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12 ATTORNEYS FOR PLAINTIFF

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15  
16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 WINDOW ROCK ENTERPRISES, INC.,  
also d/b/a WINDOW ROCK HEALTH  
20 LABORATORIES, also d/b/a  
CORTISLIM, INFINITY  
21 ADVERTISING, INC., STEPHEN F.  
CHENG, SHAWN M. TALBOTT, and  
22 GREGORY S. CYNAUMON,  
PINNACLE MARKETING CONCEPTS,  
23 INC., also d/b/a PMC HEALTH  
PRODUCTS, AND THOMAS F. CHENG

24 Defendants.  
25

CIVIL NUMBER

**CV-04-8190-DSF (JTLx)**

**STIPULATED FINAL  
AGREEMENT AND  
ORDER FOR  
PERMANENT  
INJUNCTION AND  
SETTLEMENT OF  
CLAIMS FOR  
MONETARY RELIEF  
AS TO DEFENDANTS  
PINNACLE MARKETING  
CONCEPTS, INC. AND  
THOMAS F. CHENG**

1 The Federal Trade Commission (“Commission”), filed a complaint and  
2 subsequently amended it to name additional defendants Pinnacle Marketing  
3 Concepts, Inc. and Thomas F. Cheng (as amended, “Complaint”), pursuant to  
4 Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C.  
5 § 53(b), to secure permanent injunctive relief, restitution, disgorgement, and other  
6 equitable relief against the Defendants for their alleged deceptive acts or practices  
7 and false advertisements in connection with the advertising, promotion, and sale of  
8 an alleged weight-loss product, “CortiSlim,” and an alleged stress-relief product,  
9 “CortiStress,” in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§  
10 45(a) and 52.

11 The Commission and Defendants Pinnacle Marketing Concepts, Inc., also  
12 d/b/a PMC Health Products (“Pinnacle”), and Thomas F. Cheng (Pinnacle and  
13 Thomas Cheng collectively, “Stipulating Defendants”), without the Stipulating  
14 Defendants admitting or denying liability for any of the conduct alleged in the  
15 Complaint, have stipulated to entry of the following agreement for permanent  
16 injunction and settlement of claims for monetary relief in settlement of the  
17 Commission’s Complaint against the Stipulating Defendants.

18 The Court, having been presented with this Stipulated Final Agreement and  
19 Order for Permanent Injunction and Settlement of Claims for Monetary Relief  
20 (“Order”), finds as follows:

21 **FINDINGS**

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

24 2. The Complaint states a claim upon which relief can be granted, and  
25 the Commission has the authority to seek the relief which is stipulated to in this  
26 Order.

1 3. The acts and practices of the Stipulating Defendants were and are in  
2 or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

3 4. The Stipulating Defendants waive all rights to seek judicial review or  
4 otherwise challenge or contest the validity of this Order. The Stipulating  
5 Defendants also waive any claim that they may have held under the Equal Access  
6 to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the  
7 date of this Order.

8 5. The Stipulating Defendants have entered into this Order freely and  
9 without coercion.

10 6. The Commission and the Stipulating Defendants stipulate and agree  
11 to this Order, without trial or final adjudication of any issue of fact or law, to settle  
12 and resolve all matters in dispute between them arising from the Complaint up to  
13 the date of entry of this Order. By entering this stipulation, the Stipulating  
14 Defendants do not admit or deny any of the allegations set forth in the Complaint,  
15 other than jurisdictional facts.

16 7. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of  
17 this Order are binding upon the Stipulating Defendants, and their officers, agents,  
18 servants, employees, and all other persons or entities in active concert or  
19 participation with them, who receive actual notice of this Order by personal  
20 service or otherwise.

21 8. Nothing in this Order obviates the obligation of the Stipulating  
22 Defendants to comply with Sections 5 and 12 of the Federal Trade Commission  
23 Act, 15 U.S.C. §§ 45 and 52.

24 9. This Order was drafted jointly by the Commission and the Stipulating  
25 Defendants and reflects the negotiated agreement of these parties.  
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1 10. The paragraphs of this Order shall be read as the necessary  
2 requirements for compliance and not as alternatives for compliance and no  
3 paragraph serves to modify another paragraph unless expressly so stated.

4 11. Each party shall bear its own costs and attorneys' fees.

5 12. Entry of this Order is in the public interest.  
6

7 **DEFINITIONS**

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

9 1. Unless otherwise specified, "Stipulating Defendants" shall mean

10 a. Pinnacle Marketing Concepts, Inc., also d/b/a PMC Health  
11 Products (collectively, "Pinnacle"); and

12 b. Thomas F. Cheng, individually and as an officer of Pinnacle  
13 ("Thomas Cheng").

14 2. "Advertising" and "promotion" shall mean any written or verbal  
15 statement, illustration or depiction designed to effect a sale or create interest in the  
16 purchasing of goods, whether it appears in a brochure, newspaper, magazine,  
17 pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter,  
18 catalogue, poster, chart, billboard, public transit card, point of purchase display,  
19 packaging, package insert, label, film, slide, radio, television or cable television,  
20 audio program transmitted over a telephone system, program-length commercial  
21 ("infomercial"), the Internet, email, press release, video news release, or in any  
22 other medium.

