

1 Inc., Eddie Mishan, Tony Hoffman Productions, Inc., Anthony Hoffman, Dr. Mark
2 Buchfuhrer (“Defendants”), and Jeffrey Mishan, Steven Mishan, Al Mishan, Isaac
3 Mishan, and Morris Mishan as relief defendants (“Relief Defendants”) pursuant to
4 Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §
5 53(b), alleging violations of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45
6 and 52. Wellquest International, Inc., Eddie Mishan, Tony Hoffman Productions,
7 Inc., Anthony Hoffman and the Relief Defendants agree to the entry of the
8 following Stipulated Final Order for Permanent Injunction and Settlement of Claims
9 for Monetary Relief (“Order”) to resolve the allegations set forth in the complaint.

10 The Court, being advised in the premises, finds:

11
12 **FINDINGS**

- 13 a. By entry into this Stipulation, the Defendants do not admit to the allegations
14 of the Complaint, other than the jurisdictional facts.
- 15 b. Defendants waive all rights to seek judicial review or otherwise challenge or
16 contest the validity of this Order. Defendants also waive any claims that they
17 may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412,
18 concerning the prosecution of this action to the date of this Order.
- 19 c. This Court has jurisdiction over the subject matter of this case and
20 jurisdiction over all parties. Venue in the Central District of California is
21 proper.
- 22 d. The Complaint states a claim upon which relief can be granted, and the
23 Commission has the authority to seek the relief it has requested.
- 24 e. The activities of Defendants are in or affecting commerce, as defined in 15
25 U.S.C. § 44.
- 26 f. This action and the relief awarded herein are in addition to, and not in lieu of,

1 other remedies as may be provided by law.

2 g. Entry of this Order is in the public interest.

3
4 **DEFINITIONS**

5 For purposes of this Order, the following definitions shall apply:

6 5. Unless otherwise specified, “Defendants” shall mean:

7 a. Wellquest International, Inc. (“Wellquest”), a corporation, its divisions
8 and subsidiaries, its successors and assigns and its officers, agents,
9 representatives and employees;

10 b. Eddie Mishan (“Mishan”), individually and in his capacity as a director
11 or officer of Wellquest;

12 c. Tony Hoffman Enterprises, Inc. (“THPI”), a corporation, its divisions
13 and subsidiaries, its successors and assigns, and its officers, agents,
14 representatives and employees; and

15 d. Anthony Hoffman (“Hoffman”), individually and in his capacity as a
16 director or officer of THPI;

17 separately and in any combination with each other.

18 6. “Relief Defendants” shall mean Jeffrey Mishan, Steven Mishan, Al Mishan,
19 Isaac Mishan, and Morris Mishan.

20 7. “Bloussant” shall mean the “Bloussant Breast Enhancement Herbal
21 Supplement” and any other product containing one or more of the
22 ingredients in the current product that is promoted for breast enhancement.

23 8. “EnerX” shall mean the “EnerX Male Performance Booster” and any other
24 product containing yohimbine, yohimbe bark extract, or yohimbe bark, from
25 any source, that is promoted as a male performance stimulant or treatment
26 for erectile dysfunction.

- 1 9. “D-Snore” shall mean the “D-Snore Natural Dietary Supplement” and any
2 other product containing one or more of the ingredients in the current
3 product that is promoted as a remedy for snoring or the sound of snoring.
- 4 10. “Competent and reliable scientific evidence” shall mean tests, analyses,
5 research, studies, or other evidence based on the expertise of professionals
6 in the relevant area, that has been conducted and evaluated in an objective
7 manner by persons qualified to do so, using procedures generally accepted
8 in the profession to yield accurate and reliable results.
- 9 11. “Food,” “drug,” and “cosmetic,” shall have the meaning defined in Section
10 15 of the FTC Act, 15 U.S.C. § 55.
- 11 12. “Covered product or service” shall mean any dietary supplement, food,
12 drug, or cosmetic, or any service purporting to provide weight loss benefits.
- 13 13. “Commerce” shall have the meaning defined in Section 4 of the Federal
14 Trade Commission Act, 15 U.S.C. § 44.
- 15 14. “Billing information” shall mean any data that enables an entity to charge a
16 consumer’s account, such as a credit card, checking, savings, share or
17 similar account, utility bill, mortgage loan account, or debit card.
- 18 15. “Charge” shall mean any amount charged or debited to a consumer’s credit
19 card, checking, savings, share or similar account, utility bill, telephone bill,
20 mortgage loan account, debit card, or any similar form of collecting money
21 from a consumer.
- 22 16. “Free-to-pay conversion” shall mean, in an offer or agreement to sell or
23 provide any goods or services, a provision under which a customer receives
24 a product or service for free for an initial period and will incur an obligation
25 to pay for the product or service if the customer does not take affirmative
26 action to cancel before the end of that period.

1 17. “Negative option” shall mean, in an offer or agreement to sell or provide any
2 goods or services, a provision under which the consumer’s silence or failure
3 to reject goods or services or to cancel the agreement is interpreted by the
4 seller or provider as acceptance or continuing acceptance of the goods or
5 services. Agreements with negative option features include, but are not
6 limited to: (i) free-to-pay conversion plans; (ii) continuity plans in which,
7 subsequent to the consumer’s agreement to the plan, the seller or provider
8 automatically ships goods to a consumer unless the consumer notifies the
9 seller or provider within a certain time not to ship the goods; and (iii)
10 automatic renewal plans in which the seller automatically renews the
11 agreement and charges the consumer unless the consumer cancels before the
12 seller renews the agreement.

