

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RECEIVED

AUG 27 2007

JUDGE DAVID H. COAR

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SILI NEUTRACEUTICALS, LLC, and

BRIAN MCDAID, individually and doing  
business as KAYCON LTD,

Defendants.

Case No. 07 C 4541

Judge David H. Coar

Magistrate Judge Morton Denlow

**STIPULATED PRELIMINARY INJUNCTION ORDER  
WITH ASSET FREEZE AND OTHER EQUITABLE RELIEF**

WHEREAS, Plaintiff Federal Trade Commission ("FTC" or "Commission") filed a Complaint for Injunctive and Other Equitable Relief in this matter on August 13, 2007, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM" or "CAN-SPAM Act"), 15 U.S.C. § 7706(a);

WHEREAS, the FTC moved *ex parte* for a Temporary Restraining Order With Asset Freeze, Other Equitable Relief, and Order To Show Cause Why a Preliminary Injunction Should Not Issue pursuant to Rule 65 of the Federal Rules of Civil Procedure ("TRO"), and the Court granted the TRO on August 13, 2007;

WHEREAS, Defendants Sili Neutraceuticals, LLC and Brian McDaid have received service of the Complaint, Summons and TRO and are now represented by counsel; and

WHEREAS, the FTC and Defendants, acting by and through their respective counsel, have consented to entry of this Stipulated Preliminary Injunction Order With Asset Freeze and Other Equitable Relief;

It is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

### **FINDINGS**

1. This Court has jurisdiction over the subject matter of this case, and jurisdiction over all the parties thereto.

2. The FTC and Defendants agree that this Order is binding in form and scope pursuant to Fed. R. Civ. P. 65(d).

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

4. Defendants do not agree or admit that they have violated any law or provision.

The Court's entry of this Stipulated Preliminary Injunction does not represent a finding that Defendants Sili Neutraceuticals, LLC and Brian McDaid have violated the law as alleged in the FTC's Complaint.

5. No security is required of any agency of the United States for the issuance of an injunction. *See* Fed. R. Civ. P. 65(c).

### **DEFINITIONS**

1. "Asset" or "Assets" mean any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

2. **“Clear and conspicuous”** or **“clearly and conspicuously”** with regard to the display of a notice means that the information shall be presented in writing, in a type size, color, and location sufficient for an ordinary consumer to read and comprehend it, and shall be disclosed in a manner that would be easily recognizable and understandable in language and syntax to an ordinary consumer. If the information is contained in a multi-page print document, the disclosure shall appear on the first page.

3. **“Commercial electronic mail message”** (or **“commercial email”**) **“means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).”** 15 U.S.C. § 7702(2) (A) (2004).

4. **“Defendants”** means Sili Neutraceuticals, LLC and/or Brian McDaid, individually and doing business as Kaycon Ltd.

5. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writing, drawings, graphs, charts, Internet sites, Web pages, Web sites, electronic correspondence, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

6. **“Electronic mail address”** **“means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic mail message can be sent or delivered.”** 15 U.S.C. § 7702(5).

7. **“Header information”** “means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.” 15 U.S.C. § 7702(8).

8. **“HGH Products”** shall refer to any products that are advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product contains any form of Human Growth Hormone and/or may cause a statistically significant and clinically meaningful increase in a consumer’s growth hormone levels, and include, but are not limited to, “Perfect HGH,” “Dr. HGH,” or any other substantially similar products.

9. **“Hoodia Products”** shall refer to any products that are advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product contains any form of Hoodia gordonii, and include, but are not limited to, “HoodiaHerbal,” or any other substantially similar products.

10. **“Initiate,”** “when used with respect to a commercial email message, means to originate or transmit such message or to procure the origination or transmission of such message.” 15 U.S.C. § 7702(9).

11. **“Procure,”** when used with respect to the initiation of a commercial email message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one’s behalf.” 15 U.S.C. § 7702(12).

12. **“Protected computer”** means a computer which is used in interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States. 15 U.S.C. § 7702(13); 18 U.S.C. § 1030(e)(2)(B).

13. “**Sender**” means a person who initiates a commercial electronic mail message and whose product, service, or Internet website is advertised or promoted by the message. 15 U.S.C. § 7702(16).

