



2. Venue properly lies with this Court;
3. There is good cause to believe that Defendant has engaged in and is likely to engage in acts and practices that violate Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52, and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act”), 15 U.S.C. § 7701, *et seq.*, and that the Commission is likely to prevail on the merits of this action;
4. There is good cause to believe that immediate and irreparable damage to the Court’s ability to grant effective final relief for consumers in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition or concealment by Defendant of assets or records unless Defendant is immediately restrained and enjoined by Order of this Court;
5. There is good cause for issuing this Order pursuant to Federal Rule of Civil Procedure 65(b) and for relieving the Plaintiff of the duty to provide Defendant with prior notice of Plaintiff’s motion;
6. Weighing the equities and considering the Plaintiff’s likelihood of success, this Order is in the public interest; and
7. No security is required of any agency of the United States for the issuance of a temporary restraining order. *See* Fed. R. Civ. P. 65(c).

### **DEFINITIONS**

1. “Asset” or “Assets” means any legal or equitable interest in, right to, or claim to, any real and/or personal property, including without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

2. **“Assisting others”** means: (1) performing customer service functions including, but not limited to, receiving or responding to consumer complaints, receiving identifying and financial information from consumers, and communicating with consumers; (2) developing, providing or arranging for the development or provision of marketing materials, including, but not limited to, Web site and commercial electronic message content; (3) providing names of, or arranging for the provision of, names of potential customers; (4) performing marketing services of any kind; or (5) acting as an officer or director of a business entity.

3. **“Competent and reliable scientific evidence”** means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

4. **“Customer”** means any person who has paid, or may be required to pay, for goods or services offered for sale or sold by Defendants.

5. **“Defendant”** means Creaghan A. Harry, individually and doing business as Hitech Marketing, Scientific Life Nutrition, and Rejuvenation Health Corp.

6. **“Document”** is synonymous in meaning and equal in scope to the term, as defined in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term.

7. **“Financial Institution”** means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

8. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

9. **“Person”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

10. **“Plaintiff”** means the Federal Trade Commission (“Commission”).

11. **“Web site”** means a set of electronic documents, usually a home page and subordinate pages, readily viewable on a computer by anyone with access to the Web, standard software, and knowledge of the web site’s location or address.

12. **“HGH products”** shall refer to any products that are advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product contains any form of Human Growth Hormone or may produce effects similar in nature to any form of Human Growth Hormone, and include, but are not limited to, “Supreme Formula HGH” and “Youthful Vigor HGH,” or any other substantially similar products.

#### **I. PROHIBITED BUSINESS ACTIVITIES PURSUANT TO THE FTC ACT**

**IT IS THEREFORE ORDERED** that Defendant, and his officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, distributors, corporations,

subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of a trade name or endorsement, any false or misleading oral or written statement or representation in connection with the marketing, advertising, promotion, offering for sale, sale or provision of any HGH-related products, or any other products or services, including, but not limited to:

A. Representing that “Supreme Formula HGH,” “Youthful Vigor HGH,” or any other substantially similar product, contains a form of Human Growth Hormone and/or produces effects similar in nature to any form of Human Growth Hormone;

B. Misrepresenting that any product, or any ingredient contained in it:

1. will turn back or reverse the aging process by causing effects that include, but are not limited to, (i) lower blood pressure, (ii) cellulite reduction, (iii) improved vision, (iv) new hair growth and hair color restoration, (v) improved sleep, (vi) emotional stability, and (vii) increased sexual potency and frequency; and/or

2. will enable the consumer to lose weight without diet or exercise.

C. Misrepresenting that any product, or any ingredient contained in it, is effective in the diagnosis, cure, mitigation, treatment, or prevention of any disease;

D. Making any representation about the health benefits, performance, efficacy, or safety of any product unless, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation;

E. Misrepresenting any other fact material to a consumer's decision to purchase any product; and

F. Assisting others who violate any provision of Paragraphs A through E of this Section.

**II. PROHIBITED BUSINESS ACTIVITIES UNDER THE  
CONTROLLING THE ASSAULT OF NON-SOLICITED  
PORNOGRAPHY AND MARKETING ACT OF 2003**

**IT IS FURTHER ORDERED** that Defendant, and his officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined from violating, or assisting others in violating, the provisions contained in Sections 5 and 6 of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM Act"), 15 U.S.C. §§ 7704 and 7705, as currently promulgated or as it may hereafter be amended, or any rule, regulation, or requirement adopted pursuant thereto, including, but not limited to, initiating the transmission of a commercial electronic mail message that:

A. Contains, or is accompanied by, false or misleading header information in violation of Section 5(a)(1) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(1);

B. Fails to include a clear and conspicuous notice of the opportunity to decline to receive further electronic mail messages from the sender, in violation of Section 5(a)(5)(ii) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(ii); and/or

C. Fails to include a valid physical postal address of the sender in violation of Section 5(a)(5)(iii) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(iii).