13 18. “Preacquired account information” shall mean any information that enables
14 Defendants, or any agent acting on behalf of one or more of them, to cause a
15 charge to be placed against a consumer’s account without obtaining the
16 account number directly from the consumer during the telemarketing
17 transaction pursuant to which the account will be charged.

18 19. “Telemarketing” shall mean any business activity (which includes, but is not
19 limited to, initiating or receiving telephone calls, managing or contracting with
20 others who initiate or receive telephone calls, operating an enterprise that
21 initiates or receives telephone calls, owning an enterprise that initiates or
22 receives telephone calls, or otherwise participating as an officer, director,
23 employee or independent contractor in an enterprise that initiates or receives
24 telephone calls) that involves attempts to induce consumers to purchase any
25 item, good, or service, or to enter a contest for a prize, by means of
26 telephone sales presentations, either exclusively or in conjunction with the
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1 use of other forms of marketing; *provided* that the term “telemarketing” does
2 not include transactions that are not completed until after a face-to-face
3 contact between the seller or solicitor and the consumers solicited; *provided*
4 *further* that for purposes of Part IX of this Order (requiring compliance with
5 the Telemarketing Sales Rule, or “TSR”), the definition of telemarketing shall
6 be consistent with the definition set forth in the TSR, 16 C.F.R. Part 310,
7 (effective as of March 30, 2003, and as it may be amended).

8 20. “Upselling” shall mean soliciting the purchase of other goods or services
9 following an initial transaction during a single telephone call and includes
10 external upsells and internal upsells. The upsell is a separate telemarketing
11 transaction, not a continuation of the initial transaction. An “external upsell”
12 is a solicitation made by or on behalf of a seller different from the seller in the
13 initial transaction, regardless of whether the initial transaction and the
14 subsequent transaction are made by the same telemarketer. An “internal
15 upsell” is a solicitation made by or on behalf of the same seller as in the initial
16 transaction, regardless of whether the initial transaction and subsequent
17 solicitation are made by the same telemarketer.

18 21. "Clear(ly) and prominent(ly)" shall mean as follows:

- 19 a. In an advertisement communicated through an electronic medium,
20 (such as television, video, radio, and interactive media including the
21 Internet and online services), the disclosure shall be presented
22 simultaneously in both the audio and video portions of the
23 advertisement. *Provided, however*, that in any advertisement
24 presented solely through video or audio means, the disclosure may be
25 made through the same means in which the ad is presented. The audio
26 disclosure shall be delivered in a volume and cadence sufficient for an
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1 ordinary consumer to hear and comprehend it. The video disclosure
2 shall be of a size and shade, and shall appear on the screen for a
3 duration, sufficient for an ordinary consumer to read and comprehend
4 it. In addition to the foregoing, in interactive media the disclosure shall
5 also be unavoidable and shall be presented prior to the consumer
6 incurring any financial obligation.

7 b. In a print advertisement, promotional material, or instructional manual,
8 the disclosure shall be in a type size and location sufficiently
9 noticeable for an ordinary consumer to read and comprehend it, in
10 print that contrasts with the background against which it appears. In
11 multi-page documents, the disclosure shall appear on the cover page
12 or first page.

13 c. On a product label, the disclosure shall be in a type-size and location
14 sufficiently noticeable for an ordinary consumer to read and
15 comprehend it and in print that contrasts with the background against
16 which it appears. *Provided*, that if a disclosure on a bottle label or
17 package label is made in a location other than the principal display
18 panel, the bottle label or package label shall: (i) include the statement,
19 "**See important warning on [insert disclosure location]**," in a type-
20 size and location on the principal display panel sufficiently noticeable
21 for an ordinary consumer to read and comprehend it and in print that
22 contrasts with the background against which it appears; and (ii) place
23 the disclosure on the bottle label and, if applicable, the package label,
24 within a border that is a color or shade that contrasts with the
25 background against which it appears. *Provided further*, that, in a
26 multi-page package insert, the disclosure shall appear on the cover
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1 page or first page.

2 Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall
3 be used in any advertisement or on any label.

4 22. The term “including” in this Order shall mean “including, without limitation.”

5
6 **XXIII CLAIMS FOR BLOUSSANT**

7 IT IS HEREBY ORDERED that Defendants, directly or through any
8 corporation, subsidiary, division, or other device, and their officers, agents,
9 servants, employees and all persons or entities in active concert or participation
10 with them who receive actual notice of this Order, by personal service or otherwise,
11 in connection with the manufacturing, labeling, advertising, promotion, offering for
12 sale, sale, or distribution of Bloussant, are hereby permanently restrained and
13 enjoined from making any representation, in any manner, expressly or by
14 implication, including through the use of endorsements:

- 15 A. That Bloussant works by stimulating breast cells to regenerate the
16 growth process;
- 17 B. That Bloussant enlarges the breast by two cup sizes in most women;
- 18 C. That Bloussant firms the breast; and
- 19 D. That after optimum breast size is achieved, some women will maintain
20 their increased breast size without continued use of Bloussant; and the
21 remainder of women will maintain the increase in size by taking
22 Bloussant two or three times a week;

23 unless, at the time it is made, they possess and rely upon competent and reliable
24 scientific evidence that substantiates the representation.