**I. PROHIBITED BUSINESS ACTIVITIES PURSUANT TO THE FTC ACT**

**IT IS THEREFORE ORDERED** that Defendants, and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of a trade name or endorsement, any false or misleading oral or written statement or representation in connection with the marketing, advertising, promotion, offering for sale, sale or provision of any Hoodia- or HGH-related products, or any other products or services, including, but not limited to:

- A. Misrepresenting that the Hoodia Products cause rapid and substantial weight loss, including as much as forty pounds in a month;
- B. Misrepresenting that the Hoodia Products cause users to lose safely three or more pounds per week for multiple weeks;
- C. Misrepresenting that the Hoodia Products cause permanent weight loss;
- D. Misrepresenting that scientific research establishes that the Hoodia Products cause substantial weight loss;

E. Representing that the HGH Products contain human growth hormone and/or cause a statistically significant and clinically meaningful increase in a consumer's growth hormone levels;

F. Misrepresenting that the HGH Products will turn back or reverse the aging process, including, but not limited to, causing effects such as: (i) lowering blood pressure, (ii) reducing cellulite, (iii) improving vision, (iv) causing new hair growth, (v) improving sleep, (vi) improving emotional stability, (vii) speeding injury recovery, (viii) relieving chronic pain, (ix) increasing muscle mass, and (x) causing fat and weight loss; and

G. Misrepresenting that any product, or any ingredient contained in it, is effective in the diagnosis, cure, mitigation, treatment, or prevention of any disease;

H. Making any representation about the health benefits, performance, efficacy, or safety of any product unless, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation;

I. Misrepresenting any other fact material to a consumer's decision to purchase any product; and

J. Assisting others who violate any provision of Paragraphs A through I of this Section.

**II. PROHIBITED BUSINESS ACTIVITIES UNDER THE  
CONTROLLING THE ASSAULT OF NON-SOLICITED  
PORNOGRAPHY AND MARKETING ACT OF 2003**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise,

whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined from violating, or assisting others in violating, the provisions contained in Sections 5 and 6 of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act”), 15 U.S.C. §§ 7704 and 7705, as currently promulgated or as it may hereafter be amended, or any rule, regulation, or requirement adopted pursuant thereto, including, but not limited to, initiating the transmission of a commercial electronic mail message that:

- A. Contains, or is accompanied by, false or misleading header information in violation of Section 5(a)(1) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(1);
- B. Contains subject headers that misrepresent the content or subject matter of the message in violation of Section 5(a)(2) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(2);
- C. Fails to include a clear and conspicuous notice of the opportunity to decline to receive further electronic mail messages from the sender, in violation of Sections 5(a)(3) and 5(a)(5)(A)(ii) of the CAN-SPAM Act, 15 U.S.C. §§ 7704(a)(3), 7704(a)(5)(A)(ii); and/or
- D. Fails to include a valid physical postal address of the sender in violation of Section 5(a)(5)(A)(iii) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(A)(iii).

### **III. INJUNCTION AGAINST NEW ACCOUNT REGISTRATIONS WITHOUT REPORTING**

**IT IS FURTHER ORDERED** that in connection with the promotion, advertising, marketing, sale, or offering for sale of any product or service, Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are restrained

and enjoined from registering or creating any new domain names, Web sites, Web pages, email accounts, Internet service accounts, or online payment service accounts, without notifying counsel for the Commission within 72 hours of such registrations. The notice shall include:

- A. The true identity of the registrant, account holder, or user, including the complete and accurate physical mailing address, email address, and telephone number;
- B. The means and source of payment for the registration, including the credit card number or bank account number used;
- C. The name and address of the person or entity to whom such registration was submitted;
- D. The date and time the registration was created; and
- E. The purpose of the domain names, Web sites, Web pages, or email accounts, Internet service accounts, or online payment service accounts registered.

#### **IV. INJUNCTION AGAINST USING ANY PERSONS OR ENTITIES TO SEND COMMERCIAL EMAIL WITHOUT REPORTING**

**IT IS FURTHER ORDERED** that in connection with the solicitation of consumers for personal information or in the promotion, advertising, marketing, sale, or offering for sale of any product or service, Defendants are restrained and enjoined from using any affiliates, sub-affiliates, agents, mailers, vendors, employees, contractors, or other persons or entities to send commercial email on their behalf without notifying counsel for the Commission prior to the initiation of any commercial email message by such persons or entities. The notice shall include:

- A. The identity of the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity including the name of an individual, the



complete and accurate physical mailing address, a working email address, a working telephone number, and any identification codes associated with or used by such person or entity;

- B. The amount of payment and information necessary to process such payment for the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity, including the account name and number used;
- C. A copy of the body and subject line of each unique commercial email being sent by the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity;
- D. A list of each of the email addresses from which the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity will send the commercial email message;
- E. A list of the Web site addresses and/or domain names promoted in the commercial email message;
- F. A description of the procedures Defendants have to ensure that:
  - 1. Such person or entity does not send commercial email messages to recipients who have previously requested not to receive commercial email messages from Defendants; and
  - 2. Defendants will receive all requests received by such persons or entities from email recipients who request not to receive commercial email messages from Defendants; and

- G. A certification that such person or entity has agreed, in writing, to comply with this Order and the provisions of the CAN-SPAM Act.