23 3. "Assisting others" shall mean knowingly providing any of the  
24 following services to any person or entity engaged in conduct related to the subject  
25 matter of this Order, including the sale or marketing of a Target Product or a  
26 Covered Product: (a) serving as an owner, partner, officer, director or manager of  
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1 a business entity selling or marketing a Target Product or a Covered Product; or  
2 (b) formulating or providing, or arranging for the formulation or provision of any  
3 Covered Product, advertising for any Covered Product, or marketing for any  
4 Covered Product, but excluding conduct in compliance with the Telemarketing  
5 Sales Rule (16 C.F.R. Part 310), telephone calls exempted from the Telemarketing  
6 Sales Rule under 16 C.F.R. 310.6(b)(4) and (5), or the purchase of media time, as  
7 long as the excluded conduct is not performed for or on behalf of any Related  
8 Party.

9 4. “Commerce” shall mean as defined in Section 4 of the FTC Act, 15  
10 U.S.C. § 44.

11 5. “Competent and reliable scientific evidence” shall mean tests,  
12 analyses, research, studies, or other evidence based on the expertise of  
13 professionals in the relevant area, that has been conducted and evaluated in an  
14 objective manner by persons qualified to do so, using procedures generally  
15 accepted in the professions to yield accurate and reliable results.

16 6. “CortiSlim” shall mean the dietary supplement CortiSlim and any  
17 other product marketed by or on behalf of a Related Party that

18 a. contains one or more of the following ingredients present in  
19 current or previous formulations of CortiSlim: magnolia bark  
20 extract, beta-sitosterol, theanine, green tea leaf extract, bitter  
21 orange peel extract, Panax ginseng, banaba leaf extract,  
22 chromium, or vanadium; and

23 b. is marketed with claims that it has a weight effect or reduces or  
24 manages stress.

25 7. “CortiSlim Study” shall mean the study conducted by Defendant  
26 Talbott and others as reported, at least in part, under the title “Effect of a  
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1 Stress/Cortisol-Control Dietary Supplement on Weight Loss,” by Shawn Talbott,  
2 Ann-Marie Christopulos, and Jill Whelan, as well as all underlying data for such  
3 study.

4 8. “CortiStress” shall mean the dietary supplement CortiStress and any  
5 other product marketed by or on behalf of a Related Party that

6 a. contains one or more of the following ingredients present in  
7 current or previous formulations of CortiStress: magnolia bark  
8 extract, beta-sitosterol, or theanine; and

9 b. is marketed with claims that it has a weight effect, or reduces or  
10 manages stress, or prevents or treats any disease.

11 9. “Covered Product” shall mean any dietary supplement, food, drug,  
12 cosmetic, or device.

13 10. “Endorsement” shall mean as defined in 16 C.F.R. § 255.0(b).

14 11. “Food,” “drug,” “cosmetic,” and “device” shall mean as defined in  
15 Section 15 of the FTC Act, 15 U.S.C. § 55.

16 12. “Commission” shall mean the Federal Trade Commission.

17 13. “Related Party” shall mean one or more of Window Rock Enterprises,  
18 Inc., also d/b/a Window Rock Health Laboratories, also d/b/a Cortislim, Infinity  
19 Advertising, Inc., Stephen F. Cheng, Shawn M. Talbott, and Gregory S.  
20 Cynaumon, whether acting directly or through any corporation, partnership,  
21 subsidiary, division, trade name, or other entity, and their officers, agents,  
22 servants, employees, and all persons and entities in active concert or participation  
23 with them.

24 14. “Target Product” shall mean CortiSlim and CortiStress.

25 15. “Weight effect” shall mean any weight-related effect attributed to a  
26 food, drug, dietary supplement, product, device, or program and includes, but is  
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1 not limited to, preventing weight gain or producing weight loss, reducing or  
2 eliminating fat, slimming, changing body composition, or causing a caloric deficit  
3 in a user of such food, drug, dietary supplement, product, device, or program.

4 16. A requirement that any defendant “notify,” “furnish,” “provide,” or  
5 “submit” to the Commission shall mean that the defendant shall send the necessary  
6 information via **overnight courier**, costs prepaid, to:

7 Associate Director for Advertising Practices  
8 Federal Trade Commission  
9 600 Pennsylvania Avenue, N.W.  
10 Washington, DC 20580  
11 Attn: *FTC v. Window Rock Enterprises, Inc., et al.*, (C.D. Cal.),  
12 Civ. No. 04-8190-DSF (JTLx).

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

16 18. The term “including” in this Order shall mean “including without  
17 limitation.”

18 **IT IS STIPULATED, AGREED, AND ORDERED:**

19 **I.**

20 **PROHIBITED REPRESENTATIONS REGARDING  
21 ANY TARGET PRODUCT**

22 A. That the Stipulating Defendants, directly or through any corporation,  
23 partnership, subsidiary, division, trade name, or other entity, and their officers,  
24 agents, servants, employees, and all persons and entities in active concert or  
25 participation with them who receive actual notice of this Order by personal  
26 service, facsimile, or otherwise, in connection with the manufacturing, labeling,  
27 advertising, promotion, offering for sale, sale, or distribution of any Target  
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1 Product, in or affecting commerce, are hereby permanently restrained and enjoined  
2 from making, or assisting others in making, directly or by implication, including  
3 through the use of endorsements or product names, any representation that any

4 Target Product:

- 5 1. Reduces the risk of or prevents serious health conditions,  
6 including osteoporosis, obesity, diabetes, Alzheimer's disease,  
7 cancer, and cardiovascular disease;
- 8 2. Causes weight loss of 10 to 50 pounds or more for virtually all  
9 users;
- 10 3. Causes users to lose as much as 4 to 10 pounds per week over  
11 multiple weeks;
- 12 4. Causes users to lose weight specifically from the abdomen,  
13 stomach, and thighs;
- 14 5. Causes rapid and substantial weight loss;
- 15 6. Causes long-term or permanent weight loss;
- 16 7. Causes weight loss without the need for diet or exercise; or  
17 8. Has been demonstrated effective, is supported by, or is  
18 otherwise the product of over 15 years of scientific research.