### **III. ASSET FREEZE**

**IT IS FURTHER ORDERED** that Defendant, and his officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, except as agreed to in writing by counsel for the Commission, or as directed by further order of the Court, are hereby restrained and enjoined from directly or indirectly:

A. Selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, withdrawing, or otherwise disposing of any funds, real or personal property, or other assets or any interest therein, wherever located, including any assets outside the territorial United States, which are:

1. in the actual or constructive possession of Defendant;
2. owned or controlled by, or held, in whole or in part, for the benefit of, or subject to access by, or belonging to, Defendant; or
3. in the actual or constructive possession of, or owned or controlled by, or subject to access by, or belonging to, any corporation, partnership, trust or any other entity directly or indirectly owned, managed, or controlled by, or under common control with, Defendant, including, but not limited to, any assets held by or for Defendant at any

bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, payment service provider, or other financial institution or depository of any kind including, but not limited to, assets at the following:

- a. One World Distribution;
- b. Bank of America; and
- c. Chase Merchant Services LLC

B. Opening or causing to be opened any safe deposit boxes titled in the name of Defendant, or subject to access by Defendant;

C. Incurring charges on any credit card issued in the name, singly or jointly, of Defendant;

D. The funds, property and assets affected by this Section shall include both existing assets and assets acquired after the effective date of this Order, including without limitation, those acquired by loan or gift. Defendant shall hold all assets, including without limitation, payments, loans, and gifts, received after service of this Order; and

E. Notwithstanding the asset freeze provisions of Section III.A-D above, Defendant may pay reasonable, usual, ordinary, and necessary living expenses, and reasonable attorney's fees, after written prior approval by the Commission or as authorized by the Court.

#### **IV. DUTIES OF ASSET HOLDERS**

**IT IS FURTHER ORDERED** that, pending determination of the Commission's request for a preliminary injunction, any financial institution, or any person or other entity served with a copy of this Order, or who otherwise has actual knowledge of this Order, that has possession,



custody, or control of any account, asset, or document held on behalf of, or relating or belonging to Defendant, shall:

A. Hold and retain within such entity's or person's control, and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any funds, documents, property, or other assets held by or under such entity's or person's control:

1. on behalf of, or for the benefit of Defendant or other party subject to Section III above;

2. in any account maintained in the name of, or subject to withdrawal by Defendant or other party subject to Section III above;

3. that are subject to access or use by, or under the signatory power of Defendant or other party subject to Section III above;

B. Deny access to any safe deposit boxes that are either:

1. titled in the name, individually or jointly, of Defendant or other party subject to Section III above; or

2. subject to access by Defendant or other party subject to Section III above;

C. Provide to counsel for the Commission, within three (3) business days, a statement setting forth:

1. the identification of each account or asset titled in the name, individually or jointly, or held on behalf of, or for the benefit of Defendant or other party subject to Section III above, whether in whole or in part;

2. the balance of each such account, or a description of the nature and value of such asset;

3. the identification of any safe deposit box that is either titled in the name of, individually or jointly, or is otherwise subject to access or control by Defendant or other party subject to Section III above, whether in whole or in part; and

4. if the account, safe deposit box, or other asset has been closed or removed, the date closed or removed and the balance on said date;

D. The accounts subject to this provision include existing assets and assets deposited after the effective date of this Order. This Section shall not prohibit transfers in accordance with any provision of this Order, or any further order of the Court; and

E. The Commission is granted leave, pursuant to Fed. R. Civ. P. 45, to subpoena documents immediately from any such financial institution, account custodian, or other entity concerning the nature, location, status, and extent of Defendant's assets, as well as compliance with this Order, and such financial institution, account custodian or other entity shall respond to such subpoena within five (5) business days after service.

