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13
14 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
15 SOUTHERN DIVISION

16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 ROEX, INC.,
20 RODNEY H. BURRESON, and
MARK ALEXANDER,

21 Defendants.
22

SACV09-0266

Hon.

CV-

[Proposed]
FINAL ORDER FOR
PERMANENT INJUNCTION
AND SETTLEMENT OF
CLAIMS FOR MONETARY
RELIEF

AG

MLG

23 The parties, Plaintiff Federal Trade Commission ("FTC" or "Commission")
24 and Defendants Roex, Inc., Rodney H. Burreson, and Mark Alexander
25 (collectively "Defendants"), having stipulated and agreed in the Stipulation for
26 Final Order for Permanent Injunction and Settlement of Claims for Monetary
27 Relief to entry of this Order, and having requested that the Court enter the same to
28

2009 MAR -4 PM 2:57
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

BY

1 resolve all matters in dispute in this action, and Defendants having waived service
2 of the Summons and Complaint, the Court hereby enters the following findings and
3 Order.

4 **FINDINGS**

5 1. This Court has jurisdiction over the subject matter of this case and
6 jurisdiction over all parties. Venue in the Central District of California is proper.

7 2. The Complaint states a claim upon which relief can be granted, and
8 the Commission has the authority to seek the relief it has requested.

9 3. The acts and practices of Defendants are in or affecting commerce, as
10 defined in 15 U.S.C. § 44.

11 4. Defendants waive all rights to seek judicial review or otherwise
12 challenge or contest the validity of this Order. Defendants also waive any claims
13 that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412,
14 concerning the prosecution of this action to the date of this Order.

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

16 6. Entry of this Order is in the public interest.

17 7. This Order reflects the negotiated agreement of the parties.

18 8. The Commission and Defendants agree that entry of this Order
19 resolves any and all disputes between them arising from the acts or practices
20 alleged in the Complaint in this action up to the date of entry of this Order.

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

24 **ORDER**

25 **DEFINITIONS**

26 For purposes of this Order, the following Definitions shall apply:

27 1. "Roex" ("Defendant Roex") means Roex, Inc., a California
28

1 corporation with its principal place of business at 16841 Armstrong Avenue,
2 Irvine, California 92606, its divisions and subsidiaries, and its successors and
3 assigns.

4 2. “Rodney H. Burreson” (“Defendant Burreson”) means Rodney H.
5 Burreson, individually and as an officer, director, manager, and owner of Roex.

6 3. “Mark Alexander” (“Defendant Alexander”) means Mark Alexander,
7 individually and as an employee of Roex.

8 4. Unless otherwise specified, “Defendants” means Roex, Inc., Burreson,
9 and Alexander.

10 5. “Advertisement” means any written or verbal statement, illustration,
11 or depiction that is designed to effect a sale or to create interest in the purchasing
12 of goods or services, whether it appears in a book, brochure, newspaper, magazine,
13 pamphlet, leaflet, circular, mailer, book insert, letter, catalogue, poster, chart,
14 billboard, public transit card, point of purchase display, packaging, package insert,
15 label, film, slide, radio broadcast, television or cable television broadcast, video
16 news release, audio program transmitted over a telephone system, infomercial, the
17 Internet, e-mail, or in any other medium.

18 6. “Assisting others” means knowingly providing any of the following
19 services to any person or entity: (a) performing customer service for any person or
20 entity, including, but not limited to, outbound or inbound telemarketing, upselling,
21 cross-selling, handling customer complaints, credit card or debit card processing,
22 refund processing, web design and marketing, continuity program development, or
23 designing, preparing, or assisting in the preparation of product labeling or
24 packaging; (b) formulating or providing, or arranging for the formulation or
25 provision of, any sales script or any other advertising or marketing material for any
26 such person or entity; (c) leasing, renting, selling, or servicing customer lists; or (d)
27 performing advertising or marketing services or consulting services of any kind for
28 any such person or entity.