**V. ASSET PRESERVATION**

IT IS FURTHER ORDERED that Defendants and their officers, agents servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from:

A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any assets wherever located, inside or outside the United States of America, that are owned, controlled or held by, or for the benefit of, in whole or in part, any Defendant, or in the actual or constructive possession of any Defendant, including, but not limited to,

1. accounts held in the name of, or on behalf of, Sili Neutraceuticals, LLC, at Bank of America;
2. accounts in the name of, or on behalf of, Sili Neutraceuticals, LLC at Central Bancard LLC and/or Merrick Bank;
3. accounts held in the name of, or on behalf of, any Defendant at Paypal;
4. accounts held in the name of Brian McDaid at Scottrade;
5. accounts held in the name of, or any behalf of, any Defendant at Citadel Federal Credit Union;

6. accounts held in the name of GreenEyed Media, LLC at Bank of America.;
  7. accounts held in the name of Kaycon Ltd. at LGT Bank in Liechtenstein or AIG Private Bank Ltd. in Zurich;
  8. accounts held in the name of Sili Ltd. at LGT Bank in Liechtenstein or AIG Private Bank Ltd. in Zurich; and
  9. any assets held in any account at any bank or savings and loan institution, or any credit card processing agent, customer service agent, commercial mail receiving agency, or mail holding or forwarding company, or any credit union, online payment service, IRA custodian, money market or mutual fund, storage company, trustee, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind.
- B. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of any Defendant, or subject to access by any Defendant or under any Defendant's control, without providing the Commission prior notice and an opportunity to inspect the contents in order to determine that they contain no assets covered by this Section; and
- C. Incurring liens or encumbrances on real property, personal property or other assets in the name, singly or jointly, of any Defendant.
- D. Transferring any funds or other assets subject to this Order for attorney's fees

or living expenses; **provided however that**, any Defendant may pay reasonable, usual, ordinary, and necessary living expenses, and reasonable attorney's fees after written prior approval by the Commission or as otherwise authorized by the Court.

E. Notwithstanding the provisions set forth in Paragraphs A-D, above, Defendant Brian McDaid may open one or more new bank accounts in connection with the operation of his HealthQuest chiropractic business, Green Eyed Media and for his personal use. The operation of these entities will be subject to the terms of this Order. Defendant Brian McDaid may use, for reasonable, usual and ordinary living and business expenses, and attorney's fees, funds that he receives after the effective date of this Preliminary Injunction Order, provided that, within ten (10) days after opening any bank account pursuant this Section, and monthly thereafter, Defendant Brian McDaid shall provide the Commission with complete bank account statements for such accounts.

#### **VI. REPATRIATION OF FOREIGN ASSETS AND DOCUMENTS**

##### **IT IS FURTHER ORDERED THAT:**

A. Defendant Sili Neutraceuticals, LLC represents, through counsel, that it has no assets or documents located in foreign countries. If any such assets or documents are located during the pendency of this litigation, any such asset(s) and/or document(s) shall not be transferred, disposed or dissipated.

B. Defendant Brian McDaid has asserted his Fifth Amendment right to decline to respond to the Repatriation provision of the TRO (Section VI) entered by the Court on August 13, 2007. However, if there were any asset(s) or document(s) in the possession or

control of Defendant McDaid, not already made subject to this Order, Defendant McDaid shall not dispose of, transfer or dissipate any such asset(s) and/or document(s).

C. The Commission may move the Court at any time to find that Defendant McDaid has no Fifth Amendment privilege to decline to respond to the Repatriation and disclosure provisions contained in the Court's TRO previously entered in this matter.

Upon agreement of the parties or an Order of the Court, Defendant McDaid will eventually be required to respond to the Repatriation and disclosure provisions contained in the TRO.

#### **VII. INTERFERENCE WITH REPATRIATION**

**IT IS FURTHER ORDERED** that Defendants are hereby restrained and enjoined from taking any action, directly or indirectly, which may result in the transfer, encumbrance, or dissipation of foreign assets, or in the hindrance of the repatriation required by Section VI of this Order, including but not limited to:

A. Sending any statement, letter, fax, email or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a "duress" event has occurred under the terms of a foreign trust agreement until such time that all assets have been fully repatriated pursuant to Section VI of this Order; and

B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a court order, until such time that all assets have been fully repatriated pursuant to Section VI of this Order.

**Provided further**, that, within ten (10) days of entry of this Order, Defendant Brian McDaid shall provide the Commission access, to Defendants' records and documents held by financial institutions or other institutions outside the territorial United States, by signing the Consent to Release of Financial Records attached as Attachment A to the Court's Temporary Restraining Order entered on August 13, 2007.