19 B. That the Stipulating Defendants, directly or through any corporation,  
20 partnership, subsidiary, division, trade name, or other entity, and their officers,  
21 agents, servants, employees, and all persons and entities in active concert or  
22 participation with them who receive actual notice of this Order by personal  
23 service, facsimile, or otherwise, in connection with the manufacturing, labeling,  
24 advertising, promotion, offering for sale, sale, or distribution of any Target  
25 Product, in or affecting commerce, are hereby permanently restrained and enjoined  
26 from making, or from assisting others in making, directly or by implication,



1 including through the use of endorsements or product names, any other  
2 representation about the performance or efficacy of any Target Product unless the  
3 representation is true and non-misleading, and, at the time it is made, the  
4 Stipulating Defendants possess and rely upon competent and reliable scientific  
5 evidence that substantiates the representation.

6  
7 **II.**

8 **PROHIBITED REPRESENTATIONS REGARDING**  
9 **ANY COVERED PRODUCT**

10 That the Stipulating Defendants, directly or through any corporation,  
11 partnership, subsidiary, division, trade name, or other entity, and their officers,  
12 agents, servants, employees, and all persons and entities in active concert or  
13 participation with them who receive actual notice of this Order by personal  
14 service, facsimile, or otherwise, in connection with the manufacturing, labeling,  
15 advertising, promotion, offering for sale, sale, or distribution of any Covered  
16 Product, in or affecting commerce, are hereby permanently restrained and enjoined  
17 from making, or assisting others in making, directly or by implication, including  
18 through the use of endorsements or product names, any representation about the  
19 weight effect, other health benefits, performance, or efficacy of any Covered  
20 Product unless the representation is true and non-misleading, and, at the time it is  
21 made, the Stipulating Defendants possess and rely upon competent and reliable  
22 scientific evidence that substantiates the representation.

1 **III.**

2 **PROHIBITED REPRESENTATIONS REGARDING**  
3 **TESTS AND STUDIES**

4 That the Stipulating Defendants, directly or through any corporation,  
5 partnership, subsidiary, division, trade name, or other entity, and their officers,  
6 agents, servants, employees, and all persons and entities in active concert or  
7 participation with them who receive actual notice of this Order by personal  
8 service, facsimile, or otherwise, in connection with the manufacturing, labeling,  
9 advertising, promotion, offering for sale, sale, or distribution of any Covered  
10 Product, in or affecting commerce, are hereby permanently restrained and enjoined  
11 from making or assisting others in making, directly or by implication, including  
12 through the use of endorsements or product names, any misrepresentation about  
13 the existence, contents, validity, results, conclusions, or interpretations of any test  
14 or study including, but not limited to, the CortiSlim Study.

15 **IV.**

16 **FORMATTING AND DISCLOSURES FOR BROADCAST MEDIA**

17 That the Stipulating Defendants, directly or through any corporation,  
18 partnership, subsidiary, division, trade name, or other entity, and their officers,  
19 agents, servants, employees, and all persons and entities in active concert or  
20 participation with them who receive actual notice of this Order by personal  
21 service, facsimile, or otherwise, in connection with the labeling, advertising,  
22 promotion, offering for sale, sale, or distribution of any product, program, or  
23 service, in or affecting commerce, are hereby permanently restrained and enjoined  
24 from creating or producing or assisting others in creating or producing:

25 A. Any advertisement that misrepresents, expressly or by implication,  
26 that it is not a paid advertisement;  
27

1           B.     Any television commercial or other video advertisement fifteen (15)  
2 minutes in length or longer or intended to fill a broadcasting or cablecasting time  
3 slot of fifteen (15) minutes in length or longer that does not display visually in the  
4 same language as the predominant language that is used in the advertisement, in a  
5 clear and prominent manner, and for a length of time sufficient for an ordinary  
6 consumer to read and comprehend it, within the first thirty (30) seconds of the  
7 commercial and either immediately before each presentation of ordering  
8 instructions for the product, program, or service or periodically through the  
9 program, but no more than approximately seven (7) minutes apart, the following  
10 disclosure:

11                   “YOU ARE WATCHING A PAID ADVERTISEMENT FOR [THE  
12                   PRODUCT, PROGRAM, OR SERVICE].”

13 *Provided that*, for the purposes of this provision, the oral or visual presentation of  
14 a telephone number or address through which viewers may obtain more  
15 information or place an order for the product, program, or service shall be deemed  
16 a presentation of ordering instructions so as to require the display of the disclosure  
17 provided herein; and

18           C.     Any radio commercial or other radio advertisement five (5) minutes  
19 in length or longer or intended to fill a time slot of five (5) minutes in length or  
20 longer that does not state in the same language as the predominant language that is  
21 used in the advertisement, in a clear and prominent manner, and in a volume and  
22 cadence sufficient for an ordinary consumer to hear and comprehend it, within the  
23 first thirty (30) seconds of the commercial and immediately before each  
24 presentation of ordering instructions for the product, program, or service, the  
25 following disclosure:

1 “YOU ARE LISTENING TO A PAID ADVERTISEMENT FOR  
2 [THE PRODUCT, PROGRAM, OR SERVICE].”