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

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

8 9. “Covered product or service” means any dietary supplement, food,
9 drug, or device, including, but not limited to, B-Complex Combination, Beta-
10 Sitosterol, Cell Talk, Chicken Sternal Collagen Type II, Coconut Oil, Colostrum,
11 the Daily Solutions Package, DHA, Essential Fatty Acids, the Far Infrared Sauna,
12 For Your Eyes Only, Hyaluronic Acid, MSM, Oleuropein, PC-95, Vitamin C
13 Mineral Ascorbates or any other health-related product, service, or program,
14 whether sold individually, in any combination, or as part of a program or package.

15 10. “Specified products” means B-Complex Combination, Beta-Sitosterol,
16 Cell Talk, Chicken Sternal Collagen Type II, Coconut Oil, Colostrum, the Daily
17 Solutions Package, DHA, Essential Fatty Acids, the Far Infrared Sauna, For Your
18 Eyes Only, Hyaluronic Acid, MSM, Oleuropein, PC-95, and Vitamin C Mineral
19 Ascorbates.

20 11. “Endorsement” means as defined in 16 C.F.R. § 255.0(b).

21 12. “Food,” “drug,” and “device” mean as defined in Section 15 of the
22 FTC Act, 15 U.S.C. § 55.

23 13. The term “including” in this Order means “without limitation.”

24 14. The terms “and” and “or” in this Order shall be construed
25 conjunctively or disjunctively as necessary, to make the applicable phrase inclusive
26 rather than exclusive.

1 **PROHIBITED REPRESENTATIONS**

2 **I.**

3 **IT IS HEREBY ORDERED** that Defendants, directly or through any
4 corporation, partnership, subsidiary, division, trade name, or other device, and their
5 officers, agents, servants, representatives, employees, and all persons or entities in
6 active concert or participation with them who receive actual notice of this Order by
7 personal service or otherwise, in connection with the manufacturing, labeling,
8 advertising, promotion, offering for sale, sale, or distribution of any covered
9 product or service, in or affecting commerce, are hereby permanently restrained
10 and enjoined from making any representation, in any manner, expressly or by
11 implication, including through the use of product names or endorsements, that:

- 12 A. Such product or service is effective in treating AIDS, Alzheimer’s
13 disease, arthritis, asthma, autoimmune disorders, cancer, diabetes,
14 glaucoma, herpes, HIV, lupus, multiple sclerosis, rheumatoid arthritis,
15 tumors, or ulcers;
- 16 B. Such product or service reduces the risk of breast cancer, heart attack,
17 or stroke; or
- 18 C. Such product or service is effective in preventing Alzheimer’s disease,
19 cancer, or Parkinson’s disease,

20 unless the representation is true, non-misleading, and, at the time it is made,
21 Defendants possess and rely upon competent and reliable scientific evidence that
22 substantiates the representation.

23 **II.**

24 **IT IS FURTHER ORDERED** that Defendants, directly or through any
25 corporation, partnership, subsidiary, division, trade name, or other device, and their
26 officers, agents, servants, representatives, employees, and all persons or entities in
27 active concert or participation with them who receive actual notice of this Order by
28 personal service or otherwise, in connection with the manufacturing, labeling,

1 advertising, promotion, offering for sale, sale, or distribution of any covered
2 product or service, in or affecting commerce, are hereby permanently restrained
3 and enjoined from making, or assisting others in making, any representation, in any
4 manner, expressly or by implication, including through the use of product names or
5 endorsements, about the absolute or comparative benefits, performance, efficacy,
6 safety, or side effects of such product or service unless the claim is true, non-
7 misleading, and, at the time it is made, Defendants possess and rely upon
8 competent and reliable scientific evidence that substantiates the representation.

9 **MISREPRESENTATION OF TESTS OR STUDIES**

10 **III.**

11 **IT IS FURTHER ORDERED** that Defendants, directly or through any
12 corporation, partnership, subsidiary, division, trade name, or other device, and their
13 officers, agents, servants, representatives, employees, and all persons or entities in
14 active concert or participation with them who receive actual notice of this Order by
15 personal service or otherwise, in connection with the manufacturing, labeling,
16 advertising, promotion, offering for sale, sale, or distribution of any covered
17 product or service, in or affecting commerce, are hereby permanently restrained
18 and enjoined from misrepresenting, or assisting others in misrepresenting, in any
19 manner, expressly or by implication, including through the use of any product
20 names or endorsements, the existence, contents, validity, results, conclusions, or
21 interpretations of any test, study, or research.