**VIII. PRESERVATION AND MAINTENANCE OF RECORDS  
AND NOTICE OF NEW VENTURES**

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from:

- A. Destroying, erasing, mutilating, falsifying, concealing, writing over, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents or records, including but not limited to, any and all computerized files, storage media (including but not limited to floppy disks, hard drives, CD-ROMs, Zip disks, punch cards, magnetic tape, backup tapes, and computer chips) on which information has been saved (including any and all equipment needed to read any such material), contracts, accounting data, registrations, correspondence, advertisements (including, but not limited to, advertisements placed on the World Wide Web or the Internet or sent via email), FTP logs, Service Access Logs, USENET Newsgroups postings, World Wide Web pages, email messages, books, written or printed records, handwritten notes, telephone logs, telephone scripts,

receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate to the business practices, or business or personal finances, of any Defendant;

- B. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money; and
- C. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, including, but not limited to, Green Eyed Media, without first providing the Commission with a written statement disclosing:
  - 1. the name of the business entity;
  - 2. the address, telephone number, email address, and Web site address of the business entity;
  - 3. the names of the business entity's officers, directors, principals, managers, and employees;
  - 4. the names and addresses of any persons or entities providing online marketing, advertising, or mailing services for the business entity; and
  - 5. a detailed description of the business entity's intended activities.

**IX. DUTIES OF PERSONS OR ENTITIES HOLDING DEFENDANTS' ASSETS**

**IT IS FURTHER ORDERED** that any financial or brokerage institution, escrow agent, title company, commodity trading company, entity, trust, or person that holds, controls or maintains accounts or assets of, or on behalf of, any Defendant, or has held, controlled or maintained any account or asset of, or on behalf of, any Defendant at any time since January 1, 2004, that has been served with a copy of this Order, or otherwise has actual or constructive knowledge of this Order, shall:

- A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further Order of the Court;
- B. Deny Defendants access to any safe deposit box that is:
  - 1. titled in any Defendant's name, individually or jointly; or
  - 2. otherwise subject to access by any Defendant; and
- C. Provide the Commission, within five (5) days of receiving a copy of this Order, a sworn statement setting forth:
  - 1. the identification number of each such account or asset titled in the name, individually or jointly, of any Defendant, or held on behalf of, or for the benefit of the Defendant;
  - 2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order was received, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to



close the account, and the name of the person or entity to whom such account or other asset was remitted; and

3. the identification of any safe deposit box that is titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access by any Defendant; and

D. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to each such account or asset, including but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

E. Sections IX.A-B shall not apply to accounts opened after the entry of this Preliminary Injunction Order as set forth in Section V.E above

#### **X. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, client company, agent, attorney, spouse, and representative of Defendants, and shall, if further Ordered by the Court, provide the Commission with a sworn statement that Defendants have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

#### **XI. SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including transmission by facsimile or electronic mail message, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

#### **XII. CONSUMER CREDIT REPORTS**

**IT IS FURTHER ORDERED** that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any Defendant to the Commission.

#### **XIII. EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that, notwithstanding the provisions of Fed. R. Civ. P. 26(d) and (f), the parties may seek discovery from any source at any time after entry of this Order. Defendant Brian McDaid does not waive his right to assert, in good faith, the Fifth Amendment privilege or his right or duty to assert, in good faith, the attorney-client privilege in response to any discovery request.

#### **XIV. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all purposes.

**STIPULATED AND AGREED TO BY:**

FOR THE PLAINTIFF:

FOR THE DEFENDANTS:

  
\_\_\_\_\_  
Dated 8/27/2007

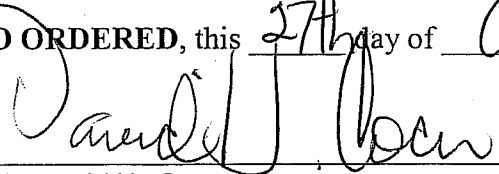
Steven M. Wernikoff  
Marissa J. Reich  
Federal Trade Commission  
55 W. Monroe St., #1825  
Chicago, IL 60603  
(312) 960-5634 [Telephone]  
(312) 960-5600 [Facsimile]

  
\_\_\_\_\_  
Dated 8/27/2007

Joseph P. Green, Jr.  
Law Offices of Duffy & Green  
Ten North Church St., Suite 307  
West Chester, PA 19380-3059  
(610) 692-0500 [Telephone]  
(610) 430-6668 [Facsimile]

Matthew D. Tanner  
Tanner & Lehman LLC  
53 W. Jackson Blvd., Suite 400  
Chicago, IL 60604  
(312) 588-1970 [Telephone]  
(312) 294-6499 [Facsimile]

IT IS SO ORDERED, this 27<sup>th</sup> day of August, 2007

  
\_\_\_\_\_  
Honorable David H. Coar  
United States District Court Judge