3 *Provided that*, for the purposes of this provision, the presentation of a telephone  
4 number or address through which listeners may obtain more information or place  
5 an order for the product, program, or service shall be deemed a presentation of  
6 ordering instructions so as to require the stating of the disclosure provided herein.

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8 **V.**

9 **FDA-APPROVED CLAIMS**

10 That nothing in this Order shall prohibit the Stipulating Defendants from  
11 making any representation:

12 A. For any product that is specifically permitted in labeling for such  
13 product by regulations promulgated by the Food and Drug Administration  
14 pursuant to the Nutrition Labeling and Education Act of 1990; or

15 B. For any drug that is permitted in labeling for such drug under any  
16 tentative final or final standard promulgated by the Food and Drug Administration,  
17 or under any new drug application approved by the Food and Drug  
18 Administration.

19 C. For any medical device that is permitted in labeling of such medical  
20 device under any medical device-specific regulation promulgated by the Food and  
21 Drug Administration, under any Federal Food, Drug and Cosmetic Act Section  
22 510(k) premarket notification substantial equivalence determination by the Food  
23 and Drug Administration, or under any premarket approval application approved  
24 by the Food and Drug Administration.

1 **VI.**

2 **MONETARY JUDGMENT AND CONSUMER REDRESS**

3 A. That judgment for equitable monetary relief is hereby entered against  
4 the Stipulating Defendants, jointly and severally, in the amount of \$3,400,000.

5 The judgment for equitable monetary relief shall be deemed to be satisfied if all of  
6 the following occur:

7 1. Transfer to the Federal Trade Commission by wire transfer not  
8 later than five (5) days after the date of entry of this Order and in accordance with  
9 directions provided by the Commission, the amount of \$700,000, which was  
10 placed in escrow by the Stipulating Defendants on or before the day this  
11 agreement was forwarded by the Bureau to the Commission for its review;

12 2. Transfer of title, unencumbered and free of any liens, and  
13 delivery to the Federal Trade Commission within ten (10) days after the date of  
14 entry of this Order and in accordance with directions provided by the Commission,  
15 (1) a 2004 Pursuit boat model 3350 purchased by Stipulating Defendants on  
16 August 6, 2004, for the amount of \$215,000, and (2) a 2004 Ford truck model  
17 F-150 purchased by Stipulating Defendants on August 2, 2004 for the amount of  
18 \$40,000;

19 3. Transfer to the Federal Trade Commission within one hundred  
20 and eighty (180) days after the date of entry of this Order, net contribution(s) made  
21 by Stipulating Defendants to an investment partnership and related charitable  
22 foundations established by or on behalf of one or more of the Stipulating  
23 Defendants. The contributions, all of which were made from assets derived from  
24 the marketing or sale of CortiSlim and CortiStress, are described more fully in the  
25 signed document entitled "Investment Partnerships, Charitable Foundations,  
26 Insurance Policies and Loans Involving Thomas Cheng" which has been provided  
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1 separately to the Commission, which is incorporated into this Part and made a part  
2 of this Order by reference, and which shall be deemed to be confidential and shall  
3 be disclosed only as necessary for enforcement purposes. Net contribution(s) shall  
4 mean all proceeds from all such contribution(s) that remain after payment of  
5 federal and state taxes, federal and state penalties, and other costs (excluding  
6 professional fees) directly associated with revoking the contributions, unwinding  
7 the business transactions, dissolving the entities, or taking other similar steps  
8 necessary to recover the contributions; and

9           4.     Assignment to the Federal Trade Commission within twenty  
10 (20) days of entry of this Order of a secured lien in the amount of \$450,000  
11 against real property which is unencumbered and free of liens and is described in  
12 the signed document set forth in paragraph A.3 of this Part. The lien, which  
13 secures assets not in the possession of the Stipulating Defendants that were  
14 derived from the marketing or sale of CortiSlim and CortiStress, shall be due and  
15 payable upon sale of the residence; transfer of the residence by gift, inheritance, or  
16 other means; refinancing; or change from an owner-occupied primary residence to  
17 a non-owner-occupied or non-primary residence.

18           B.     That each Stipulating Defendant hereby assigns to the Federal Trade  
19 Commission, without any encumbrances, all rights and claims to money or other  
20 assets owed to it as of the date of entry of this Order by a Related Party, and of the  
21 right to pursue any chose in action to recover any such money or assets owed to it  
22 by a Related Party, under the terms of any agreement, oral or written, including  
23 but not limited to the Joint Venture Agreement entered into on June 10, 2003 by  
24 and between Defendants Talbott and Window Rock, the Joint Venture Agreement  
25 entered into on June 21, 2003 by and between Defendants Window Rock and  
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1 Cynaumon, and the purported non-written agreement by and between Defendant  
2 Window Rock and Stipulating Defendant Pinnacle.

3 C. That, if a Related Party later assigns to the Federal Trade Commission  
4 rights of recovery and claims to money or other assets purportedly owed as of the  
5 date of entry of this Order by Stipulating Defendants Pinnacle and Thomas Cheng,  
6 the Commission shall not exercise any such rights and claims in a manner that  
7 would allow it to recover additional funds from Stipulating Defendants Pinnacle  
8 and Thomas Cheng; *provided, however*, that this paragraph shall cease to apply  
9 upon occurrence of any of the events described under Part VII.