22 **FDA APPROVED CLAIMS**

23 **IV.**

24 **IT IS FURTHER ORDERED** that:

25 A. Nothing in this Order shall prohibit Defendants from making any
26 representation for any drug that is permitted in labeling for such drug under any
27 tentative or final standard promulgated by the Food and Drug Administration, or
28

1 under any new drug application approved by the Food and Drug Administration;
2 and

3 B. Nothing in this Order shall prohibit Defendants from making any
4 representation for any product that is specifically permitted in labeling for such
5 product by regulations promulgated by the Food and Drug Administration pursuant
6 to the National Labeling and Education Act of 1990.

7 LIST OF CONSUMERS

8 V.

9 **IT IS FURTHER ORDERED** that:

10 A. Defendants Roex and Burreson shall, no later than twenty (20)
11 calendar days after the date of entry of this Order, deliver to the Commission a list,
12 in the form of a sworn affidavit, of all customers who purchased the specified
13 products, on or after January 1, 2004 through the date of entry of this Order, to the
14 extent that such purchasers are known to Defendants Roex and Burreson through a
15 diligent search of their records, including but not limited to computer files, sales
16 records, and inventory lists. Such list shall include each consumer's name and
17 address, the product(s) purchased, the total amount of moneys paid less any
18 amount credited for returns or refunds, and, if available, the consumer's telephone
19 number and e-mail address; and

20 B. Except as provided in this Order, Defendants Roex and Burreson, and
21 their officers, agents, servants, employees, and all other persons or entities in active
22 concert or participation with them who receive actual notice of this Order by
23 personal service or otherwise, are permanently restrained and enjoined from
24 selling, renting, leasing, transferring, or otherwise disclosing the name, address,
25 telephone number, credit card number, bank account number, e-mail address, or
26 other identifying information of any person who paid any money to either
27 Defendant Roex or Defendant Burreson, at any time prior to entry of this Order, in
28 connection with the purchase of any specified product. *Provided, however, that*

1 Defendants Roex and Burreson may disclose such identifying information as
2 required in Subparagraph V.A above, or to any law enforcement agency, or as
3 required by any law, regulation, or court order.

4 **MONETARY JUDGMENT AND REDRESS TO CONSUMERS**

5 **VI.**

6 **IT IS FURTHER ORDERED** that:

7 A. Judgment is hereby entered in favor of the Commission and against
8 Defendants, jointly and severally, in the amount of Twenty-Nine Million Dollars
9 and No Cents (\$29,000,000.00) for redress to consumers. In addition, judgment is
10 hereby entered in favor of the Commission and against Defendants Roex and
11 Burreson, jointly and severally, in the amount of Five Million Six Hundred
12 Thousand Dollars and No Cents (\$5,600,000.00) for redress to consumers.
13 *Provided, however,* that the judgment against Defendant Alexander shall be
14 suspended until further order of the Court, and *provided further,* that upon the
15 fulfillment of the payment obligations of Subparagraph VI.B of this Order by
16 Defendants Roex and Burreson, the judgments against Defendants Roex and
17 Burreson shall be suspended until further order of the Court. The judgments
18 provided for herein shall be subject to reinstatement under the conditions set forth
19 in Paragraph VII of this Order.

20 B. Defendants Roex and Burreson shall pay to the Commission the
21 amount of Three Million Dollars and No Cents (\$3,000,000.00). Such funds shall
22 be deposited by Defendants Roex and Burreson into the escrow or client trust
23 account of attorney Marc S. Ullman no later than December 5, 2008. Payment
24 shall be made to the Commission within five (5) days of the date of entry of this
25 Order by wire transfer in accord with instructions that will be provided by the
26 Commission. Defendants Roex and Burreson are jointly and severally liable for
27 the payment provided for herein.