1 **XXIV CLAIMS FOR D-SNORE**

2 IT IS HEREBY ORDERED that Defendants Wellquest and Mishan, directly
3 or through any corporation, subsidiary, division, or other device, and their officers,
4 agents, servants, employees and all persons or entities in active concert or
5 participation with them who receive actual notice of this Order, by personal service
6 or otherwise, in connection with the manufacturing, labeling, advertising,
7 promotion, offering for sale, sale, or distribution of D-Snore, are hereby
8 permanently restrained and enjoined from making any representation, in any
9 manner, expressly or by implication, including through the use of endorsements:

- 10 A. That D-Snore significantly reduces or eliminates snoring or the sound
11 of snoring in users of the product;
- 12 B. That a single application of D-Snore significantly reduces or eliminates
13 snoring or the sound of snoring for eight hours; and
- 14 C. That D-Snore can eliminate, reduce, or mitigate the symptoms of sleep
15 apnea including daytime tiredness and frequent interruptions of deep
16 restorative sleep;

17 unless, at the time it is made, they possess and rely upon competent and reliable
18 scientific evidence that substantiates the representation.

19
20 **XXV DISCLOSURES ABOUT SLEEP APNEA**

21 IT IS FURTHER ORDERED that Defendants Wellquest and Mishan,
22 directly or through any corporation, subsidiary, division, or other device, and their
23 officers, agents, servants, employees and all persons or entities in active concert or
24 participation with them who receive actual notice of this Order, by personal service
25 or otherwise, in connection with the manufacturing, labeling, advertising,
26 promotion, offering for sale, sale, or distribution of any covered product or service

1 that has not been shown by competent and reliable scientific evidence to be
2 effective in the treatment of sleep apnea, in or affecting commerce, shall not
3 represent, in any manner, expressly or by implication, including through the use of
4 endorsements, that the product or service is effective in reducing or eliminating
5 snoring or the sounds of snoring, unless they disclose, clearly and prominently, and
6 in close proximity to the representation, that such product or service is not intended
7 to treat sleep apnea, that the symptoms of sleep apnea include loud snoring,
8 frequent episodes of totally obstructed breathing during sleep, and excessive
9 daytime sleepiness, that sleep apnea is a potentially life-threatening condition, and
10 that persons who have symptoms of sleep apnea should consult their physician or a
11 specialist in sleep medicine. *Provided, however,* that for any television commercial
12 or other video advertisement fifteen (15) minutes in length or longer or intended to
13 fill a broadcasting or cablecasting time slot fifteen (15) minutes in length or longer,
14 the disclosure shall be made within the first thirty (30) seconds of the advertisement
15 and immediately before each presentation of ordering instructions for the product.
16 *Provided further,* that, for the purposes of this provision, the presentation of a
17 telephone number, e-mail address, or mailing address for listeners to contact for
18 further information or to place an order for the product shall be deemed a
19 presentation of ordering instructions so as to require the announcement of the
20 disclosure provided herein.

21
22 **XXVICLAIMS FOR ENERX**

23 IT IS FURTHER ORDERED that Defendants, directly or through any
24 corporation, subsidiary, division, or other device, and their officers, agents,
25 servants, employees and all persons or entities in active concert or participation
26 with them who receive actual notice of this Order, by personal service or otherwise,
27 in connection with the manufacturing, labeling, advertising, promotion, offering for
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1 sale, sale, or distribution of EnerX, are hereby permanently restrained and enjoined
2 from:

- 3 A. Making any misrepresentation, directly or by implication, in any
4 manner, including through the use of endorsements, that EnerX has no
5 harmful side effects; and
- 6 B. Making any representation, directly or by implication, in any manner,
7 including through the use of endorsements, that EnerX is safe, unless,
8 at the time it is made, they possess and rely upon competent and
9 reliable scientific evidence that substantiates the representation;

10 *Provided* that, in any advertisement, promotional material, or product label for
11 EnerX that contains any representation about the efficacy, benefits, performance,
12 safety, and side effects of such product, Defendants, their officers, agents,
13 servants, employees and attorneys, and all other persons or entities in active
14 concert or participation with them who receive actual notice of this Order by
15 personal service or otherwise, shall make, clearly and prominently, the following
16 disclosure:

17 **WARNING:** This product can raise blood pressure and
18 interfere with other drugs you may be taking. Talk to your
19 doctor before taking this product.

20 unless Defendants possess competent and reliable scientific evidence that the
21 advertised product is safe and produces no adverse side effects.

22
23 **XXVII CLAIMS FOR COVERED PRODUCTS AND SERVICES**

24 IT IS FURTHER ORDERED that Defendants, directly or through any
25 corporation, subsidiary, division, or other device, and their officers, agents,
26 servants, employees and all persons or entities in active concert or participation
27 with them who receive actual notice of this Order, by personal service or otherwise,
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1 in connection with the manufacturing, labeling, advertising, promotion, offering for
2 sale, sale, or distribution of any covered product or service, are hereby permanently
3 restrained and enjoined from making any representation, in any manner, expressly
4 or by implication, including through the use of endorsements, about the benefits,
5 performance, efficacy, safety, or side effects, of any covered product or service
6 unless, at the time the representation is made, they possess and rely upon
7 competent and reliable scientific evidence that substantiates the representation.

