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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
Oakland Division

14 FEDERAL TRADE COMMISSION,

15
16 Plaintiff,

17 v.

18
19 SPRINGTECH 77376, LLC, et al.,

20 Defendants.

Case No. C 12-4631 PJH

[PROPOSED]

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT AS TO
DEFENDANT CHEMICAL FREE
SOLUTIONS LLC**

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24 Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), filed its
25 Complaint for a permanent injunction and other equitable relief in this matter,
26 pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15
27 U.S.C. § 53(b). The Commission and Defendant Chemical Free Solutions LLC
28 stipulate to the entry of this Stipulated Order for Permanent Injunction and

Final Order re Chemical Free Solutions – C 12-4631 PJH

1 Monetary Judgment (“Order”) to resolve all matters in dispute in this action
2 between them.

3 THEREFORE, IT IS ORDERED as follows:

4 **FINDINGS**

- 5 1. This Court has jurisdiction over this matter.
- 6 2. The Complaint charges that Defendant participated in deceptive acts or
7 practices in violation of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and
8 52, in the advertising of pest-control products.
- 9 3. Defendant neither admits nor denies any of the allegations in the Complaint,
10 except as specifically stated in this Order. Only for purposes of this action,
11 Defendant admits the facts necessary to establish jurisdiction.
- 12 4. Defendant waives any claim that it may have under the Equal Access to
13 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through
14 the date of this Order, and agrees to bear its own costs and attorneys fees.
- 15 5. The FTC and Defendant Chemical Free Solutions LLC waive all rights to
16 appeal or otherwise challenge or contest the validity of this Order.

17 **DEFINITIONS**

18 For the purpose of this Order, the following definitions apply:

- 19 A. “Defendant” means Chemical Free Solutions LLC.
- 20 B. “Pesticide” means any product intended to prevent, destroy, repel, or
21 mitigate any pest.
- 22 C. “Specified product” means the Best Yet! product line.

23 **I.**

24 **PROHIBITION ON DECEPTIVE**
25 **PERFORMANCE AND EFFICACY CLAIMS**

26 IT IS HEREBY ORDERED that Defendant, its officers, agents, servants,
27 employees, and attorneys, and all other persons in active concert or participation
28 with any of them, who receive actual notice of this Order by personal service or

1 otherwise, whether acting directly or indirectly, in connection with the advertising,
2 marketing, promoting or offering for sale of the specified product, or any other
3 pesticide, are permanently restrained and enjoined from making, or assisting others
4 in making, expressly or by implication, including through the use of a product
5 name, endorsement, depiction, or illustration, any representation, other than
6 representations covered under Section II of this Order:

7 A. that such product by itself is effective in stopping bed bug
8 infestations;

9 B. that such product is effective in preventing bed bug infestations;

10 C. that such product is more effective than other products or services at
11 stopping and preventing bed bug infestations; or

12 D. about the performance or efficacy of such product;

13 unless the representation is non-misleading, and, at the time such representation is
14 made, Defendant possesses and relies upon competent and reliable scientific
15 evidence that is sufficient in quality and quantity based on standards generally
16 accepted in the relevant scientific fields, when considered in light of the entire
17 body of relevant and reliable scientific evidence, to substantiate that the
18 representation is true. For purposes of this Section, competent and reliable
19 scientific evidence means tests, analyses, research, or studies that have been
20 conducted and evaluated in an objective manner by qualified persons and are
21 generally accepted in the profession to yield accurate and reliable results.

22 II.

23 PROHIBITION ON HEAD LICE

24 INFESTATION CLAIMS

25 IT IS FURTHER ORDERED that Defendant, its officers, agents, servants,
26 employees, and attorneys, and all other persons in active concert or participation
27 with any of them, who receive actual notice of this Order by personal service or
28 otherwise, whether acting directly or indirectly, in connection with the advertising,

1 marketing, promoting or offering for sale of the specified product, or any other
2 drug or pesticide intended for the treatment of head lice in humans, are
3 permanently restrained and enjoined from making, or assisting others in making,
4 expressly or by implication, including through the use of a product name,
5 endorsement, depiction, or illustration, any representation that such product is
6 effective in the treatment of head lice infestations unless the representation is non-
7 misleading and such product:

8 A. is subject to a final OTC drug monograph promulgated by the Food
9 and Drug Administration (FDA) for such use, and conforms to the conditions of
10 such use;

11 B. remains covered by a tentative final OTC drug monograph for such
12 use and adopts the conditions of such use; or

13 C. is the subject of a new drug application for such use approved by
14 FDA, and conforms to the conditions of such use.