#### **V. REPATRIATION OF FOREIGN ASSETS AND DOCUMENTS**

**IT IS FURTHER ORDERED** that Defendant shall:

A. Within three (3) business days following service of this Order, take such steps as are necessary to repatriate to the United States all documents and assets that are located outside of such territory and are held by or for Defendant or are under Defendant's direct or indirect control, jointly, severally, or individually;

B. Within three (3) business days following service of this Order, provide Plaintiff with a full accounting of all documents and assets that are located outside of the territory of the United States or that have been transferred to the territory of the United States pursuant to Subsection A above and are held by or for Defendant or are under Defendant's direct or indirect control, jointly, severally, or individually, including the names and addresses of any foreign or domestic financial institution or other entity holding the assets, along with the account numbers and balances;

C. Hold and retain all repatriated documents and assets and prevent any transfer, disposition, or dissipation whatsoever of any such documents or assets; and

D. Within three (3) business days following service of this Order, provide Plaintiff access to Defendant's records and documents held by financial institutions or other entities outside the territorial United States, by signing and delivering to Plaintiff's counsel the Consent to Release of Financial Records attached to this Order as **Attachment A**.

## **VI. RECORD KEEPING/MAINTAINING BUSINESS RECORDS**

**IT IS FURTHER ORDERED** that Defendant, and his officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined from:

A. Failing to make and keep books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipts ledgers, cash disbursements

ledgers and source documents, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Defendant; and

B. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, contracts, agreements, customer files, customer lists, customer addresses and telephone numbers, correspondence, advertisements, brochures, sales material, training material, sales presentations, documents evidencing or referring to Defendant's products or services, data, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, "verification" or "compliance" tapes or other audio or video tape recordings, receipt books, invoices, postal receipts, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind, including electronically-stored materials, that relate to the business practices or business or personal finances of Defendant or other entities directly or indirectly under the control of Defendant.

## **VII. DISTRIBUTION OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that Defendant shall immediately provide a copy of this Order to each affiliate, partner, division, sales entity, successor, assign, officer, director, employee, independent contractor, agent, attorney, ad broker, fulfillment house, and representative of any Defendant. Within five (5) calendar days following service of this Order by Plaintiff, Defendant shall serve on Plaintiff an affidavit identifying the name, title, address,

telephone number, date of service, and manner of service of each person or entity Defendant served with a copy of this Order in compliance with this provision.

#### **VIII. SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be served by facsimile transmission, personal or overnight delivery, or by U.S. Mail, by agents and employees of the Commission or any state, federal or international law enforcement agency, or by private process server, on: (1) Defendants; (2) any financial institution, entity, or person that holds, controls, or maintains custody of any documents or assets of Defendant, or that held, controlled, or maintained custody of any documents or assets of Defendant; or (3) any other person or entity that may be subject to any provision of this Order. Service upon any branch or office of any financial institution or entity shall effect service upon the entire financial institution or entity.

#### **IX. CREDIT REPORTS**

**IT IS FURTHER ORDERED** that pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency may furnish a consumer report concerning Defendant to the Commission.

#### **X. FINANCIAL REPORTS AND ACCOUNTING**

**IT IS FURTHER ORDERED** that at least three (3) calendar days prior to the preliminary injunction hearing in this matter, and in no event later than ten (10) calendar days after entry of this Order, Defendant shall provide to counsel for the Commission:

A. A completed financial statement accurate as of the date of service of this Order upon Defendant in the form as provided as **Attachment B** to this Order.

B. A completed statement, verified under oath, of all payments, transfers, or assignments of funds, assets, or property worth \$5,000 or more since August 1, 2003. Such statement shall include: (a) the amount transferred or assigned; (b) the name of each transferee or assignee; (c) the date of the assignment or transfer; and (d) the type and amount of consideration paid by or to the Defendant. Each statement shall specify the name and address of each financial institution and brokerage firm at which Defendant has accounts or safe deposit boxes. Said statements shall include assets held in foreign as well as domestic accounts; and

C. A detailed accounting of:

1. the names and active ingredients of all products advertised, marketed, promoted, offered for sale, distributed, or sold, by, for, or on behalf of Defendant;

2. gross revenues and net profits obtained from the sale of each product identified in Subsection X.C.1. above, from inception of sales through the date of issuance of this Order; and

3. the full name, address, telephone number, e-mail address, Web site address, and identification number or code (including affiliate monikers) of each person who advertised, marketed, promoted, offered for sale, distributed, or sold any product for or on behalf of Defendant.