1 C. In the event of default on any obligation to make payment under this
2 Order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the
3 date of default to the date of payment. In the event such default continues for ten
4 (10) calendar days beyond the date the payment is due, the judgments against
5 Defendants Roex and Burreson, jointly and severally, together with interest, shall
6 immediately become due and payable by Defendants Roex and Burreson.
7 Defendant Alexander shall not be liable for any obligation in the event of default
8 by Defendants Roex and Burreson.

9 D. All funds paid pursuant to this Order shall be deposited into a fund
10 administered by the Commission or its agents to be used for equitable relief,
11 including, but not limited to, redress to consumers and any attendant expenses for
12 the administration of such equitable relief. In the event that direct redress to
13 consumers is wholly or partially impracticable or funds remain after the redress is
14 completed, the Commission may apply any remaining funds for such other
15 equitable relief (including consumer information remedies) as it determines to be
16 reasonably related to Defendants' practices alleged in the Complaint. Any funds
17 not used for such equitable relief shall be deposited to the United States Treasury
18 as disgorgement. Defendants shall have no right to challenge the Commission's
19 choice of remedies under this Paragraph. Defendants shall have no right to contest
20 the manner of distribution chosen by the Commission. No portion of any payment
21 under the Judgment herein shall be deemed a payment of any fine, penalty, or
22 punitive assessment.

23 E. Defendants relinquish all dominion, control, and title to the funds
24 paid, and all legal and equitable title to the funds vests in the Treasurer of the
25 United States and in the designated consumers. Defendants shall make no claim to
26 or demand for return of the funds, directly or indirectly, through counsel or
27 otherwise; and in the event of bankruptcy, Defendants acknowledge that the funds
28

1 are not part of the debtor's estate, nor does the estate have any claim or interest
2 therein.

3 F. Defendants agree that the facts as alleged in the Complaint filed in
4 this action shall be taken as true without further proof in any bankruptcy case or
5 subsequent civil litigation pursued by the Commission to enforce its rights to any
6 payment or money judgment pursuant to this Order, including but not limited to a
7 non-dischargeability complaint in any bankruptcy case. Defendants further
8 stipulate and agree that the facts alleged in the Complaint establish all elements
9 necessary to sustain an action pursuant to, and that this Order shall have collateral
10 estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy Code, 11
11 U.S.C. § 523(a)(2)(A).

12 G. In accordance with 31 U.S.C. § 7701, Defendants are hereby required,
13 unless they have done so already, to furnish to the Commission their taxpayer
14 identifying numbers and/or social security numbers, which shall be used for the
15 purposes of collecting and reporting on any delinquent amount arising out of
16 Defendants' relationship with the government.

17 H. Proceedings instituted under this Paragraph are in addition to, and not
18 in lieu of, any other civil or criminal remedies that may be provided by law,
19 including any other proceedings the Commission may initiate to enforce this
20 Order.

21 **RIGHT TO REOPEN**

22 **VII.**

23 **IT IS FURTHER ORDERED** that:

24 A. The Commission's agreement to this Order and the Court's approval
25 are expressly premised upon the truthfulness, accuracy, and completeness of the
26 certified financial statements and supporting documents submitted to the
27 Commission as follows:

- 1 1. Certified financial disclosures for Defendant Roex and all
2 addenda thereto, signed and dated August 6, 2008;
- 3 2. Certified financial disclosures for Defendant Burreson and all
4 addenda thereto, signed and dated July 24, 2008;
- 5 3. Certified financial disclosures for Defendant Alexander and all
6 addenda thereto, signed and dated July 14, 2008; and
- 7 4. Supplemental financial disclosures and all addenda thereto,
8 submitted August 14, 2008, August 22, 2008, September 3,
9 2008, November 3, 2008, November 11, 2008, and November
10 17, 2008.

11 Each Defendant stipulates that all of the materials such Defendant submitted are
12 truthful, accurate, and complete. These documents contain material information
13 upon which the Commission relied in negotiating and agreeing to the terms of this
14 Order.