8
9 **XXVIII REPRESENTATIONS ABOUT TESTS**

10 IT IS FURTHER ORDERED that Defendants, directly or through any
11 corporation, subsidiary, division, or other device, and their officers, agents,
12 servants, employees and all persons or entities in active concert or participation
13 with them who receive actual notice of this Order, by personal service or otherwise,
14 in connection with the manufacturing, labeling, advertising, promotion, offering for
15 sale, sale, or distribution of any covered product or service, are hereby permanently
16 restrained and enjoined from misrepresenting, in any manner, expressly or by
17 implication, the existence, contents, validity, results, conclusions, or interpretations
18 of any test, study, or research.

19
20 **XXIX FDA APPROVED CLAIMS**

21 IT IS FURTHER ORDERED that:

- 22 A. Nothing in this Order shall prohibit Defendants from making any
23 representation for any drug that is permitted in labeling for such drug
24 under any tentative final or final standard promulgated by the Food
25 and Drug Administration, or under any new drug application approved
26 by the Food and Drug Administration; and
27 B. Nothing in this Order shall prohibit Defendants from making any

1 representation for any product that is specifically permitted in labeling
2 for such product by regulations promulgated by the Food and Drug
3 Administration pursuant to the Nutrition Labeling and Education Act
4 of 1990.

5
6 **VIII REFUND TERM CLAIMS**

7 IT IS FURTHER ORDERED that Defendants, directly or through any
8 corporation, subsidiary, division, or other device, and their officers, agents,
9 servants, employees and all persons or entities in active concert or participation
10 with them who receive actual notice of this Order, by personal service or otherwise,
11 in connection with the advertising, promotion, offering for sale, sale, or distribution
12 of any covered product or service in or affecting commerce, are hereby
13 permanently restrained and enjoined from:

- 14 A. Misrepresenting, expressly or by implication, that any entity will refund
15 costs associated with purchasing, or any other material aspect or
16 conditions of any entity's refund policy, including, but not limited to,
17 failing to disclose any material condition, qualification, requirement, or
18 limitation to a refund; and
19 B. Failing to honor a request for a money-back refund consistent with the
20 terms advertised by the Defendants.

21
22 **IX TELEMARKETING SALES RULE**

23 IT IS FURTHER ORDERED that Defendants, directly or through any
24 corporation, subsidiary, division, or other device, and their officers, agents,
25 servants, employees and all persons or entities in active concert or participation
26 with them who receive actual notice of this Order, by personal service or otherwise,
27 each are hereby permanently restrained and enjoined from violating any provision of

1 each are hereby permanently restrained and enjoined:

2 A. In connection with the telemarketing of any product or service
3 pursuant to an offer or agreement with a free-to-pay conversion,
4 making any representation, expressly or by implication, that a good or
5 service is offered with “no obligation,” or words of similar import,
6 denoting or implying the absence of any obligation on the part of the
7 recipient of the offer to affirmatively act in order to avoid charges if, in
8 fact, a charge will be submitted for payment at the end of a trial period
9 unless the consumer takes an affirmative action to cancel;

10 B. In connection with the telemarketing of any product or service
11 pursuant to an offer or agreement with a negative option feature,
12 directly or indirectly causing billing information to be submitted for
13 payment, or collecting or attempting to collect, without the
14 consumer’s express informed consent. *Provided*, that to obtain the
15 consumer’s express informed consent, the Defendants must clearly
16 and conspicuously disclose, before the consumer consents to any
17 such purchase, all material terms and conditions of the negative option
18 feature, including but not limited to, the fact that the consumer’s
19 account will be charged unless the consumer takes an affirmative
20 action to avoid the charge(s); the date the initial charge, and the
21 frequency or time period that subsequent charges, will be submitted
22 for payment; the total cost of the initial charge; the total cost, or range
23 of costs, for of each subsequent charge; and the specific steps the
24 consumer must take to avoid the charge(s).

1 that exceeds the debt secured and that it is not encumbered. The
2 Federal Trade Commission is permitted to perfect a security interest in
3 such collateral as permitted by law. In the event such security interest
4 is found to be defective, after reasonable notice, Defendants Wellquest
5 and Mishan and Relief Defendants agree to cooperate with the Federal
6 Trade Commission to cure any deficiencies in perfecting said security
7 interest. Defendants Wellquest and Mishan and Relief Defendants
8 agree that they shall not encumber the security without the express
9 prior written permission of the staff of the Federal Trade Commission.
10 The Federal Trade Commission agrees to release said security interest
11 upon full payment of the judgment.

12 D. In the event of any default on any obligation to make payment under
13 this Order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall
14 accrue from the date of default to the date of payment. In the event
15 such default continues for ten (10) calendar days beyond the date a
16 payment is due, the entire unpaid amount shall immediately become
17 due and payable. Defendants Wellquest and Mishan and Relief
18 Defendants shall be jointly and severally liable for all payments
19 required by this Order and any interest on such payments.

