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U.S. DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CV-S-99-1564-PMP-LRL

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CYBERLIX MARKETING, INC., a Nevada
Corporation; JEFFREY S. STEIN, individually
and as an officer and director of Cyberlix
Marketing, Inc.,

Defendants.

STIPULATED FINAL ORDER
FOR PERMANENT
INJUNCTION AND
SETTLEMENT OF CLAIMS
FOR MONETARY RELIEF -

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed a Complaint for permanent injunction and other relief against Cyberlix Marketing, Inc., and Jeffrey S. Stein, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b).

The Commission and defendants have stipulated to the entry of the following Stipulated

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1 Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief ("Order") in
2 settlement of the Commission's complaint against defendants. The Court, being advised in the
3 premises, finds as follows:

4 **FINDINGS**

5 1. In its complaint, the Commission alleges that defendants violated Sections 5(a)
6 and 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 52. The
7 Commission seeks both permanent injunctive relief and consumer redress for alleged unfair or
8 deceptive acts or practices by defendants in connection with the marketing and sales of putative
9 HIV home test kits.

10 2. The Commission has the authority under Section 13(b) of the FTC Act, 15 U.S.C.
11 §53(b), to seek the relief it has requested.

12 3. This Court has jurisdiction over the subject matter of this action and has
13 jurisdiction over defendants. Venue in the District of Nevada is proper, and the Complaint states
14 a claim upon which relief may be granted against the defendants under Sections 5(a) and 12 of
15 the FTC Act, as well as Section 13(b).

16 4. The activities of defendants, as alleged in the Complaint, are in or affecting
17 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

18 5. The Commission and defendants stipulate and agree to this Order, without trial or
19 final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising
20 from the Complaint to the date of entry of this Order. By entering this stipulation, defendants do
21 not admit or deny any of the allegations set forth in the Complaint, other than jurisdictional facts.
22 The Commission and defendants stipulate and agree that this Order constitutes a settlement
23 agreement pursuant to Federal Rules of Evidence 408.

24 6. Defendants waive all rights to seek judicial review or otherwise challenge or
25 contest the validity of this Order. They also waive any claim that they may have held under the
26 Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the
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1 date of this Order. Each settling party shall bear its own costs and attorneys' fees.

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

3 8. The provisions of this Order are binding upon defendants and their officers,
4 agents, servants, employees, and attorneys, independent contractors, and upon those persons or
5 entities in active concert or participation with defendants who receive actual notice of this Order
6 by personal service or otherwise.

7 DEFINITIONS

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

9 1. "Defendants" shall refer to the following:

- 10 A. "Cyberlinx Marketing, Inc.," ("Cyberlinx"), and its successors or assigns;
11 B. Jeffrey S. Stein (herein "Stein"), an individual; and
12 C. any combination of the foregoing.

13 2. "Participating associates" shall refer to defendants' officers, agents, servants,
14 employees, attorneys, independent contractors, and those persons in active concert or
15 participation with them who receive actual notice of this Order by personal service or otherwise.

16 3. "Human immunodeficiency virus" ("HIV") shall refer to all strains of the virus
17 that causes acquired immunodeficiency syndrome ("AIDS"), an infectious disease characterized
18 by immune system failure.

19 4. "HIV home test kit" shall refer to any product that is advertised, marketed,
20 promoted, offered for sale, or sold with express or implied representations that the product will
21 or may detect the presence of HIV in any human, including "E-Z MEDTEST" and any other
22 substantially similar product.

23 5. For the purposes of this Order, "device" means "device" as defined in Section
24 15(d) of the FTC Act, 15 U.S.C. § 55(d).

25 6. A requirement that any defendant "notify," "transfer," or "provide" any
26 information or material to the Commission, shall mean that the defendant shall send the
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1 necessary information or material via first-class mail, costs prepaid, to:

2 Associate Director for Advertising Practices
3 Federal Trade Commission
4 Room S-4002
5 600 Pennsylvania Ave., N.W.
6 Washington, DC 20580
7 Re: FTC v. Cyberlinx, et al. Matter No. 9923226.

8 **ORDER**

9 **I. BAN ON CERTAIN ACTIVITIES**

10 IT IS THEREFORE ORDERED ADJUDGED AND DECREED that defendants are
11 permanently restrained and enjoined from engaging, participating, or assisting in any manner or
12 capacity whatsoever, directly, or indirectly, in concert with others, or through any business entity
13 or other entity, in the advertising, marketing, promotion, offering for sale, or sale of any HIV
14 home test kit.

