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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**FEDERAL TRADE COMMISSION,**

Plaintiff,

v.

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

Defendants.

**CASE NO. 2:09-1262 (WJM)**

**STIPULATED FINAL JUDGMENT  
AND ORDER FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AS  
TO DEFENDANT V. CRAIG PAYTON**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed a Complaint for Injunctive and Other Equitable Relief against Defendants David J. Romeo, Stella Labs, LLC, Nutraceuticals International, LLC, Deborah B. Vickery, V. Craig Payton, and Zoltan Klivinyi (“Complaint”) pursuant to Section 13(b) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 53(b), alleging deceptive acts or practices and false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

The Commission and Defendant V. Craig Payton (“Defendant”) have stipulated to entry of the following agreement for permanent injunction and settlement of claims for monetary relief in settlement of the Commission’s allegations against Defendant.

The Court, having been presented with this Stipulated Final Judgment and Order for Injunctive and Other Equitable Relief as to Defendant V. Craig Payton (Order), finds as follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over Defendant. Venue in the District of New Jersey is proper.

2. The acts and practices of Defendant are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

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

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

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

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

7. The Commission and V. Craig Payton agree that the entry of this Order resolves all matters of dispute arising from the Complaint in this matter to the date of entry of this Order. This Order does not resolve any claims against

David J. Romeo, Stella Labs, LLC, Nutraceuticals International, LLC, Deborah B. Vickery, or Zoltan Klivinyi.

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

9. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding upon Defendant, and his officers, agents, servants, representatives, employees, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise.

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

11. Nothing in this Order shall be construed to limit in any respect Defendant's rights under the Fifth Amendment of the United States Constitution.

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

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

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

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

**ORDER**

**DEFINITIONS**

1. "Advertising" and "promotion" mean any written or verbal statement, illustration, or depiction designed to effect a sale or create interest in the purchasing of goods, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, packaging, package insert, label, film, slide, radio, television or cable television, audio program transmitted over a telephone system, program-length commercial ("infomercial"), the Internet, email, press release, video news release, or in any other medium.

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

3. "Covered product" shall mean:
  - a. Any dietary supplement, food, or drug;
  - b. Any vitamin, mineral, herb or other botanical, or amino acid; or
  - c. Any concentrate, metabolite, constitute, extract, or combination of any ingredient described in Paragraph 3(b).

4. "Defendant" means V. Craig Payton.

5. "Food" and "drug" mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

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

7. The term "including" in this Order means "including without limitation."

**I.**

**PROHIBITED BUSINESS ACTIVITIES**

IT IS HEREBY ORDERED that Defendant, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, is hereby permanently enjoined and restrained from manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing; or assisting others in manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing; any Covered Product, in or affecting commerce.

**II.**

**COMPLIANCE MONITORING BY THE COMMISSION**

IT IS FURTHER ORDERED that, for the purpose of monitoring and

investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control to inspect the business operation. Copies of any such notice shall be provided by the Commission to the undersigned counsel representing the Defendant or to any other counsel whose identity has been provided to the Commission.

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

1. Obtaining discovery from any person, without further leave of court, using the procedures described in Fed. R. Civ. P. 30, 31, 33, 34, 36, 45, and 69; and
2. Posing as consumers, marketers, manufacturers, suppliers, wholesalers, retailers, distributors, or other product-related entities to Defendant, his employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice; and

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

*Provided, however,* that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)), and that nothing in this Order shall limit the Defendant's lawful right to object to the use of such process in accordance with any provision of the Federal Rules of Civil Procedure.

### III.

#### COMPLIANCE REPORTING

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

- A. For a period of five (5) years from the date of entry of this Order,
  1. Defendant shall notify the Commission in writing of the following:



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

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

B. Sixty (60) days after the date of entry of this Order, and annually thereafter for a period of five (5) years, Defendant shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. Defendant's then-current residence address, mailing addresses, and telephone numbers;

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

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

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

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Attn: *FTC v. Romeo, et al.* (D. N.J), Case No. **2:09-1262 (WJM)**

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

DEBrief@ftc.gov.

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

#### IV.

#### RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendant, for any business for which he is the majority owner or directly or indirectly controls, is hereby restrained and enjoined from failing to create and retain the following records:

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

B. Customer files containing the names, addresses, telephone numbers,

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

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

D. All records and documents necessary to demonstrate full compliance with each provision of the Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections V and VII and all reports submitted to the FTC pursuant to the Section III.

**V.**

**DISTRIBUTION OF ORDER**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant shall deliver copies of the Order as directed below:

A. Defendant as Control Person: For any business that Defendant controls, directly or indirectly, or in which Defendant has a majority ownership interest, Defendant shall deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter

of this Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of Section III. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities or engaging in conduct related to the subject matter of this Order. For any business entity resulting from any change in structure set forth in Subsection A.2 of Section III, delivery shall be at least ten (10) days prior to the change in structure.

B. Defendant as employee or non-control person: For any business in which Defendant is not a controlling person of the business but otherwise engages in conduct related to the subject matter of this Order, Defendant shall deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

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

## VI.

### COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Defendant shall, in connection with this action or any subsequent investigations related to or associated with the

transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendant shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena. Nothing in this Order shall be construed as prohibiting Defendant from representation by counsel of his choice in connection with matter relating to this Section, or any other provision, of this Order.

**VII.**

**ACKNOWLEDGMENT OF RECEIPT OF ORDER**

IT IS FURTHER ORDERED that Defendant, within five (5) business days of receipt of this Order as entered by the Court, shall submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

VIII.


~~RETENTION OF JURISDICTION~~

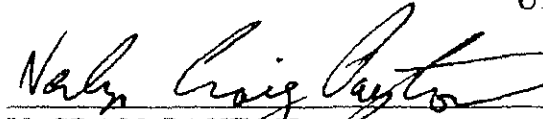
~~IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.~~


*WJM*

IT IS SO ORDERED.

Dated: *Aug 2*, 2010

  
WILLIAM J. MARTINI  
UNITED STATES DISTRICT JUDGE

  
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