20 E. All funds paid pursuant to this Order shall be deposited into a fund
21 administered by the Commission or its agent to be used for equitable
22 relief, including but not limited to consumer redress or one or more of
23 the products or services set forth in the Complaint, and any attendant
24 expenses for the administration of such equitable relief. In the event
25 that direct redress to consumers is wholly or partially impracticable, or
26 funds remain after redress is completed, the Commission may apply
27 any remaining funds for such other equitable relief (including
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1 consumer information remedies) as it determines to be reasonably
2 related to the Defendants' practices alleged in the complaint. Any
3 funds not used for such equitable relief shall be deposited to the
4 United States Treasury as disgorgement. Defendants shall have no
5 right to challenge the Commission's choice of remedies under this
6 Paragraph. Defendants shall have no right to contest the manner of
7 distribution chosen by the Commission. No portion of any payments
8 under the judgement herein shall be deemed a payment of any fine,
9 penalty, or punitive assessment.

10 F. Defendants and Relief Defendants relinquish all dominion, control and
11 title to the funds paid to the Commission, and all legal and equitable
12 title to the funds. Defendants and Relief Defendants shall make no
13 claim to or demand for the return of the funds, directly or indirectly,
14 through counsel or otherwise; and in the event of bankruptcy of any
15 Defendant or Relief Defendant, Defendants and Relief Defendants
16 acknowledge that the funds are not part of the debtor's estate, nor
17 does the estate have any claim or interest therein.

18 G. In accordance with 31 U.S.C. § 7701, Defendants and Relief
19 Defendants are hereby required, unless they have done so already, to
20 furnish to the FTC their taxpayer identifying number and/or social
21 security number, which shall be used for purposes of collecting and
22 reporting on any delinquent amount arising out of Defendants' and
23 Relief Defendants' relationship with the government.

24 H. Defendants shall provide their complete customer lists for Bloussant,
25 DSnore, and EnerX to the Commission within thirty (30) days of the
26 date of entry of this Order. The customer lists shall be in a searchable
27 electronic format and shall include the names and addresses of all
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1 purchasers of the three products, the number of each product
2 purchased, the date of purchase, the number of times each consumer
3 made a repeat purchase, and the date and dollar amount of any refund
4 to the consumer, to the extent such information is contained in the
5 files.

- 6 I. Defendants also shall, within ten (10) days following a written request
7 by a representative of the Commission, provide copies of all recorded
8 consumer complaints with regard to Bloussant, D-Snore, or EnerX,
9 received by them on or after January 1, 1999, and all responses
10 thereto.

11
12 **XII RIGHT TO REOPEN**

13 IT IS FURTHER ORDERED that:

- 14 A. The Commission's agreement to this Order, requiring that the
15 Defendants and the Relief Defendants be liable for less than the full
16 amount of consumer injury, is expressly premised on the truthfulness,
17 accuracy, and completeness of their sworn financial statements and
18 supporting documents submitted to the Commission, namely:

- 19 1. With regard to Defendants Wellquest, Mishan, and the Relief
20 Defendants, the February 6, 2003 letter from Counsel for
21 Defendants, Linda A. Goldstein, including the financial
22 disclosures, Statements of Financial Condition, U.S. Income
23 Tax Returns and the New York S Corporation Franchise Tax
24 Returns attached thereto; and the letter from Counsel for
25 Defendants, Linda A. Goldstein submitted on March 5, 2003,
26 and attachments thereto; and
27 2. With regard to Defendants THPI and Hoffman, the May 12,

1 2003 letter from Counsel for Defendants, Charulata B. Pagar,
2 including the Financial Statement of Corporate Defendant Tony
3 Hoffman Productions, Inc. and attachments thereto.

4 Such financial statements and supporting documents contain material
5 information upon which the Commission relied in negotiating and
6 agreeing to this Order.

7 B. If, upon motion by the Commission, this Court finds that:

- 8 1. Defendants Wellquest, Mishan, or the Relief Defendants have
9 failed to disclose any material asset, or made any other material
10 misrepresentation or omission in the above-referenced financial
11 statements and related documents described in Paragraph A1,
12 above, the Court shall enter judgment against Defendants
13 Wellquest, Mishan, and the Relief Defendants, jointly and
14 severally, in the amount of Twenty Million Dollars (\$20,000,000)
15 in U.S. currency, minus any payments previously made under
16 Part XI, which amount would be rendered immediately due and
17 payable; or
- 18 2. Defendants THPI and Hoffman have failed to disclose any
19 material asset, or made any other material misrepresentation or
20 omission in the above-referenced financial statements and
21 related documents described in Paragraph A2, above, the Court
22 shall enter judgment against Defendants THPI and Hoffman,
23 jointly and severally, in the amount of Nine Hundred and Two
24 Thousand Dollars (\$902,000) in U.S. currency, minus any
25 payments previously made under Part XI, which amount would
26 be rendered immediately due and payable.

27 Interest computed at the rate prescribed in 28 U.S.C. § 1961 shall

1 immediately begin to accrue on the balance. For the purposes of this
2 Part XII and any subsequent proceedings to enforce payment, the
3 Defendants waive any right to contest any of the allegations in the
4 Complaint filed in this action. *Provided however*, that in all other
5 respects this Stipulated Final Order shall remain in full force and effect
6 unless otherwise ordered by the Court; and *provided further*, that
7 proceedings instituted under this Paragraph XII are in addition to, and
8 not in lieu of, any other civil or criminal remedies that may be provided
9 by law, including any other proceedings the Commission may initiate
10 to enforce this Order.

