defendant delivered a copy of this Order,
18 Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this
19 Order.
20

21 **XII. COMPLIANCE REPORTING**

22 IT IS FURTHER ORDERED that Defendant make timely submissions to the
23 Commission:

24 A. One year after entry of this Order, Defendant must submit a compliance report, sworn
25 under penalty of perjury.

26 1. Defendant must: (a) designate at least one telephone number and an email,
27 physical, and postal address as points of contact, which representatives of the Commission may
28

1 use to communicate with Defendant; (b) identify all of Defendant's businesses by all of their
2 names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the
3 activities of each business, including the products and services offered, the means of advertising,
4 marketing, and sales, and the involvement of any other defendant (which Defendant must
5 describe if he knows or should know due to his own involvement); (d) describe in detail whether
6 and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of
7 each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the
8 Commission.

9 B. For 10 years following entry of this Order, Defendant must submit a compliance notice,
10 sworn under penalty of perjury, within 14 days of any change in the following: (a) any
11 designated point of contact; or (b) the structure of any entity that Defendant has any ownership
12 interest in or directly or indirectly controls that may affect compliance obligations arising under
13 this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary,
14 parent, or affiliate that engages in any acts or practices subject to this Order.

15 C. Defendant must submit to the Commission notice of the filing of any bankruptcy petition,
16 insolvency proceeding, or any similar proceeding by or against Defendant within 14 days of its
17 filing.

18 D. Any submission to the Commission required by this Order to be sworn under penalty of
19 perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I
20 declare under penalty of perjury under the laws of the United States of America that the
21 foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name,
22 title (if applicable), and signature.

23 E. Unless otherwise directed by a Commission representative in writing, all submissions to
24 the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight
25 courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of
26
27
28

1 Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington,
2 DC 20580. The subject line must begin: FTC v. Springtech 77376, LLC (X120042).

3 **XIII. RECORDKEEPING**

4 IT IS FURTHER ORDERED that Defendant must create certain records for 10 years
5 after entry of this Order, and retain each such record for 5 years. Specifically, Defendant, for
6 any business in which it is a majority owner or directly or indirectly controls, must maintain the
7 following records:

8 A. Accounting records showing the revenues from all products or services sold, all costs
9 incurred in generating those revenues, and the resulting net profit or loss;

10 B. Personnel records showing, for each person providing services, whether as an employee
11 or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates
12 of service; and, if applicable, the reason for termination;

13 C. Complaints and refund requests, whether received directly or indirectly, such as through a
14 third party, and any response;

15 D. All records necessary to demonstrate full compliance with each provision of this Order,
16 including all submissions to the Commission; and

17 E. A copy of each advertisement or other marketing material.

18 **XIV. COMPLIANCE MONITORING**

19 IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant's compliance
20 with this Order, including financial representations upon which part of the judgment was
21 suspended:

22 A. Within 14 days of receipt of a written request from a representative of the Commission,
23 Defendant must: submit additional compliance reports or other requested information, which
24 must be sworn under penalty of perjury; appear for depositions; and produce documents, for
25 inspection and copying. The Commission is also authorized to obtain discovery, without further
26
27
28

1 leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30
2 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

3 B. For matters concerning this Order, the Commission is authorized to communicate directly
4 with Defendant. Defendant must permit representatives of the Commission to interview any
5 employee or other person affiliated with Defendant who has agreed to such an interview. The
6 person interviewed may have counsel present.

7 C. The Commission may use all other lawful means, including posing, through its
8 representatives, as consumers, suppliers, or other individuals or entities, to Defendant or any
9 individual or entity affiliated with Defendant, without the necessity of identification or prior
10 notice. Nothing in this Order limits the Commission's lawful use of compulsory process,
11 pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

12 **XV. RETENTION OF JURISDICTION**


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

15
16
17 PURSUANT TO STIPULATION, IT IS SO ORDERED this 26th day of January, 2018:

18
19
20 
21 _____
22 HONORABLE PHYLLIS J. HAMILTON
UNITED STATES DISTRICT JUDGE

23 STIPULATED AND AGREED:

24 FOR THE PLAINTIFF: FEDERAL TRADE COMMISSION

25
26 
27 _____
MIRIAM R. LEDERER, Attorney
28 JOSHUA S. MILLARD, Attorney

Date: 1/9/2018

1 Federal Trade Commission
2 600 Pennsylvania Ave., NW
3 Washington, DC 20580
4 Phone: (202) 326-2975 (Lederer) -2454 (Millard)
5 Fax: (202) 326-3197
6 Email: mlederer@ftc.gov; jmillard@ftc.gov

7 FOR DEFENDANT CHEMICAL FREE SOLUTIONS LLC



Date: 10-19-17

8 ROBERT K. WISE, Attorney
9 Lillard Wise Szygenda
10 13760 Noel Rd., Suite 1150
11 Dallas, TX 75240
12 Phone: (214) 739-2005
13 Fax: (214) 739-2010
14 Email: bwise@lwsattorneys.com

15 COUNSEL FOR CHEMICAL FREE SOLUTIONS LLC



Date: 10-18-2017

17 Matthew Jones
18 CEO, Chemical Free Solutions LLC

19 DEFENDANT CHEMICAL FREE SOLUTIONS LLC