15 **II. PROHIBITED MISREPRESENTATIONS**

16 IT IS FURTHER ORDERED that defendants and their participating associates, directly
17 or indirectly, or acting through any corporation, entity, or person under their control, are
18 restrained and enjoined from making, or assisting others in making, expressly or by implication,
19 any material false or misleading oral or written statement or representation in connection with the
20 advertising, marketing, promotion, offering for sale, or sale of any device, other than HIV home
21 test kits, including but not limited to:

- 22 A. Misrepresenting, in any manner, the efficacy or accuracy of any device.
- 23 B. Misrepresenting that the World Health Organization ("WHO") or any other
24 international or national public health body has reviewed, evaluated, is affiliated
25 with, or otherwise endorses or supports, any device.
- 26 C. Misrepresenting that any device has been shown to meet the testing standards of
27 France, England, or any other country.
- 28 D. Misrepresenting that any device has, or is likely to satisfy the registration

1 requirements of any governing or regulatory body, national or international.

2 E. Misrepresenting the nature and/or extent of the distribution of any device.

3 F. Misrepresenting any other fact material to a consumer's decision to purchase any
4 device.

5 **III. BOND REQUIREMENTS**

6 IT IS FURTHER ORDERED that defendants are permanently restrained and enjoined
7 from engaging, participating, or assisting in any manner or capacity whatsoever, directly, or
8 indirectly, in concert with others, or through any business entity or other entity, in the
9 advertising, marketing, promotion, offering for sale, or sale of any device, other than HIV home
10 test kits ("Bond Covered Activity"), unless defendants each first obtain a surety bond in the
11 principal sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000); if both defendant
12 Cyberlinx and defendant Stein engage jointly in any Bond Covered Activity, the required bond
13 amount shall be ONE MILLION DOLLARS (\$1,000,000) (\$500,000 for each defendant
14 engaging, participating, or assisting in such activity).

15 The terms and conditions of any bond required by this Section shall be as follows:

16 1. The bond shall be conditioned upon compliance with the provisions of this Order
17 and with Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52;

18 2. The bond shall be continuous and remain in full force and effect as long as
19 defendants continue engaging in any Bond Covered Activity, and for at least three (3) years after
20 defendants have ceased to engage in Bond Covered Activity;

21 3. The bond shall cite this Order as the basis of the bond, and shall provide surety
22 thereunder to consumers against financial loss resulting from any violation of the provisions of
23 this Order, or Sections 5(a) or 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52;

24 4. The bond required by this Section shall be issued by a surety company that:

25 (a) is admitted to do business in each of the states in which defendants
26 conduct business; and

1 (b) holds a Federal Certificate of Authority As Acceptable Surety On Federal
2 Bond and Reinsuring;

3 5. The bond shall be in favor of the Commission for the benefit of any consumer
4 injured as a result of any violation of the provisions of this Order or of Sections 5(a) or 12 of the
5 FTC Act, 15 U.S.C. §§ 45(a), 52, by defendants, or their participating associates, while engaging
6 in the Bond Covered Activity;

7 6. The bond required pursuant to this Section is in addition to, and not in lieu of, any
8 other bond required by federal, state, or local law. The bond requirements of this Order shall not
9 be construed to limit or preempt the regulatory powers of any other federal, state, regional,
10 county, local or other government agency or authority; and

11 7. At least ten (10) days before commencing any Bond Covered Activity, defendants
12 shall provide a copy of the bond required by this Section to the Commission. Defendants,
13 directly or through their participating associates, shall not disclose the existence of the surety
14 bond required by this Order to any consumer or prospective customer without simultaneously
15 making the following disclosure: "THIS BOND IS REQUIRED BY ORDER OF THE U.S.
16 DISTRICT COURT IN SETTLEMENT OF CHARGES THAT CYBERLINX AND JEFFREY
17 S. STEIN ENGAGED IN THE FRAUDULENT MARKETING OF INACCURATE HIV
18 HOME TEST KITS." Such disclosure shall be made clearly and prominently, and in close
19 proximity to any statement disclosing the existence of the bond. In written material, the required
20 written disclosure shall be set forth in a clear and conspicuous manner, separated from all other
21 text, in 100% black ink against a light background, in print at least as large as the main text of
22 the sales material or document, and enclosed in a box containing only the required disclosure.