## **XI. EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that, notwithstanding the provisions of Federal Rules of Civil Procedure 26(d) and (f) and 30(a)(2)(C), and pursuant to Federal Rules of Civil Procedure 30(a), 34, and 45, the parties are granted leave, at any time after service of this Order, to:

A. Take the deposition, on three (3) calendar days' notice, of any person, whether or not a party, for the purpose of discovering the nature, location, status, and extent of the assets of Defendant, or his affiliates or subsidiaries; the nature and location of documents reflecting Defendant's business transactions, or the business transactions of Defendant's affiliates or subsidiaries; the location of any premises where Defendant, directly or through any third party, conduct business operations; Defendant's whereabouts; and/or the applicability of any evidentiary privileges to this action. The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) and 31(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Section. Any such depositions taken pursuant to this Section shall not be counted toward the ten (10) deposition limit set forth in Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A). Service of discovery upon a party, taken pursuant to this Section, shall be sufficient if made by facsimile or by overnight delivery; and

B. Demand the production of documents, on five (5) calendar days' notice, from any person, whether or not a party, relating to the nature, status, or extent of Defendant's assets, or of their affiliates or subsidiaries; the location of documents reflecting the business transactions of Defendant, or of his affiliates or subsidiaries; the location of any premises where Defendant, directly or through any third party, conducts business operations; Defendant's whereabouts; and/or the applicability of any evidentiary privileges to this action, provided that twenty four (24) hours' notice shall be deemed sufficient for the production of any such documents that are maintained or stored only as electronic data.

## **XII. CREATION OF OTHER BUSINESSES**

**IT IS FURTHER ORDERED** that Defendant is hereby temporarily restrained and enjoined from creating, operating, or controlling any business entity, whether newly-formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

## **XIII. ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION**

**IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil Procedure 65(b), that Defendant shall appear before this Court, on the \_\_\_\_\_ floor of the Dirksen Federal Courthouse, 219 S. Dearborn, Chicago, Illinois, on the \_\_\_\_\_ day of \_\_\_\_\_, 2004, at \_\_\_\_\_ o'clock \_\_\_\_m., to show cause, if there is any, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against Defendant, enjoining him from further violations of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52, and from violations of the CAN-SPAM Act, 15 U.S.C. § 7701, *et seq.*, continuing the freeze of assets and imposing such additional relief as may be appropriate.

## **XIV. SERVICE OF PLEADINGS, MEMORANDA, AND OTHER EVIDENCE**

**IT IS FURTHER ORDERED** that Defendant shall file any answering affidavits, pleadings, expert reports or declarations, or legal memoranda with the Court and serve the same on counsel for the Commission no later than three (3) business days prior to the preliminary



injunction hearing in this matter. The Commission may file responsive or supplemental pleadings, materials, affidavits, or memoranda with the Court and serve the same on counsel for Defendant no later than one (1) business day prior to the preliminary injunction hearing in this matter, provided that service shall be performed by personal or overnight delivery or by facsimile, and documents shall be delivered so that they shall be received by the other parties no later than 4:00 p.m. (Central Time) on the appropriate dates listed in this Subsection.

#### **XV. WITNESS IDENTIFICATION**

**IT IS FURTHER ORDERED** that the question of whether this Court should enter a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining Defendants during the pendency of this action shall be resolved on the pleadings, declarations, exhibits, and memoranda filed by and oral argument of the parties. Live testimony shall be heard only on further order of this Court or on motion filed with the Court and served on counsel for the other parties at least three (3) business days prior to the preliminary injunction hearing in this matter. Such motion shall set forth the name, address, and telephone number of each proposed witness, a detailed summary or affidavit revealing the substance of each proposed witness' expected testimony, and an explanation of why the taking of live testimony would be helpful to this Court. Any papers opposing a timely motion to present live testimony or to present live testimony in response to another party's timely motion to present live testimony shall be filed with this Court and served on the other parties at least two (2) business days prior to the preliminary injunction hearing in this matter, provided that service shall be performed by personal or overnight delivery or by facsimile, and documents shall be delivered so that they

shall be received by the other parties no later than 4:00 p.m. (Central Time) on the appropriate dates listed in this Subsection.

**XVI. CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF**

**IT IS FURTHER ORDERED** that, for purposes of this Order, all correspondence and pleadings to the Commission shall be addressed to:

Steven M. Wernikoff, Esq.  
Federal Trade Commission  
55 East Monroe Street, Suite 1860  
Chicago, Illinois 60603  
(312) 960-5600 [facsimile]

**XVII. DURATION OF THE TEMPORARY RESTRAINING ORDER**

**IT IS FURTHER ORDERED** that the Temporary Restraining Order granted herein shall expire on August 10, 2004, at 11:59 p.m., unless, within such time, for good cause shown, the Order is extended, or unless, as to Defendant, Defendant consents that it should be extended for a longer period of time.

**XVIII. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all purposes.

**IT IS SO ORDERED**, this 27<sup>th</sup> day of July, 2004, at 3:06 p.m.

  
United States District Judge