15 B. If, upon motion by the Commission, a Court determines that
16 Defendants Roex or Burreson made a material misrepresentation or omitted
17 material information concerning its or his financial condition, then the Court shall
18 reinstate the applicable suspended judgment amount (*i.e.*, \$34,600,000.00) entered
19 against Defendants Roex and Burreson in Subparagraph VI.A of this Order.
20 *Provided, however,* that Defendant Alexander shall not be liable for any material
21 misrepresentations or omitted material information concerning Defendant Roex's
22 or Defendant Burreson's financial conditions. Should the Court reinstate the
23 applicable suspended judgment amount entered against Defendants Roex and
24 Burreson in Subparagraph VI.A of this Order, Defendants Roex and Burreson shall
25 be entitled to offset this amount by any sums already paid under this Order. Any
26 such reinstated judgment shall become immediately due and payable by
27 Defendants Roex and Burreson, and interest computed at the rate prescribed under
28 28 U.S.C. § 1961(a) shall immediately begin to accrue on the unpaid balance.

1 *Provided, however,* that in all other respects this Order shall remain in full force
2 and effect unless otherwise ordered by the Court. For purposes of this Paragraph,
3 and any subsequent proceedings to enforce payment, including, but not limited to,
4 a nondischargeability complaint filed in a bankruptcy proceeding, Defendants
5 Roex and Burreson agree not to contest any of the allegations in the Commission's
6 Complaint.

7 C. If, upon motion by the Commission, a Court determines that
8 Defendant Alexander made a material misrepresentation or omitted material
9 information concerning his financial condition, then the Court shall reinstate the
10 applicable suspended judgment amount (*i.e.*, \$29,000,000.00) entered against him
11 in Subparagraph VI.A of this Order. Should the Court reinstate the applicable
12 suspended judgment amount entered against Defendant Alexander in Subparagraph
13 VI.A of this Order, Defendant Alexander shall be entitled to offset this amount by
14 any sums already paid by Defendants Roex and Burreson under this Order. Any
15 such reinstated judgment shall become immediately due and payable by Defendant
16 Alexander, and interest computed at the rate prescribed under 28 U.S.C. § 1961(a)
17 shall immediately begin to accrue on the unpaid balance. *Provided, however,* that
18 in all other respects this Order shall remain in full force and effect unless otherwise
19 ordered by the Court. For purposes of this Paragraph, and any subsequent
20 proceedings to enforce payment, including, but not limited to, a
21 nondischargeability complaint filed in a bankruptcy proceeding, Defendant
22 Alexander agrees not to contest any of the allegations in the Commission's
23 Complaint.

24 D. Proceedings instituted under this Paragraph are in addition to, and not
25 in lieu of, any other civil or criminal remedies that may be provided by law,
26 including any other proceedings the Commission may initiate to enforce this
27 Order.

1 **COMPLIANCE MONITORING**

2 **VIII.**

3 **IT IS FURTHER ORDERED** that, for purposes of monitoring and
4 investigating compliance with any provision of this Order:

5 A. Within ten (10) calendar days of receipt of written notice from a
6 representative of the Commission, Defendants each shall submit additional written
7 reports, sworn to under penalty of perjury; produce documents for inspection and
8 copying; appear for deposition; and/or provide entry during normal business hours
9 to any business location in such Defendant's possession or direct or indirect
10 control to inspect the business operations;

11 B. In addition, the Commission is authorized to monitor compliance with
12 this Order by all lawful means, including, but not limited to the following:

- 13 1. Obtaining discovery from any person, without further leave of
14 the Court, using the procedures prescribed by Fed. R. Civ. P.
15 30, 31, 33, 34, 36, and 45;
- 16 2. Posing as customers and clients to any Defendant, employees of
17 any Defendant, or any other entity managed or controlled in
18 whole or in part by any Defendant, without the necessity of
19 identification or prior notice; and

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

24 *Provided, however,* that nothing in this Order shall limit the Commission's
25 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act,
26 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things,
27 testimony, or information relevant to unfair or deceptive acts or practices in or
28 affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

1 **COMPLIANCE REPORTING BY DEFENDANTS**

2 **IX.**

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

5 A. For a period of three (3) years from the date of entry of this Order,

6 1. Defendant Burreson and Defendant Alexander each shall notify
7 the Commission of the following:

8 a. Any changes in his residence(s), mailing address(es), and
9 telephone number(s) within ten (10) calendar days of the
10 date of such change;

11 b. Any changes in his employment status (including self-
12 employment) and any change in his ownership in any
13 business entity, within ten (10) calendar days of such
14 change. Such notice shall include the name and address
15 of each business that the Defendant is affiliated with,
16 employed by, creates or forms, or performs services for;
17 a statement of the nature of the business; and a statement
18 of the Defendant's duties and responsibilities in
19 connection with the business or employment; and

20 c. Any changes in the Defendant's name or use of any
21 aliases or fictitious names; and

22 2. Defendants Roex and Burreson shall notify the Commission of
23 any proposed change in the corporate structure of Defendant
24 Roex or any business entity that Defendants Roex or Burreson
25 directly or indirectly controls, or has an ownership interest in,
26 that may affect compliance obligations arising under this Order,
27 including but not limited to a dissolution, assignment, sale,
28 merger, or other action that would result in the emergence of a

1 successor entity; the creation or dissolution of a subsidiary,
2 parent, or affiliate that engages in any acts or practices subject
3 to this Order; the filing of a bankruptcy petition; or a change in
4 the corporate name or address, at least thirty (30) calendar days
5 prior to such change, *provided that*, with respect to any
6 proposed change in the business entity about which Defendants
7 Roex or Burreson learns less than thirty (30) calendar days
8 prior to the date such action is to take place, Defendants Roex
9 and Burreson shall notify the Commission as soon as is
10 practicable after obtaining such knowledge.

- 11 3. Defendant Alexander shall notify the Commission of any
12 business entity that he directly or indirectly controls, or has an
13 ownership interest in, or of any proposed change in such
14 business entity, that may affect compliance obligations arising
15 under this Order, including but not limited to a dissolution,
16 assignment, sale, merger, or other action that would result in the
17 emergence of a successor entity; the creation or dissolution of a
18 subsidiary, parent, or affiliate that engages in any acts or
19 practices subject to this Order; the filing of a bankruptcy
20 petition; or a change in the corporate name or address, at least
21 thirty (30) calendar days prior to such change, *provided that*,
22 with respect to any proposed change in the business entity
23 about which Defendant Alexander learns less than thirty (30)
24 calendar days prior to the date such action is to take place,
25 Defendant Alexander shall notify the Commission as soon as is
26 practicable after obtaining such knowledge.

27 B. Sixty (60) calendar days after the date of entry of this Order,
28 Defendants each shall provide a written report to the Commission, sworn to under

1 penalty of perjury, setting forth in detail the manner and form in which they have
2 complied and are complying with this Order. This report shall include, but not be
3 limited to:

4 1. For Defendant Burreson and Defendant Alexander:

- 5 a. The then-current residence addresses, mailing addresses,
6 and telephone numbers of the Defendant;
- 7 b. The then-current employment and business addresses and
8 telephone numbers of the Defendant, a description of the
9 business activities of each such employer or business,
10 and the title and responsibilities of the Defendant, for
11 each such employer or business. For purposes of this
12 Paragraph, “employment” includes the performance of
13 services as an employee, consultant, or independent
14 contractor; and “employers” include any individual or
15 entity for whom the Defendant performs services as an
16 employee, consultant, or independent contractor;
- 17 c. A copy of each acknowledgment of receipt of this Order
18 obtained by the Defendant pursuant to Paragraph X; and
- 19 d. Any other change required to be reported under
20 Subparagraph A of this Paragraph.

21 2. For Defendant Roex:

- 22 a. A copy of each acknowledgment of receipt of this Order
23 obtained by each Defendant pursuant to Paragraph X;
24 and
- 25 b. Any other changes required to be reported under
26 Subparagraph A of this Paragraph.

27 C. For the purposes of this Order, Defendants shall, unless otherwise
28 directed by the Commission’s authorized representatives, send by overnight

1 courier all reports and notifications required by this Order to the Commission, to
2 the following address:

3 Associate Director for Enforcement
4 Federal Trade Commission
5 600 Pennsylvania Avenue, N.W.
6 Washington, D.C. 20580
7 Re: **FTC v. Roex, Inc., et al.**, Civil Action _____.