23 **IV. MONETARY RELIEF**

24 IT IS FURTHER ORDERED that:

25 A. Within ten (10) days after entry of this Order defendant Stein shall transfer to the
26 Commission the sum of ONE THOUSAND THREE HUNDRED SEVENTY
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1 DOLLARS (\$1,370).

2 B. All funds collected by the Commission pursuant to this Section shall be deposited
3 into an account to be maintained by the Commission or its agent. Upon final
4 disposition of this action, such funds shall be either (1) used to provide consumer
5 redress and any administrative costs associated with providing such redress, or (2)
6 paid to the United States Treasury as equitable disgorgement, if the Commission
7 in its sole discretion deems that consumer redress is impractical. If the
8 Commission in its sole discretion determines that consumer redress is practical, it
9 shall submit a plan for the disbursement of funds to the Court for review and
10 approval.

11 C. Within five (5) days after entry of this Order, defendant Jeffrey S. Stein is hereby
12 required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission his
13 social security number, which shall be used for purposes of collecting and
14 reporting on any delinquent amount arising out of this Order.

15 D. Defendants agree that the facts as alleged in the Commission's complaint in this
16 action shall be taken as true in the event of any subsequent litigation to collect
17 amounts due pursuant to this Order, including but not limited to a
18 nondischargeability complaint in any bankruptcy proceeding.

19 **V. RECORD KEEPING PROVISIONS**

20 IT IS FURTHER STIPULATED AND ORDERED that, for a period of five (5) years
21 from the date of entry of this Order, defendants, and defendants' participating associates, in
22 connection with any business where (1) defendant Stein is the majority owner of the business, or
23 directly or indirectly controls the business, and where (2) the business engages in the business of
24 marketing any device other than HIV home test kits, are permanently restrained and enjoined
25 from failing to have such business create, and from failing to have such business retain for a
26 period of three (3) years following the date of such creation, unless otherwise specified:
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- 1 A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect
2 the cost of goods or services sold, revenues generated, and the disbursement of
3 such revenues;
- 4 B. Records accurately reflecting: the name, address, and telephone number of each
5 person employed in any capacity by such business, including as an independent
6 contractor; that person's job title or position; the date upon which the person
7 commenced work; and the date and reason for the person's termination, if
8 applicable; provided that the business subject to this Subsection shall retain such
9 records for a period of two years following the date of each such person's
10 termination;
- 11 C. Records containing the names, addresses, telephone numbers, dollar amounts
12 paid, quantity of items or services purchased, and description of items or services
13 purchased, for all consumers to whom such business has sold, invoiced or shipped
14 any goods or services;
- 15 D. Records that reflect, for every consumer complaint or refund request, whether
16 received directly or indirectly or through any third party: (1) the consumer's name,
17 address, telephone number and the dollar amount paid by the consumer; (2) the
18 written complaint or refund request, if any, and the date of the complaint or refund
19 request; (3) the basis of the complaint, including the name of any salesperson
20 complained against, and the nature and result of any investigation conducted
21 concerning any complaint; (4) each response and the date of the response; (5) any
22 final resolution and the date of the resolution; and (6) in the event of a denial of a
23 refund request, the reason for the denial; and
- 24 E. Copies of all sales scripts, training materials, advertisements, or other marketing
25 materials utilized.
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1 VI. NON-DISCLOSURE OF CONSUMER LISTS

2 IT IS FURTHER STIPULATED AND ORDERED that defendants, and their
3 participating associates, are permanently restrained and enjoined from selling, renting, leasing,
4 transferring, or otherwise disclosing the name, address, telephone number, credit card number,
5 bank account number, e-mail address, or other identifying information of any person who paid
6 any money to any defendant in this action, at any time prior to entry of this Order, in connection
7 with the purchase of any HIV home test kit. *Provided, however,* that defendants may disclose
8 such identifying information to a law enforcement agency or as required by any law, regulation,
9 or court order.