11 **XIII NOTIFICATION TO COMMISSION**

12 IT IS FURTHER STIPULATED AND ORDERED a requirement in this
13 Order that any Defendant “notify the Commission” shall mean that the Defendant
14 shall send the necessary information via first-class mail, costs prepaid, to the
15 Associate Director for Advertising Practices, Federal Trade Commission, 600
16 Pennsylvania Ave., N.W., Washington, D.C. 20580. Attn: FTC v. Wellquest
17 International, Inc. et al., (C.D. Cal.).

18 **XIV ACKNOWLEDGMENT OF RECEIPT OF ORDER**

19
20 IT IS FURTHER STIPULATED AND ORDERED that, within five (5)
21 business days after receipt by Defendants and Relief Defendants of this Order as
22 entered by the Court, Defendant Mishan, individually and on behalf of Defendant
23 Wellquest; Defendant Hoffman, individually and on behalf of Defendant THPI; and
24 each of the Relief Defendants, individually, shall execute and submit to the
25 Commission a truthful sworn statement, in the form shown on Appendix A, that
26 shall acknowledge receipt of this Order.
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2 **XV DISTRIBUTION OF ORDER**

3 IT IS FURTHER ORDERED that:

4 A. For a period of five (5) years from the date of entry of this Order,
5 Defendants Wellquest and THPI, and any business where (1)
6 Defendants Mishan or Hoffman is the majority owner of the business,
7 or directly or indirectly manages or controls the business, and (2) the
8 business is engaged in the advertising, marketing, promotion, offering
9 for sale, distribution, or sale of any covered product or service, shall
10 deliver a copy of this Order to all officers, directors, and all
11 individuals employed by them serving in a management capacity, and
12 must deliver a Summary of Parts I through X of this Order, agreed
13 upon by Plaintiff's Counsel, to all sales and sales verification
14 personnel and all personnel involved in responding to consumer
15 complaints or inquiries (whether such persons are designated as
16 employees, consultants, independent contractors, or otherwise) for
17 goods or services subject to this Order and must secure from each
18 such person a signed and dated statement acknowledging receipt of
19 the Order or Summary, as applicable. This Order must be delivered to
20 current personnel within thirty (30) days after the date of service of
21 this Order and to future personnel within thirty (30) days after the
22 person assumes such position or responsibilities.

23 B. For a period of five (5) years from the date of entry of this Order,
24 Defendants Mishan and Hoffman shall deliver a Summary of Parts IX
25 and X of this Order, agreed upon by Plaintiff's Counsel, to (1) any
26 business engaged in telemarketing, as defined in Definition 15, above,
27 if it includes negative option features, or telemarketing, as defined in
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1 the TSR, where (2) Defendant Mishan or Hoffman (a) is the majority
2 owner, (b) directly or indirectly manages or controls the business, or
3 (c) is employed by the business. Defendants Mishan and Hoffman
4 shall obtain a signed and dated acknowledgment of receipt of the
5 Summary from such business.

6 C. Defendants shall maintain for a period of three (3) years after creation,
7 and upon reasonable notice make available to representatives of the
8 Commission, the original signed and dated acknowledgments of the
9 receipt of copies of this Order, as required in Paragraphs A and B
10 above.

11
12 **XVI COMMISSION'S AUTHORITY TO MONITOR**
13 **COMPLIANCE**

14 IT IS FURTHER ORDERED that the Commission is authorized to monitor
15 Defendants' compliance with this Order by all lawful means, including but not
16 limited to the following:

- 17 A. The Commission is authorized, without further leave of court, to
18 obtain discovery from any person in the manner provided by Chapter
19 V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37,
20 including the use of compulsory process pursuant to Fed. R. Civ. P.
21 45, for the purpose of monitoring and investigating Defendants'
22 compliance with any provision of this Order;
- 23 B. The Commission is authorized to use representatives posing as
24 consumers and suppliers to Defendants, Defendants' employees, or
25 any other entity managed or controlled in whole or in part by
26 Defendants, without the necessity of identification or prior notice; and
- 27 C. Nothing in this Order shall limit the Commission's lawful use of

1 compulsory process, pursuant to Sections 9 and 20 of the FTC Act,
2 15 U.S.C. §§ 49, 57b-1, to investigate whether Defendants have
3 violated any provision of this Order or Section 5 or 12 of the FTC
4 Act, 15 U.S.C. §§ 45, 52.

5
6 **XVII COMPLIANCE REPORTING**

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

9 A. For a period of three (3) years from the date of entry of this Order,
10 each individual Defendant shall notify the Commission of the
11 following:

- 12 1. Any changes in his residence, mailing addresses, and telephone
13 numbers, within ten (10) days of the date of such change; and
- 14 2. Any changes in his employment status (including self-
15 employment) within ten (10) days of such change. Such notice
16 shall include the name and address of each business that
17 Defendant is employed or hired as a consultant or independent
18 contractor for personal services in his individual capacity, a
19 statement of the nature of the business, and a statement of
20 Defendant's duties and responsibilities in connection with the
21 business or employment.