10 D. That all funds paid pursuant to this Order shall be deposited into an  
11 account administered by the Commission or its agent to be used for equitable  
12 relief, including but not limited to consumer redress for nationwide sales of  
13 CortiSlim and CortiStress from the time those products were first advertised up to  
14 and including September 30, 2004, and any attendant expenses for the  
15 administration of such equitable relief. In the event that direct redress to  
16 consumers is wholly or partially impracticable or funds remain after redress is  
17 completed, the Commission may apply any remaining funds for such other  
18 equitable relief (including consumer information remedies) as it determines to be  
19 reasonably related to the Stipulating Defendants' practices alleged in the  
20 Complaint. Any funds not used for such equitable relief shall be deposited to the  
21 United States Treasury as disgorgement. Stipulating Defendants shall have no  
22 right to challenge the Commission's choice of remedies under this Part.  
23 Stipulating Defendants shall have no right to contest the manner of distribution  
24 chosen by the Commission. No portion of any payments under the judgment  
25 herein shall be deemed a payment of any fine, penalty, or punitive assessment;

1 E. That Stipulating Defendants relinquish all dominion, control and title  
2 to the funds paid into the account established pursuant to this Order, and all legal  
3 and equitable title to the funds shall vest in the Treasurer of the United States  
4 unless and until such funds are disbursed to consumers. Stipulating Defendants  
5 shall make no claim to or demand for the return of the funds, directly or indirectly,  
6 through counsel or otherwise; and in the event of bankruptcy of any Stipulating  
7 Defendant, Stipulating Defendants acknowledge that the funds are not part of the  
8 debtor's estate, nor does the estate have any claim or interest therein;

9 F. That each Stipulating Defendant shall provide to the Commission a  
10 sworn statement setting forth i) the amount of 2003 and 2004 state and federal  
11 taxes, if any, paid by each Stipulating Defendant on or before the day this  
12 agreement was signed; ii) the amount of 2005 estimated state and federal tax  
13 payments, if any, paid by each Stipulating Defendant on or before the day this  
14 agreement was signed; and iii) a statement of the date(s) on which each tax  
15 payment to a state or federal tax authority was made. All 2003 or 2004 tax  
16 payments reported to the Commission as being owed to a state or federal tax  
17 authority must be paid in full no later than sixty (60) days from the date of entry of  
18 this Order. The financial information and documents referenced in this paragraph  
19 F shall be designated as confidential.



1 **VII.**

2 **RIGHT TO REOPEN**

3 A. That, by agreeing to this Order, the Stipulating Defendants reaffirm  
4 and attest to the truthfulness, accuracy, and completeness of the financial  
5 information that Stipulating Defendants have previously submitted to the  
6 Commission. The Commission's agreement to this Order is expressly premised  
7 upon the truthfulness, accuracy, and completeness of the Stipulating Defendants'  
8 financial statements and supporting documents submitted to the Commission,  
9 namely:

- 10 1. For Stipulating Defendant Pinnacle Marketing Concepts, Inc.:
- 11 a. Federal Trade Commission Financial Statement of
  - 12 Corporate Defendants
  - 13 b. Financial Statements, September 30, 2004 and December
  - 14 31, 2003
  - 15 c. Statement of Operations, unaudited, January 1, 2005 to
  - 16 April 30, 2005;
  - 17 d. Statement of Operations, unaudited, September 2004
  - 18 through December 2004;
  - 19 e. Summary of Bank Balances as of October 8, 2004;
  - 20 f. Current Balances as of March 31, 2005;
  - 21 g. Current Balances as of May 25, 2005;
  - 22 h. Cash Flow Analysis; and
- 23 2. For Stipulating Defendant Thomas F. Cheng:
- 24 a. Federal Trade Commission Financial Statement of
  - 25 Individual Defendant dated April 25, 2005, with
  - 26
  - 27

1 accompanying United States and California income tax  
2 returns and applications for extension of time to file;

3 b. Summary of Bank Balances, Investment Accounts, and  
4 Personal Accounts as of October 8, 2004;

5 c. Summary of Bank Activity, September 2004 through  
6 January 2005;

7 d. Addendum to Item 12 of Federal Trade Commission  
8 Financial Statement of Individual Defendant dated April  
9 25, 2005, updated through May 25, 2005;

10 e. Letter dated June 17, 2005 from Kleinfeld, Kaplan and  
11 Becker LLC to Federal Trade Commission

12 If, upon motion by the Commission, this Court finds that any Stipulating  
13 Defendant failed to disclose any material asset, or materially misrepresented the  
14 value of any asset, or made any other material misrepresentation in or omission  
15 from the Financial Statements or other supporting documents listed in this Part,  
16 the Court shall enter judgment against the Stipulating Defendants and for the  
17 Commission in the amount of \$23,837,000, less any amount already paid by or on  
18 behalf of the Stipulating Defendants to the Commission; *provided, however*, that  
19 in all other respects this Order shall remain in full force and effect unless  
20 otherwise ordered by the Court; and *provided further*, that proceedings instituted  
21 under this Part would be in addition to, and not in lieu of, any other civil or  
22 criminal remedies as may be provided by law, including any other proceedings  
23 that the Commission may initiate to enforce this Order. Solely for purposes of this  
24 Part, the Stipulating Defendants waive any right to contest any of the allegations  
25 in the Commission's Complaint. Except for the amount of the judgment, the  
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1 financial information and documents referenced in this Part shall be designated as  
2 confidential.