10 VII. REPORTS BY DEFENDANTS

11 IT IS FURTHER STIPULATED AND ORDERED that:

12 A. For a period of five (5) years from the date of entry of this Order, defendant Stein
13 shall notify the Commission of the following: (1) any changes in his business address(es),
14 residential address(es) or telephone number(s), within thirty (30) days of the date of such change;
15 and (2) any changes in his employment status (including self-employment) within thirty (30)
16 days of such change. Such notice shall include the name and address of each business that
17 defendant Stein is employed by, a statement of the nature of the business(es), and a statement of
18 his duties and responsibilities in connection with the business(es) or employment;

19 B. One hundred and eighty (180) days after the date of entry of this Order, defendant
20 Stein shall submit a written report to the Commission, signed under penalty of perjury, setting
21 forth in detail the manner and form in which he has complied and is complying with this Order.

22 This report shall include but not be limited to:

- 23 (1) Defendant's then current residence address and telephone number;
24 (2) Defendant's then current employment, business address(es) and telephone
25 number(s), a description of the business activities of each such employer, and defendant's
26 title and responsibilities for each employer;

1 (3) A copy of each acknowledgment of receipt of this Order obtained by defendant
2 pursuant to Section XII of this Order; and

3 (4) A statement describing the manner in which defendant has complied and is
4 complying with the provisions of Section I and II of this Order.

5 C. For a period of five (5) years from the date of entry of this Order, upon written
6 request by a representative of the Commission, defendant shall submit written reports (under
7 oath, if requested) and produce documents on thirty (30) days' notice with respect to any conduct
8 subject to this Order;

9 D. For the purposes of this section, "employment" includes the performance of
10 services as an employee, consultant, independent contractor, or officer or director; and

11 E. For purposes of the compliance reporting required by this section, the
12 Commission is authorized to communicate directly with defendants.

13 VIII. RIGHT TO REOPEN

14 IT IS FURTHER STIPULATED AND ORDERED THAT the Commission's agreement
15 to this Order is expressly premised upon the truthfulness, accuracy, and completeness of
16 defendants' financial information as represented in their sworn statements, which contain
17 material information relied upon by the Commission in negotiating and agreeing to the terms of
18 this Order. If upon motion by the Commission, this Court finds that the above referenced
19 statements of defendants failed to disclose any material asset, materially misrepresented the
20 value of any asset, or made any other material misrepresentation or omission, the Commission
21 may request that this Order be reopened for the sole purpose of modifying the terms specified in
22 Section IV. Any request to reopen made pursuant to this Section must be made within ten (10)
23 years after the date of entry of this Order, *provided, however*, that in all other respects this Order
24 shall remain in full force and effect unless otherwise ordered by the Court and that defendants
25 have no right to contest any of the allegations in the Commission's complaint in this matter in
26 any proceedings brought pursuant to this Section; and provided further, that proceedings
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1 instituted under this Section would be in addition to, and not in lieu of, any other civil or criminal
2 remedies as may be provided by law, including any other proceedings the Commission may
3 initiate to enforce this Order.

4 **IX. ACCESS TO BUSINESS PREMISES**

5 IT IS FURTHER STIPULATED AND ORDERED that, for a period of five (5) years
6 from the date of entry of this Order, for the purpose of further determining compliance with this
7 Order, defendants shall permit representatives of the Commission, within three (3) business days
8 of receipt of written notice from the Commission:

9 A. Access during normal business hours to any office, or facility storing documents,
10 of any business where they are officers, directors, managers or majority owners. In providing
11 such access, defendants shall permit representatives of the Commission to inspect and copy all
12 documents relevant to any matter contained in this Order, and shall permit Commission
13 representatives to remove documents relevant to any matter contained in this Order for a period
14 not to exceed five business days so that the documents may be inspected, inventoried, and
15 copied; and

16 B. To interview the officers, directors, and employees, including all personnel
17 involved in responding to consumer complaints or inquiries, and all sales personnel, whether
18 designated as employees, consultants, independent contractors or otherwise, of any business to
19 which subsection A of this Section applies, concerning matters relating to compliance with the
20 terms of this Order. The person interviewed may have counsel present.

21 *Provided that*, upon application of the Commission and for good cause shown, the Court
22 may enter an *ex parte* order granting immediate access to defendants' business premises for the
23 purposes of inspecting and copying all documents relevant to any matter contained in this Order.