22 B. For a period of three (3) years from the date of entry of this Order,
23 Defendants Wellquest and THPI each shall notify the Commission of
24 any proposed change in its structure, such as creation, incorporation,
25 dissolution, assignment, sale, creation or dissolution of subsidiaries, or
26 any other change that may affect compliance obligations arising out of
27 this Order, thirty (30) days prior to the effective date of any proposed
28

1 change; *provided, however*, that, with respect to any proposed change
2 in the corporation about which a Defendant learns less than thirty (30)
3 days prior to the date such action is to take place, it shall notify the
4 Commission as soon as is practicable after obtaining such knowledge.
5

6 C. Ninety (90) days after the date of entry of this Order, Defendants shall
7 provide a written report to the FTC, sworn to under penalty of
8 perjury, setting forth in detail the manner and form in which they have
9 complied and are complying with this Order. This report shall include
10 but not be limited to:

- 11 1. The individual Defendants' then current residence addresses
12 and telephone numbers;
- 13 2. The individual Defendants' then current employment, business
14 addresses, and telephone numbers, a description of the business
15 activities of each such employer, and the Defendants' title and
16 responsibilities for each employer;
- 17 3. For Defendants Wellquest and THPI, their then current business
18 addresses, telephone numbers, a description of their business
19 activities, and identification of all products that they advertise or
20 sell;
- 21 4. A copy of each acknowledgment of receipt of this Order
22 obtained by Defendants pursuant to Part XV; and
- 23 5. A statement describing the manner in which Defendants have
24 complied and are complying with Parts I through XII.

25 D. Upon written request by a representative of the Commission,
26 Defendants shall submit additional written reports (under oath, if
27 requested) and produce documents on thirty (30) days' notice with
28

1 respect to any conduct subject to this Order.

2 E. For purposes of the compliance reporting required by this Part, if any
3 Defendant is no longer represented by Hall Dickler Kent Goldstein &
4 Wood, the Commission is authorized to communicate directly with
5 that Defendant.

6
7 **XVIII RECORD KEEPING PROVISIONS**

8 IT IS FURTHER ORDERED that, for a period of six (6) years from the
9 date of entry of this Order, Defendants Wellquest and THPI and any business
10 where (1) individual Defendants Mishan or Hoffman is the majority owner or an
11 officer or director of the business, or directly or indirectly manages or controls the
12 business and where (2) the business engages in telemarketing, as defined in
13 Definition 15, above, if it includes negative option features; or telemarketing, as
14 defined in the TSR; or the advertising, marketing, promotion, offering for sale,
15 distribution or sale of any covered product or service; and their agents, employees,
16 officers, corporations, successors, and assigns, and those persons in active
17 concert or participation with them who receive actual notice of this Order by
18 personal service or otherwise, are hereby restrained and enjoined from failing to
19 create and retain, unless otherwise specified:

- 20 A. Accounting records that reflect the cost of goods or services sold,
21 revenues generated, and disbursement of such revenues;
- 22 B. Personnel records accurately reflecting: the name, address, and
23 telephone number of each person employed in any capacity by such
24 business, including as an independent contractor; that person's job
25 title or position; the date upon which the person commenced work;
26 and the date and reason for the person's termination, if applicable;
- 27 C. Customer files containing the names, addresses, telephone numbers,

1 dollar amounts paid, quantity of items or services purchased, and
2 description of items or services purchased, to the extent such
3 information is obtained in the ordinary course of business;

4 D. Records accurately reflecting all consumer complaints and refund
5 requests (whether received directly, indirectly, or through any third
6 party), including the date of the complaint, the name, address, and
7 other contact information provided by the consumer, and the
8 substance of the complaint, and any responses to those complaints or
9 requests;

10 E. Copies of all advertisements, promotional materials, sales scripts,
11 training materials, or other marketing materials utilized in the
12 advertising, marketing, promotion, offering for sale, distribution or sale
13 of any covered product or service, to the extent such information is
14 prepared in the ordinary course of business;

15 F. All materials that were relied upon in making any representations
16 contained in the materials identified in Paragraph E above, including all
17 documents evidencing or referring to the accuracy of any claim therein
18 or to the efficacy of any covered product or service, including, but not
19 limited to, all tests, reports, studies, demonstrations, or other evidence
20 that confirm, contradict, qualify, or call into question the accuracy or
21 efficacy of such covered product or service; and

22 G. Records accurately reflecting the name, address, and telephone
23 number of each manufacturer or laboratory engaged in the
24 development or creation of any testing obtained for the purpose of
25 advertising, marketing, promoting, offering for sale, distributing, or
26 selling any covered product or service.

XIX RETENTION OF JURISDICTION

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

SO STIPULATED:

JANET M. EVANS
LEMUEL DOWDY
JOCK CHUNG
JILL F. DASH
Federal Trade Commission
600 Pennsylvania Ave., N.W.,
NJ-3126
Washington, D.C. 20580
(202) 326-2125
(202) 326-3259 (facsimile)
Attorneys for Plaintiff

WELLQUEST INTERNATIONAL, INC.
By: Eddie Mishan, President

EDDIE MISHAN, individually and as an officer
or director of Wellquest International, Inc.