3 B. That, in agreeing to this Order, the Commission has specifically relied  
4 on the representations that each Stipulating Defendant has made regarding the  
5 amount of federal and state taxes it has paid or will pay for tax years 2003 and  
6 2004 and the amount of estimated federal and state taxes, if any, that it has paid  
7 toward estimated taxes for tax year 2005, including but not limited to  
8 representations in the sworn statements referenced in Part VI, paragraph F, above,  
9 and in the documents listed in paragraph A of this Part. It shall be a violation of  
10 this Part for a Stipulating Defendant to file any federal or state tax return seeking a  
11 cash refund of some or all of the amounts previously reported to the Commission  
12 as taxes owed and paid for tax years 2003 and 2004, or a cash refund of some or  
13 all of the amounts paid toward estimated taxes for tax year 2005. *Provided*  
14 *however*, that seeking such a cash refund shall not be deemed to be a violation of  
15 this Part if the Stipulating Defendant promptly remits to the Commission the full  
16 amount of any such cash refund within ten (10) days of receipt of the refund.

17  
18 **VIII.**

19 **ACKNOWLEDGMENT OF RECEIPT OF**  
20 **ORDER BY THE STIPULATING DEFENDANTS**

21 That, within five (5) business days after receipt of this Order as entered by  
22 the Court, Stipulating Defendant Thomas Cheng, individually and on behalf of  
23 Pinnacle, shall submit to the Commission a truthful sworn statement  
24 acknowledging receipt of this Order, using the form shown at Attachment A.

1 **IX.**

2 **DISTRIBUTION OF ORDER BY THE STIPULATING DEFENDANTS**

3 That, for a period of three (3) years from the date of entry of this Order, the  
4 Stipulating Defendants shall deliver copies of the Order as directed below:

5 A. Stipulating Defendant Pinnacle must deliver a copy of this Order to  
6 all of its principals, officers, directors, and managers and also to all of its  
7 supervisory employees, agents, and representatives who engage in conduct related  
8 to the subject matter of this Order. For current personnel, delivery shall be within  
9 ten (10) business days of entry of this Order. For new personnel, delivery shall  
10 occur prior to their assuming their position or responsibilities;

11 B. Stipulating Defendant Thomas Cheng as Control Person: For each  
12 business that is not already subject to paragraph A of this Part and that is  
13 controlled, directly or indirectly, by Stipulating Defendant Thomas Cheng, and for  
14 each business that is not already subject to paragraph A of this Part in which  
15 Stipulating Defendant Thomas Cheng has a majority ownership interest, he must  
16 deliver a copy of this Order to all principals, officers, directors, and managers of  
17 each such business and also to all supervisory employees, agents, and  
18 representatives of each such business who engage in conduct related to the  
19 marketing of Target or Covered Products. For current personnel, delivery shall be  
20 within ten (10) business days of entry of this Order upon Defendant. For new  
21 personnel, delivery shall occur prior to their assuming their position or  
22 responsibilities;

23 C. Stipulating Defendant Thomas Cheng not as Control Person: For  
24 each business that is not already subject to paragraphs A or B of this Part and that  
25 is not controlled, directly or indirectly, by Thomas Cheng, he must deliver a copy  
26 of this Order to all principals and managers of each such business before engaging  
27 in conduct related to the marketing of Target or Covered Products.



1 and other entity or individual that the Stipulating Defendants used to place  
2 television, radio, print, or on-line advertisements, for any Target Product between  
3 September 30, 2004, and the date of entry of this Order. This mailing shall not  
4 include any other document or enclosures;

5       B. Notify, immediately, each media placement company, broadcasting  
6 company, or other entity or individual that the Stipulating Defendants used to  
7 place television, radio, print, or on-line advertisements for any Target Product that  
8 the Stipulating Defendants will stop doing business with that media placement  
9 company, broadcasting company, or other entity or individual in connection with  
10 any Target Product in the event that the Stipulating Defendants become aware that  
11 the media placement company, broadcasting company, or other entity or individual  
12 is using or disseminating any advertisement or promotional material that contains  
13 any representation prohibited by this Order subsequent to receipt of the notice  
14 required by paragraph A of this Part, if that media placement company,  
15 broadcasting company, or other entity or individual fails to take prompt corrective  
16 action, if it continues to use any advertisement or promotional material that  
17 contains any representation prohibited by this Order, or if it engages in conduct  
18 prohibited by this Part on more than two separate occasions; and

19       C. Terminate all placements for any Target Product with any media  
20 placement company, broadcasting company, or other entity or individual that the  
21 Stipulating Defendants used to place television, radio print, or on-line  
22 advertisements for any Target Product within ten (10) days after the Stipulating  
23 Defendants become aware that the media placement company, broadcasting  
24 company, or other entity or individual has failed to take prompt corrective action,  
25 has continued to use any advertisement or promotional material that contains any  
26 representation prohibited by this Order, or has engaged in conduct prohibited by  
27 this Part on two separate occasions.

