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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

SI

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 MEDLAB, INC.,

18 PINNACLE HOLDINGS, INC.,

19 METABOLIC RESEARCH ASSOCIATES,
20 INC.,

21 U.S.A. HEALTH, INC., and

22 L. SCOTT HOLMES,
individually and as an officer of Medlab, Inc.;
23 Pinnacle Holdings, Inc.; Metabolic Research
Associates, Inc.; and U.S.A. Health, Inc.,

24 Defendants.
25

Case No.

CV 08

0822

COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE
RELIEF

26 Plaintiff, the Federal Trade Commission ("FTC"), through its undersigned attorneys,
27 alleges as follows:

28 1. Plaintiff FTC brings this action under Section 13(b) of the Federal Trade

1 Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a permanent injunction, rescission of
2 contracts, restitution, disgorgement of ill-gotten gains, and other equitable relief against the
3 Defendants for engaging in deceptive acts or practices and false advertising in connection with
4 the advertising, marketing, and sale of a dietary supplement, which purports to cause rapid,
5 substantial, and permanent weight loss, in violation of Sections 5(a) and 12 of the FTC Act, 15
6 U.S.C. §§ 45(a) and 52.

7 JURISDICTION AND VENUE

8 2. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C.
9 §§ 45(a), 52, and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

10 3. Venue in the Northern District of California is proper under 15 U.S.C. § 53(b) and
11 28 U.S.C. §§ 1391(b) and (c).

12 INTRADISTRICT ASSIGNMENT

13 4. The claims are based on violations that were directed at residents of San Francisco
14 and elsewhere.

15 THE PARTIES

16 5. Plaintiff, the Federal Trade Commission, is an independent agency of the United
17 States Government created by statute. *See* 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a)
18 of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
19 affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which
20 prohibits false advertisements for food, drugs, devices, services, or cosmetics in or affecting
21 commerce. The FTC, through its attorneys, may initiate federal district court proceedings to
22 enjoin violations of the FTC Act and to secure such equitable relief, including rescission of
23 contracts, restitution, and disgorgement of ill-gotten gains, as may be appropriate in each case.
24 15 U.S.C. § 53(b).

25 6. Defendant Medlab, Inc. ("Medlab") is a closely-held Georgia corporation located
26 at 78030 Calle Cadiz, La Quinta, California 92253. At all times relevant to this Complaint,
27 Medlab has marketed, distributed, and/or sold weight loss products to consumers throughout the
28 United States. Medlab transacts or has transacted business in the Northern District of California.

1 affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

2 **DEFENDANTS’ COURSE OF CONDUCT**

3 13. Since at least 2005 and continuing thereafter, Defendants have advertised,
4 promoted, offered for sale, sold, and distributed a purported weight loss product to the public
5 throughout the United States. Defendants have marketed this product under a variety of names
6 including Zyladex Plus, Questral AC, Questral AC Fat Killer Plus, Rapid Loss 245, and Rapid
7 Loss R_x (hereinafter, collectively “Defendants’ Weight Loss Product”).

8 14. Defendants’ Weight Loss Product is an oral tablet, which, according to
9 Defendants, contains a propriety blend of ingredients, including kola nut, citrus aurantium (also
10 known as bitter orange), cornflower, bladderwrack, green tea extract, white willow bark,
11 eleutherococcus senticosus, l-tyrosine, yerba mate, and kelp. Defendants typically sold
12 Defendants’ Weight Loss Product for \$19.95 for a 30-day supply, \$37.95 for a 60-day supply,
13 and \$54.95 for a 90-day supply.

14 15. To induce consumers to purchase Defendants’ Weight Loss Product the
15 Defendants have disseminated or caused to be disseminated, among other things, print
16 advertisements appearing in Sunday newspaper supplements, including SmartSource
17 by News America Marketing FSI, Inc. These advertisements include, but are not limited to, the
18 attached Exhibits A through U and contain, among other things, the following or similar
19 statements:

20 a. ***Lose up to 15 pounds a week***

21 (Exhibit A; *see also* Exhibit F (Spanish version of Exhibit A); Exhibits G-
22 K, S (similar statements))

23 b. **SLIM DOWN as much as 18 lbs. in a SINGLE WEEK**

24 (Exhibits L, N, O, Q; *see also* Exhibits P, U (similar statements))

25 c. **Not Even Total Starvation Can Slim You Down and Firm You Up This Fast -
26 This Safe!**

27 (Exhibits A-E, G-K; *see also* Exhibit F (Spanish version of Exhibit A))

28 d. **THE FUTURE OF WEIGHT LOSS IS HERE**

1 **NO CALORIE COUNTING . . .**

2 **NO STARVATION DIETS**

3 (Exhibits A-E; *see also* Exhibit F (Spanish version of Exhibit A))

4 e. **LOOK HOW EASY IT IS...**

5 *** NO SKIPPING MEALS**

6 *** NO CARB COUNTING**

7 *** NO SPECIAL FOODS TO BUY AT OUTRAGEOUS PRICES**

8 (Exhibits G-K)

9 f. As much as 4 inches and 50% of all excess fat gone in 14 days!