TONY HOFFMAN PRODUCTIONS, Inc.
By: Anthony Hoffman, President

ANTHONY HOFFMAN, individually
and as an officer or director of Tony Hoffman
Productions, Inc.

JEFFREY MISHAN, Relief Defendant

STEVEN MISHAN, Relief Defendant

AL MISHAN, Relief Defendant

ISAAC MISHAN, Relief Defendant

MORRIS MISHAN, Relief Defendant

LINDA GOLDSTEIN
Hall Dickler Kent Goldstein & Wood
909 Third Avenue
New York, New York 10022-4731
(212) 339-5400
Attorney for Defendants

SO ORDERED:

UNITED STATES DISTRICT JUDGE Date

1
2 **APPENDIX A**
3 **UNITED STATES DISTRICT COURT**
4 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
5 **WESTERN DIVISION**

6 FEDERAL TRADE COMMISSION,)

7 Plaintiff,)

8 v.)

Hon.

Civil Action No.

9 WELLQUEST INTERNATIONAL, INC.,)

AFFIDAVIT OF DEFENDANT

10 EDDIE MISHAN, TONY HOFFMAN)

11 PRODUCTIONS, INC., ANTHONY)

12 HOFFMAN, AND MARK J.)

13 BUCHFUHRER,)

Defendants, and)

14 JEFFREY MISHAN, STEVEN MISHAN)

15 AL MISHAN, ISAAC MISHAN, and)

16 MORRIS MISHAN,)

Relief Defendants)

17 [Defendant], being duly sworn, hereby states and affirms:

18 1. My name is _____. I am a citizen of the United
19 States and am over the age of eighteen. I have personal knowledge of the matters
20 discussed in this declaration, and if called as a witness, I could and would
21 competently testify as to the matters stated herein. I am a defendant in the above
22 captioned action.

23 2. My current business address is _____. My
24 current business telephone number is _____. My current residential
25 address is _____. My current residential telephone number is
26 _____.

27 3. On (date) _____, I received a copy of the Stipulated Final Order
28 and Settlement of Claims for Monetary Relief, which was signed by the Honorable
_____, United States District Court Judge for the Central District of

1 California. A true and correct copy of the Order that I received is appended to this
2 Affidavit.

3 4. I reaffirm and attest to the truthfulness, accuracy and completeness of
4 the financial statements that I submitted to the Federal Trade Commission on or about
5 _____.

6 I hereby declare under penalty of perjury under the laws of the United States of
7 America that the foregoing is true and correct. Executed on (date) _____, at
8 (city, state) _____, _____.

9 _____
10 _____
11 (Name of Defendant)

12 STATE OF _____
13 COUNTY OF _____

14 BEFORE ME this day personally appeared _____,
15 who being first duly sworn, deposes and says that s/he has read and understands the
16 foregoing statement and that s/he has executed the same for the purposes contained
17 therein.

18 SUBSCRIBED AND SWORN TO before me this _____ day of _____,
19 2001 by _____ . S/he is personally
20 known to me or has presented (state identification)
21 _____ as identification.

22 _____
23 _____
24 Print Name
25 NOTARY PUBLIC,
26 STATE OF
27 _____
28 Commission Number

Affix Seal

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**APPENDIX B
Promissory Note**

Date:

**One Million, Six Hundred Thousand Dollars
(\$1,600,000)**

FOR VALUE RECEIVED, the undersigned, Wellquest International, Inc., Eddie Mishan, Jeffrey Mishan, Steven Mishan, Al Mishan, Isaac Mishan, and Morris Mishan, jointly and severally, ("Makers") promise to pay to the Federal Trade Commission together with its assigns ("Holder") at such place as the Holder may designate in writing, in lawful money of the United States of America, the principal sum of One Million, Six Hundred Thousand Dollars (\$1,600,000).

This Note shall be paid in twelve installments as follows: the sum of One Hundred Thirty Three Thousand, Three Hundred Thirty-Four Dollars (\$133,334.00) shall be paid on August 1, 2003, and on the first day of each of the following ten months; and the sum of One Hundred Thirty Three Thousand, Three Hundred and Twenty-Six Dollars (\$133,326) shall be paid on July 1, 2004.

In the event of any default on any obligation to make payment under this Note, interest, computed pursuant to 28 U.S.C. §§ 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for ten (10) calendar days beyond the date the payment is due, the entire unpaid amount shall immediately become due and payable. The Makers and any endorser or guarantor hereof shall have the right to prepay this Note at any time in whole or in part without premium or penalty.

The Makers and any endorsers waive presentment, notice of dishonor and protest; and agree that any extension of the time of payment of all or any part of this Note may be made before, at, or after maturity by agreement with the Holder without notice to and without releasing the liability of any other party to this Note.

This Note is secured by the inventory of Wellquest International, Inc. identified below.

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WITNESS the following signatures and seals:

WELLQUEST INTERNATIONAL, INC.
By: Eddie Mishan, President

EDDIE MISHAN, individually

JEFFREY MISHAN, individually

STEVEN MISHAN, individually

AL MISHAN, individually

ISAAC MISHAN, individually

MORRIS MISHAN, individually

Secured Inventory consists of the following items:

Design a Nail; Super Styler; Clean Between Machine; Interdental Toothbrushes; Revo Hair Brush