24 **X. AUTHORITY TO MONITOR COMPLIANCE**

25 IT IS FURTHER STIPULATED AND ORDERED that the Commission is authorized to
26 monitor defendants' compliance with this Order by all lawful means, including but not limited to
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1 the following means:

2 A. The Commission is authorized, without further leave of court, to obtain discovery
3 from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure,
4 Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45,
5 for the purpose of monitoring defendants' compliance with any provision of this Order;

6 B. The Commission is authorized to use representatives posing as consumers and
7 suppliers in contacts with defendants, their employees, or any other entity managed or controlled
8 in whole or in part by defendants, without the necessity of identification or prior notice; and

9 C. Nothing in this Order shall limit the Commission's lawful use of compulsory
10 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate
11 whether defendants have violated any provision of this Order or Sections 5 or 12 of the FTC Act,
12 15 U.S.C. §§ 45, 52.

13 **XI. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

14 IT IS FURTHER STIPULATED AND ORDERED that, within five (5) business days
15 after receipt by defendants of this Order as entered by the Court, defendant Stein shall submit to
16 the Commission a truthful sworn statement, in the form shown on Appendix A, that shall
17 acknowledge receipt of this Order.

18 **XII. DISTRIBUTION OF ORDER BY DEFENDANTS**

19 IT IS FURTHER STIPULATED AND ORDERED that, for a period of five (5) years
20 from the date of entry of this Order, defendants shall:

21 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of
22 receipt of same from, each officer or director, each individual serving in a management capacity,
23 all personnel involved in responding to consumer complaints or inquiries, and all sales personnel,
24 whether designated as employees, consultants, independent contractors or otherwise,
25 immediately upon employing or retaining any such persons, for any business where defendants
26 are officers, directors, managers or majority owners; and

1 B. Maintain for a period of three (3) years after creation, and upon reasonable notice,
2 make available to representatives of the Commission, the original signed and dated
3 acknowledgments of the receipt of copies of this Order, as required in the previous subsection.

4 **XIII. COOPERATION WITH THE COMMISSION**

5 IT IS FURTHER STIPULATED AND ORDERED that defendants shall, in connection
6 with this action or any subsequent investigations related to or associated with the transactions or
7 the occurrences that are the subject of the Commission's Complaint, cooperate in good faith with
8 the Commission and appear at such places and times as the Commission shall reasonably request,
9 after written notice to defendants or their counsel of record, for interviews, conferences, pretrial
10 discovery, review of documents, and for such other matters as may be reasonably requested by
11 the Commission. If requested in writing by the Commission, defendants shall appear and
12 provide truthful testimony in any trial, deposition, or other proceeding related to or associated
13 with the transactions or the occurrences that are the subject of the Complaint, without the service
14 of a subpoena.

15 **XIV. RETENTION OF JURISDICTION**

16 IT IS FURTHER STIPULATED AND ORDERED that this Court shall retain
17 jurisdiction over this matter for purposes of the construction, modification and enforcement of
18 this Order.

19 **XV. ENTRY OF THIS FINAL JUDGMENT**

20 IT IS FURTHER STIPULATED AND ORDERED, pursuant to Federal Rule of Civil
21 procedure 54(b), that there is no just reason for delay and the Clerk of Court immediately shall

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APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CYBERLINX MARKETING, INC., a Nevada
Corporation; JEFFREY S. STEIN, individually
and as an officer and director of Cyberlinx
Marketing, Inc.,

Defendants.

CV-S-

AFFIDAVIT OF
JEFFREY S. STEIN

Jeffrey S. Stein, being duly sworn, hereby states and affirms as follows:

1. My name is Jeffrey S. Stein. I am a defendant in the above-captioned civil action. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit, and if called as a witness, I could and would competently testify as to the matter stated herein.

2. My current business address is _____. My current business telephone number is _____. My current residential address is _____. My current residential telephone number is _____.

3. On [date], I received a copy of the Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief, which was signed by the Honorable [name of Judge] and entered by the Court on [date of entry of Order]. A true and correct copy of the Order that I received is appended to this Affidavit.

4. I affirm and attest to the truthfulness, accuracy and completeness of the financial statement that I submitted to the Federal Trade Commission on or about _____.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [date], at [city and state].

JEFFREY S. STEIN, individually and on behalf of Cyberlinx Marketing, Inc.

BEFORE ME this day personally appeared Jeffrey S. Stein, who being first duly sworn, deposes and says that he has read and understands the foregoing statement and that he has executed the same for the purposes contained therein.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 1999, by Jeffrey S. Stein. He is personally known to me or has presented (state identification) _____ as identification.

PRINT NAME

NOTARY PUBLIC,
STATE OF _____

Commission Number
My Commission Expires: _____

Affix Seal