1 **XI.**

2 **COMPLIANCE MONITORING**

3 That, for the purpose of monitoring and investigating compliance with any  
4 provision of this Order:

5 A. Within thirty (30) days of receipt of written notice from a  
6 representative of the Commission, each Stipulating Defendant so notified shall  
7 submit additional written reports, sworn to under penalty of perjury; produce  
8 documents for inspection and copying; appear for deposition; and/or provide entry  
9 during normal business hours to any business location in any Stipulating  
10 Defendants' possession or direct or indirect control to inspect the business  
11 operation. Copies of any such notice shall also be provided by the Commission to  
12 the undersigned counsel representing the Stipulating Defendants or to any other  
13 counsel whose identity has been furnished to the Commission;

14 B. In addition, the Commission is authorized to monitor the Stipulating  
15 Defendants' compliance with this Order by all other lawful means, including but  
16 not limited to the following:

- 17 1. obtaining discovery from any person, without further leave of  
18 court, using the procedures prescribed by Federal Rules of  
19 Civil Procedure 30, 31, 33, 34, 36, and 45; and  
20 2. posing as consumers, marketers, suppliers, or other product-  
21 related entities to the Stipulating Defendants, the Stipulating  
22 Defendants' employees, or any other entity managed or  
23 controlled in whole or in part by any defendant, without the  
24 necessity of identification or prior notice; and

25 C. The Stipulating Defendants, upon fourteen (14) days notice, shall  
26 permit representatives of the Commission to interview any officer, director,  
27 employee, employer, consultant, independent contractor, representative, or agent  
28

1 of any entity managed or controlled in whole or in part by a Stipulating Defendant  
2 who has agreed to such an interview, relating in any way to any conduct subject to  
3 this Order. The person interviewed may have counsel present.

4 *Provided*, however, that nothing in this Order shall limit the Commission's  
5 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act,  
6 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things,  
7 testimony, or information relevant to unfair or deceptive acts or practices in or  
8 affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

9  
10 **XII.**

11 **COMPLIANCE REPORTING BY THE STIPULATING DEFENDANTS**

12 That, in order that compliance with the provisions of this Order may be  
13 monitored:

14 A. Stipulating Defendant Thomas Cheng, within ten (10) business days  
15 of service of this Order, shall notify the Commission, in writing, with  
16 the following information:

- 17 1. his residence address and mailing address;
- 18 2. his home telephone number;
- 19 3. the name, address, and telephone number of his employer(s);
- 20 4. if applicable, the names of his supervisor(s);
- 21 5. a description of each employer's activities; and
- 22 6. a description of his duties and responsibilities for each  
23 employer;

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

- 25 1. Stipulating Defendant Thomas Cheng shall notify the  
26 Commission of the following:



- 1 (a) Any changes in his residence, mailing addresses, and  
2 telephone numbers, within ten (10) days of the date of  
3 such change;
- 4 (b) Any changes in his employment status (including self-  
5 employment), any change in his ownership in any  
6 business entity, and any change in the corporate structure  
7 of any business entity in which he has an ownership  
8 interest in that may affect compliance obligations arising  
9 under this Order, within ten (10) days of the date of such  
10 change. Such notice shall include the name and address  
11 of each business that he is affiliated with, employed by,  
12 creates or forms, or performs services for; a statement of  
13 the nature of the business; and a statement of his duties  
14 and responsibilities in connection with the business; and
- 15 (c) Any changes in his name or use of any aliases or  
16 fictitious names; and

17 2. Stipulating Defendant Pinnacle shall notify the Commission of  
18 any changes in its corporate structure or in any business entity  
19 that it directly or indirectly control(s), or has an ownership  
20 interest in, that may affect compliance obligations arising under  
21 this Order, including but not limited to a dissolution,  
22 assignment, sale, merger, or other action that would result in  
23 the emergence of a successor entity; the creation or dissolution  
24 of a subsidiary, parent, or affiliate that engages in any acts or  
25 practices subject to this Order; the filing of a bankruptcy  
26 petition; or a change in the corporate name or address, at least  
27 thirty (30) days prior to such change, *provided that*, with  
28

1 respect to any proposed change in the corporation about which  
2 a Defendant learns less than thirty (30) days prior to the date  
3 such action is to take place, that Defendant shall notify the  
4 Commission as soon as is practicable after obtaining such  
5 knowledge;.

6 C. Ninety (90) days after the date of entry of this Order, the Stipulating  
7 Defendants each shall provide a written report to the Commission, sworn to under  
8 penalty of perjury, setting forth in detail the manner and form in which they have  
9 complied and are complying with this Order. This report shall include, but not be  
10 limited to any changes required to be reported pursuant to paragraph (B) of this  
11 Part; a copy of the signed declaration regarding distribution of copies of this Order  
12 as required by Part IX.E; and, for any Covered Product, a copy of all advertising  
13 and promotional materials in use at any point from the date of entry of the Order  
14 until submission of the written report required by this paragraph;

15 D. Each Stipulating Defendant shall provide to the Commission, no more  
16 than 10 days after submitting it to a state or federal tax authority, a complete copy  
17 of any submission seeking a cash refund of some or all of the taxes it reported  
18 under Part VI as owed in tax years 2003 and 2004 or as paid toward estimated  
19 2005 tax;

20 E. For purposes of the compliance reporting and monitoring required by  
21 this Order, the Commission is authorized to communicate directly with the  
22 Stipulating Defendants, with contemporaneous notice to undersigned counsel or to  
23 any other counsel whose identity has been furnished to the Commission; and

24 F. The information and documents referenced in paragraphs A, B, and D  
25 of this Part shall be designated as confidential information.