10 (Exhibits A-E; *see also* Exhibit F (Spanish version of Exhibit A); Exhibits
11 G-K (similar statements))

12 g. *Melt away fat 3 times faster than jogging 4 miles a day, 12 times faster than a full*
13 *hour of military aerobics!*

14 (Exhibits A-E, G-K; *see also* Exhibit F (Spanish version of Exhibit A))

15 h. *If you can take two tiny pills per day, you can lose ALL the weight you want!*

16 (Exhibits N, S; *see also* Exhibit L (similar statement))

17 i. *** NO DIETING * NO EXERCISE**

18 (Exhibits L, N, S; *see also* Exhibits Q, U (similar statements))

19 j. **They Lost 216 lbs**

20 **... Without Dieting**

21 **... Without Exercise**

22 (Exhibit M; *see also* Exhibit R (similar statement))

23 k. **Eat, Eat, Eat!** Never skip a meal as the Rapid Loss R_x prescription turns your
24 body into a calorie burning incinerator so pounds and inches begin to disappear
25 right before your very eyes.

26 (Exhibit O)

27 l. **Patient Testimonials**

28 *Questral AC Fat Killer Plus is the hottest NEW weight loss product*

1 anywhere. Users of Questral AC Fat Killer Plus proclaimed substantial weight
2 loss within hours after taking the pills, awakening pounds thinner and inches
3 smaller in just 48 hours. One testimonial revealed that a user lost an incredible 52
4 pounds in a mere 35 days. Another formerly overweight person slimmed down an
5 amazing 5 sizes smaller in just 3 short weeks. Success after success story
6 illustrates that Questral AC Fat Killer Plus with its formula for success work ultra-
7 fast.

8 (Exhibit T)

9 m. **FINALLY, YOU ARE ON YOUR WAY TO A BEAUTIFUL, SLIM FIGURE**
10 **OF A LIFETIME!**

11 (Exhibits G-K; *see also* Exhibits A-E (similar statements), Exhibit F
12 (Spanish version of Exhibit A))

13 n. Even if right now you need to lose 40 - 60 - 80 - 100 pounds or more, you owe it
14 to yourself and your loved ones to pick up the phone and call right now, because
15 this is the **LAST WEIGHT REDUCING AD YOU WILL EVER HAVE TO**
16 **READ!**

17 (Exhibits A-E; *see also* Exhibit F (Spanish version of Exhibit A), Exhibits
18 G-K (similar statements))

19 o. **LOSE ALL YOUR UNWANTED WEIGHT**
20 **AND KEEP IT OFF**
21 **OR YOUR MONEY BACK**

22 (Exhibits A-E; *see also* Exhibit F (Spanish version of Exhibit A); Exhibit
23 L (similar statement))

24 p. **LIFETIME MONEY BACK GUARANTEE!**
25 **LOSE ALL YOUR UNWANTED WEIGHT OR**
26 **WE'LL BUY BACK YOUR EMPTY BOTTLES!**

27 That's right! Your satisfaction is guaranteed for life!

28 (Exhibits G-K)

1 q. To lose all your unwanted weight and keep it off forever, the only lifestyle change
2 YOU have to make is to take two tiny tasteless caplets per day.

3 (Exhibits L, N, S)

4 r. Now YOU can finally conquer the self-defeating, unhealthy Yo-Yo cycle of
5 temporary weight loss.

6 (Exhibit M; *see also* Exhibits O, Q, T (similar statements))

7 s. . . . this new slimming program offers *real* hope to all who have tried in vain to
8 lose weight and keep it off.

9 (Exhibit R; *see also* Exhibit M (similar statement))

10 t. For the Last Time You Will Ever Need to Lose Weight.