15 III.

16 PROHIBITION ON MISREPRESENTING 17 ENDORSEMENTS OR AFFILIATIONS

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

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

28

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

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

5 **IV.**

6 **PROHIBITION ON MISREPRESENTING TESTS OR STUDIES**

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

16 **V.**

17 **MONETARY JUDGMENT AND SUSPENSION**

18 IT IS FURTHER ORDERED that:

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

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

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

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

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

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

15 **VI.**

16 **ADDITIONAL MONETARY PROVISIONS**

17 IT IS FURTHER ORDERED that:

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

21 B. Defendant agrees that the facts as alleged in the Complaint filed in
22 this action shall be taken as true without further proof in any bankruptcy case or
23 subsequent civil litigation pursued by the Commission to enforce its rights to any
24 payment or money judgment pursuant to this Order, including but not limited to a
25 nondischargeability complaint in any bankruptcy case. Defendant further
26 stipulates and agrees that the facts alleged in the Complaint establish all elements
27 necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A)
28

1 of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall have
2 collateral estoppel effect for such purposes.

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

8 D. All money paid to the Commission pursuant to this Order may be
9 deposited into a fund administered by the Commission or its designee to be used
10 for equitable relief, including consumer redress and any attendant expenses for the
11 administration of any redress fund. If a representative of the Commission decides
12 that direct redress to consumers is wholly or partially impracticable or money
13 remains after redress is completed, the Commission may apply any remaining
14 money for such other equitable relief (including consumer information remedies)
15 as it determines to be reasonably related to Defendant's practices alleged in the
16 Complaint. Any money not used for such equitable relief is to be deposited to the
17 U.S. Treasury as disgorgement. Defendant has no right to challenge any actions
18 the Commission or its representatives may take pursuant to this Subsection.

19 **VII.**

20 **LIST OF CUSTOMERS**

21 IT IS FURTHER ORDERED that Defendant, its officers, agents, servants,
22 employees, and attorneys, and all other persons in active concert or participation
23 with any of them who receive actual notice of this Order by personal service or
24 otherwise, are permanently restrained and enjoined from directly or indirectly:

25 A. disclosing, using, or benefitting from customer information, including
26 the name, address, telephone number, email address, social security number, other
27 identifying information, or any data that enables access to a customer's account
28 (including a credit card, bank account, or other financial account), that any

1 defendant obtained prior to entry of this Order in connection with the purchase of
2 any specified product; and

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

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

12 VIII.

13 COOPERATION

14 IT IS FURTHER ORDERED that Defendant must in good faith cooperate
15 with representatives of the Commission in this case and in any investigation related
16 to or associated with the transactions or the occurrences that are the subject of the
17 Complaint. Defendant must appear, at such places and times as the FTC shall
18 reasonably request, upon ten (10) days written notice, for interviews, conferences,
19 pretrial discovery, review of documents, and for such other matters as may be
20 reasonably requested by the FTC. If requested in writing by the FTC, Defendant
21 shall appear and provide truthful testimony in any trial, deposition, or other
22 proceeding related to or associated with the transactions or the occurrences that are
23 the subject of the Complaint, without the service of a subpoena.

24 IX.

25 ORDER ACKNOWLEDGMENT

26 IT IS FURTHER ORDERED that Defendant obtain acknowledgments of
27 receipt of this Order:

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

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

11 D. Any submission to the Commission required by this Order to be
12 sworn under penalty of perjury must be true and accurate and comply with 28
13 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under
14 the laws of the United States of America that the foregoing is true and correct.
15 Executed on: _____” and supplying the date, signatory’s full name, title (if
16 applicable), and signature.

17 E. Unless otherwise directed by a Commission representative in writing,
18 all submissions to the Commission pursuant to this Order must be emailed to
19 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
20 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
21 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
22 subject line must begin: FTC v. Springtech 77376, LLC (X120042).

23 XI.

24 RECORDKEEPING

25 IT IS FURTHER ORDERED that Defendant must create certain records for
26 10 years after entry of the Order, and retain each such record for 5 years.
27 Specifically, Defendant must maintain the following records:
28

1 Defendant who has agreed to such an interview. The person interviewed may have
2 counsel present.

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

9 **XIII.**

10 **RETENTION OF JURISDICTION**

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

13 PURSUANT TO STIPULATION, IT IS SO ORDERED
14 this day of , 2013.

15
16 _____
17 HONORABLE PHYLLIS J. HAMILTON
18 UNITED STATES DISTRICT JUDGE

19 STIPULATED AND AGREED:

20 FOR THE PLAINTIFF: FEDERAL TRADE COMMISSION
21

22
23 _____
24 /s/ Kerry O'Brien

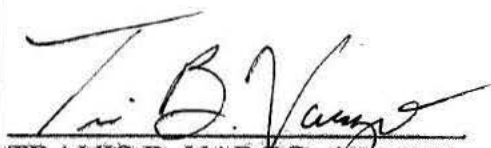
Date: July 15, 2013

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FOR DEFENDANT CHEMICAL FREE SOLUTIONS LLC



Date: 3/28/13

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Date: 03.28.13