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

11 DEBrief@ftc.gov.

12 D. For purposes of the compliance reporting required by this Paragraph,
13 the Commission is authorized to communicate directly with any Defendant.

14 **RECORD KEEPING PROVISIONS**

15 **X.**

16 **IT IS FURTHER ORDERED** that, for a period of six (6) years from the
17 date of entry of this Order, Defendant Roex and any business engaged in the sale of
18 any covered product or service in which Defendant Bureson or Defendant
19 Alexander is a majority owner or otherwise directly or indirectly controls the
20 business, and their agents, employees, officers, corporations, successors, and
21 assigns, are hereby restrained and enjoined from failing to create and retain the
22 following records:

23 A. Accounting records that reflect the cost of covered products or
24 services sold, revenues generated, and disbursement of such revenues;

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

1 C. Customer files containing the names, addresses, telephone numbers,
2 dollar amounts paid, quantity of items or services purchased, and description of
3 items or services purchased, to the extent such information is obtained in the
4 ordinary course of business;

5 D. Complaints and refund requests (whether received directly, indirectly,
6 or through any third party) and all records showing any responses to those
7 complaints or requests;

8 E. Copies of all advertisements, promotional materials, sales scripts,
9 training materials, or other marketing materials utilized in the advertising,
10 marketing, promotion, offering for sale, distribution, or sale of any product,
11 service, package, or program covered by this Order;

12 F. All materials that were relied upon in making any representations
13 contained in the materials identified in Subparagraph X.E above, including all
14 documents evidencing or referring to the accuracy of any claim therein or to the
15 benefits, performance, efficacy, safety, or side effects of any product, service,
16 package, or program, including but not limited to all tests, reports, studies,
17 demonstrations, as well as evidence that confirms, contradicts, qualifies, or calls
18 into question the accuracy of such claims regarding the benefits, performance,
19 efficacy, safety, or side effects of such product, service, package, or program; and

20 G. All records and documents necessary to demonstrate full compliance
21 with each provision of this Order, including but not limited to, copies of
22 acknowledgments of receipt of this Order and all reports submitted to the
23 Commission pursuant to this Order.

24 **DISTRIBUTION OF ORDER**

25 **XI.**

26 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the
27 date of entry of this Order, Defendants shall deliver copies of the Order as directed
28 below:

1 A. Defendant Roex shall deliver a copy of this Order to each of its
2 principals, officers, directors, and managers. Defendant Roex also shall deliver a
3 copy of the Order to all of its employees, agents, and representatives who engage
4 in conduct related to the subject matter of this Order. For current personnel,
5 delivery shall be within five (5) business days of service of this Order upon
6 Defendants. For new personnel, delivery shall occur prior to their assuming their
7 responsibilities.

8 B. For any business that Defendant Burreson or Defendant Alexander
9 controls, directly or indirectly, or in which such individual Defendant has a
10 majority ownership interest, such individual Defendant shall deliver a copy of this
11 Order to all of the principals, officers, directors, and managers of that business, and
12 to all employees, agents, and representatives of that business who engage in
13 conduct related to the subject matter of this Order. For current personnel, delivery
14 shall be within five (5) business days of service of this Order upon Defendants.
15 For new personnel, delivery shall occur prior to their assuming their
16 responsibilities.

17 C. For any business where Defendant Burreson or Defendant Alexander
18 is not a controlling person of the business but otherwise engages in conduct related
19 to the subject matter of this Order, such individual Defendant shall deliver a copy
20 of this Order to each of the principals and managers of such business before
21 engaging in such conduct.

22 D. Defendants shall secure a signed and dated statement acknowledging
23 receipt of this Order, within thirty (30) calendar days of delivery, from each person
24 receiving a copy of the Order pursuant to this Paragraph.

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26 **THE REST OF THIS PAGE IS INTENTIONALLY BLANK.**
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1 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

2 **XII.**

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

6 **RETENTION OF JURISDICTION**

7 **XIII.**

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

11 **IT IS SO ORDERED.**

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DATE:

UNITED STATES DISTRICT JUDGE