1 **XIII.**

2 **RECORD-KEEPING PROVISIONS**

3 That, for a period of five (5) years from the date of entry of this Order, the  
4 Stipulating Defendants, and their agents, employees, officers, corporations,  
5 successors, and assigns, and those persons in active concert or participation with  
6 them who receive actual notice of this Order by personal service or otherwise, if  
7 engaging or assisting others engaged in the advertising, marketing, promotion,  
8 offering for sale, distribution or sale of any Covered Product, in or affecting  
9 commerce, and any business where (1) Stipulating Defendant Thomas Cheng is a  
10 majority owner or an officer or director of the business, or directly or indirectly  
11 manages or controls the business and where (2) the business is engaged,  
12 participating, or assisting in any manner whatsoever, directly or indirectly, in the  
13 advertising, marketing, promotion, offering for sale, distribution or sale of any  
14 Covered Product, in or affecting commerce, are hereby permanently restrained and  
15 enjoined from failing to create and retain the following records:

16 A. Accounting records that reflect the cost of goods or services sold,  
17 revenues generated, and the disbursement of such revenues;

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

23 C. Customer files containing the names, addresses, telephone numbers,  
24 dollar amounts paid, quantity of items purchased, and description of items  
25 purchased, to the extent such information is obtained in the ordinary course of  
26 business;

1 D. Complaints and refund requests (whether received directly, indirectly  
2 or through any third party), and any response to those complaints or requests;

3 E. Copies of all advertisements, promotional materials, sales scripts,  
4 training materials, or other marketing materials utilized in the advertising,  
5 marketing, promotion, offering for sale, distribution or sale of any Covered  
6 Product, to the extent such information is prepared in the ordinary course of  
7 business;

8 F. All documents evidencing or referring to the accuracy of any claim or  
9 representation contained in the materials identified in Paragraph E of this Part, or  
10 to the efficacy of any Covered Product, including, but not limited to, all tests,  
11 reports, studies, and demonstrations, as well as all evidence that confirms,  
12 contradicts, qualifies, was relied upon in making, or calls into question the  
13 accuracy of such claims;

14 G. Records accurately reflecting the name, address, and telephone  
15 number of each manufacturer or laboratory engaged in the development or  
16 creation of any testing obtained for the purpose of advertising, marketing,  
17 promoting, offering for sale, distributing, or selling any Covered Product; and

18 H. All records and documents necessary to demonstrate full compliance  
19 with each provision of this Order, including but not limited to copies of  
20 acknowledgments of receipt of this Order, required by Part VIII, and all reports  
21 submitted to the Commission pursuant to Part X.

#### 22 23 **XIV.**

#### 24 **COOPERATION WITH COMMISSION COUNSEL**

25 That the Stipulating Defendants must, in connection with the unwinding of  
26 the charitable foundation and its related limited partnership described in Section  
27 VI.A.3, and in cooperation with the Commission: request the voluntary  
28

1 unwinding of these entities and request the trustees, agents, or representatives of  
2 these entities to cooperate in this voluntary unwinding; initiate communications  
3 for the purposes of unwinding these entities with State or Federal authorities;  
4 cooperate in good faith with the Commission's reasonable requests for documents  
5 and writings and testimony in connection with the unwinding of these entities;  
6 and, if necessary, appear in person or through their representatives at such places  
7 and times or execute such documents as the Commission shall reasonably request  
8 after written notice to the Stipulating Defendants and their counsel of record.  
9

10 **XV.**

11 **NOTICE OF ORDER BY DEFENDANTS TO**  
12 **THIRD PARTIES HOLDING ASSETS**

13 That within five (5) business days of receipt of this Order as entered by the  
14 Court, defendants shall serve a copy of this Order on all entities, including  
15 financial institutions, charitable foundations, investment partnerships, and  
16 individuals, that hold or have assets derived from the marketing or sale of  
17 Cortislim and Cortistress and gifted by any of the Stipulating Defendants.  
18

19 **XVI.**

20 **TURNOVER OF ASSETS**

21 That, in order to partially satisfy the monetary judgment set forth in  
22 paragraphs A.3 and A.4 of Part VI, above, any law firm, financial or brokerage  
23 institution, escrow agent, title company, commodity trading company, general or  
24 limited partner of any investment partnership, director of any charitable  
25 foundation, business entity, or person, whether located within the United States or  
26 outside the United States, that holds, controls, or maintains accounts or assets  
27 derived from the marketing or sale of Cortislim and Cortistress and gifted by any  
28 of the Stipulating Defendants to a charitable foundation or investment partnership,

1 shall turn over such account or asset to the Commission within one hundred and  
2 eighty days (180) days of receiving notice of this Order by any means, including  
3 but not limited to via facsimile;

4  
5 **XVII.**

6 **RETENTION OF JURISDICTION**

7 That this Court shall retain jurisdiction over the Stipulating Defendants for  
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1 purposes of construction, modification, and enforcement of this Order and for  
2 issues relating to the Complaint and to non-settling Defendants.

3  
4 **IT IS SO ORDERED**, this \_\_\_ day of \_\_\_\_\_, 2005.

5  
6 UNITED STATES DISTRICT JUDGE

7 **SO STIPULATED:**

8  
9 WILLIAM BLUMENTHAL  
10 General Counsel

11  
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17 JEFFREY A. KLURFELD  
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23 ATTORNEYS FOR PLAINTIFF

24  
25 Pinnacle Marketing Concepts, Inc.  
26 By: Thomas F. Cheng, President

27 THOMAS F. CHENG  
28 Individually, and as an officer of  
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September \_\_\_, 2005