11 (Exhibits L, N, S)

12 u. ***Powerful, Clinically Proven Results***

13 (Exhibits C-E)

14 v. **FAST, IMMEDIATE RESULTS. . .**

15 **GUARANTEED!**

16 Clinical studies prove it. . . . [It] works so fast you can actually LOSE as much as
17 50% OF YOUR EXCESS WEIGHT IN JUST 2 WEEKS

18 (Exhibits A-B; *see also* Exhibits C-E (similar statements), Exhibit F

19 (Spanish version of Exhibit A))

20 w. Read the evidence in *The International Journal of Obesity*. . . . This latest
21 weapon in the "*War Against Obesity*" literally *forced* test subjects to **lose 5 times**
22 **more weight** than those not taking the pill. Even more astonishing is the fact that
23 this *five hundred percent increase in weight loss* occurred even though
24 participants were specifically instructed not to exercise or diet!

25 (Exhibits L, N; *see also* Exhibit S (similar statement); Exhibits M, Q, R

26 (also cite *International Journal of Obesity*))

27 x. The studies prove it and we know it to be fact . . . [the product] works!

28 (Exhibits L, N, S)

1 y. The company needs to verify the results of their clinical study that demonstrates
2 that those who take Rapid Loss Rx lose incredible amounts of weight without diet
3 or exercise.

4 (Exhibit P)

5 z. **Fast N' Easy Weight Loss**

6 Whether you want to lose 20, 40, 60, even 100 pounds or more, Questral AC Fat
7 Killer Plus helps take the pangs out of losing weight. Patients in our recent
8 clinical study reported losing unprecedented amounts of weight without dieting or
9 exercise.

10 (Exhibit T)

11 **DEFENDANTS' VIOLATIONS OF THE FTC ACT**

12 16. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts
13 or practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits
14 the dissemination of any false advertisement in or affecting commerce for the purpose of
15 inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or
16 cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, Defendants' Weight
17 Loss Product is either a "food" or "drug" pursuant to Section 15(b) and (c) of the FTC Act, 15
18 U.S.C. §§ 55(b), (c). As set forth below, the Defendants have engaged and are continuing to
19 engage in such unlawful practices in connection with the advertising, marketing and sale of
20 Defendants' Weight Loss Product.

21 **COUNT I**

22 **False and Deceptive Weight-loss Claims**

23 17. Through the means described in Paragraph 15, including the statements and
24 depictions contained in the advertisements attached as Exhibits A through U, among others,
25 Defendants have represented, expressly or by implication, that:

26 a. Defendants' Weight Loss Product causes users to lose substantial amounts of
27 weight rapidly, including as much as 15 to 18 pounds per week and as much as
28 50% of all excess weight in just 14 days, without dieting or exercising.

1 b. Defendants' Weight Loss Product causes permanent or long-term weight loss.

2 c. Clinical studies prove that Defendants' Weight Loss Product causes users to lose
3 substantial amounts of weight rapidly, including as much as 15 to 18 pounds per
4 week and 50% of all excess weight in just 14 days, without dieting or exercising.

5 18. The representations set forth in Paragraph 17 are false or were not substantiated at
6 the time the representations were made. Therefore, the making of the representations set forth in
7 Paragraph 17 above constitutes a deceptive practice, and the making of false advertisements, in
8 or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a)
9 and 52.

10 **CONSUMER INJURY**

11 19. Consumers throughout the United States have suffered and continue to suffer
12 substantial monetary loss as a result of Defendants' unlawful acts or practices. In addition,
13 Defendants have been unjustly enriched as a result of their unlawful practices. Absent relief by
14 this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and
15 harm the public interest.

16 **THIS COURT'S POWER TO GRANT RELIEF**

17 20. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
18 injunctive and such other relief as the Court may deem appropriate to halt and redress violations
19 of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other
20 ancillary relief, including, but not limited to, rescission of contracts, restitution, and the
21 disgorgement of ill-gotten gains caused by Defendants' law violations.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. §
24 53(b), and the Court's own equitable powers, requests that the Court:

25 1. Enter a permanent injunction to prevent future violations of the FTC Act by
26 Defendants.

27 2. Award such relief as the Court finds necessary to redress injury to consumers
-28 resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission or

1 reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-
2 gotten monies; and

3 3. Award Plaintiff the costs of bringing this action, as well as such other and
4 additional relief as the Court may determine to be just and proper.

5
6 Respectfully submitted,

7
8 WILLIAM BLUMENTHAL
General Counsel

9
10 JEFFREY A. KLURFELD
Regional Director

11
12 DATED: February 6, 2008
13 *J*

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