	APPROVED	**The moving party is hereby ORDERED to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.**	**Christopher J. Munch** **Jefferson District Court Judge** DATE OF ORDER INDICATED ON ATTACHMENT

100 Jefferson County Parkway Golden, Colorado 80401-6002 STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL, Plaintiff, v. NUTRA PILLS, INC. D/B/A GLOBAL NUTRITION SCIENCES, GNS, VITRASUN, NUTRA LANE, F/D/B/A GOLF NUTRITION SCIENCES; AND JOSHUA D. BEZONI, individually, Defendants.	▲ **COURT USE ONLY** ▲
Attorneys for the Plaintiff: JOHN W. SUTHERS, Attorney General OLIVIA C. DEBLASIO, Reg. No. 35867* 1525 Sherman Street, 5th Floor Denver, CO 80203 Phone: (303) 866-5079 **Attorney for the Defendants:** RICHARD BENENSON, Reg. No. 32566* Brownstein Hyatt Farber Schreck, LLP 410 Seventeenth Street, Ste. 2200 Denver, CO 80202-4432 Phone: (303) 223-1100 *Counsel of Record	Case No.:

EXPEDITED CONSENT JUDGMENT CONCERNING NUTRA PILLS, INC., ET AL.

This matter is before the Court on the parties' Stipulation for Entry of an Expedited Consent Judgment. The Court has reviewed the Stipulation, the Complaint and is otherwise advised in the grounds therefore. The Court concludes that good cause has been shown for entering this Expedited Consent Judgment [hereinafter "Consent Judgment"].

Accordingly IT IS ORDERED that:

GENERAL PROVISIONS

1. Scope of Consent Judgment. The injunctive provisions of this Consent Judgment are entered pursuant to the Colorado Consumer Protection Act, § § 6-1-101 *et. seq.*, C.R.S. (2009) ("CCPA). This Consent Judgment shall apply to (i) DEFENDANTS, individually, and any other person under their control or at their direction, including but not limited to, any principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, contractors, and assigns who receives actual notice of this Court's Order; (ii) any other company of which DEFENDANT Bezoni is a majority owner and which sells or offers products or services primarily over the Internet through Negative Option Marketing.

2. Release of Claims. The State acknowledges by its execution hereof that this Consent Judgment constitutes a complete settlement and release of all claims on behalf of the STATE OF COLORADO ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL ("STATE") against Defendant JOSHUA D. BEZONI ("BEZONI") in his individual capacity, and NUTRA PILLS, INC. d/b/a GLOBAL NUTRITION SCIENCES, GNS, VITRASUN, AND NUTRA LANE f/d/b/a GOLF NUTRITION SCIENCES (hereinafter referred to collectively as the "DEFENDANTS" unless otherwise specified) with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted in the Complaint, that arose prior to this date under the above-cited consumer protection statutes and relating to or based upon the acts or practices which are the subject of the Complaint filed in this action. The STATE agrees that it shall not proceed with or institute any civil action or proceeding based upon the above-cited consumer protection statutes against the DEFENDANTS, including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys' fees, or costs, for any communication disseminated prior to this date which relates to the subject matter of the Complaint filed in this action or for any conduct or practice prior to the date of this Order which relates to the subject matter of the Complaint filed in this action. Notwithstanding the foregoing, the STATE may institute an action or proceeding to enforce the terms and provisions of this Consent Judgment or to take action based on future conduct by the DEFENDANTS.

3. No Admission of Liability. DEFENDANTS contest that they have violated the CCPA, any other laws, and expressly deny any wrongdoing on their parts. DEFENDANTS are entering into this Consent Judgment for the purpose of compromising and resolving disputed claims and to avoid the expense of further litigation. DEFENDANTS' execution of this Consent Judgment is not and shall not be considered an admission by the DEFENDANTS of any of the allegations or claims set forth in the Complaint.

4. Preservation of Law Enforcement Action. Nothing herein precludes the STATE from enforcing the provisions of this Consent Judgment, or from pursuing any law enforcement action with respect to the acts or practices of DEFENDANTS not covered by this lawsuit, Consent Judgment or any acts or practices of DEFENDANTS conducted after the date of this Consent Judgment.

5. Compliance with and Application of State Law. Nothing herein relieves DEFENDANTS of their duty to comply with applicable laws of the STATE nor constitutes authorization by the STATE for DEFENDANTS to engage in acts and practices prohibited by such laws. This Consent Judgment shall be governed by the laws of the State of Colorado.

6. Non-Approval of Conduct. Nothing herein constitutes approval by the STATE of DEFENDANTS' past business practices. DEFENDANTS shall not make any representation contrary to this paragraph.

7. Guarantee of Financial Obligations. Defendant BEZONI expressly denies any wrongdoing on his part or by any of the other Defendants. Execution of this Consent Judgment by Defendant BEZONI is not and shall not be considered an admission by Defendant BEZONI of any of the allegations or claims set forth in the Complaint. Defendant BEZONI agrees to personally guarantee DEFENDANTS' compliance with the monetary payments agreed to and ordered by this Consent Judgment and to ensure payment set forth by this agreement.

8. Use of Settlement as Defense. DEFENDANTS acknowledge that it is the STATE's customary position that an agreement restraining certain conduct on the part of a defendant does not prevent the STATE from addressing later conduct that could have been prohibited, but was not, in the earlier agreement, unless the earlier agreement expressly limited the STATE's enforcement options in that manner. Therefore, nothing herein shall be interpreted to prevent the STATE from taking enforcement action to address conduct occurring after the entry of this Consent Judgment that the STATE believes to be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of this Consent Judgment shall not be a defense to any such enforcement action.

9. Retention of Jurisdiction. This Court shall retain jurisdiction over this matter for the purpose of enabling any party to this Consent Judgment to apply to the Court at any time for any further orders which may be necessary or appropriate for the construction, modification or execution of this Consent Judgment, and for the enforcement of compliance herewith and the punishment of violations hereof.

10. Public Record. Pursuant to § 6-1-112(2), C.R.S. (2009), this Consent Judgment shall be a matter of public record.

11. Contempt. The parties understand and agree that any violation of any term of this Consent Judgment shall give rise to the contempt remedies and penalties provided under § 6-1-112(2), C.R.S. (2009).

12. Execution in Counterparts. This Consent Judgment may be executed in counterparts.

DEFINITIONS

13. "Negative Option Marketing" as defined by the Federal Trade Commission ("FTC") rule on Use of Prenotification Negative Option Plans, 16 C.F.R. Part 425 ("PNOR") refers to those commercial transactions in which sellers interpret a consumer's failure to take affirmative action—either to reject an offer or to cancel an agreement—as affirmative assent to be charged.

14. "Free-to-Pay Conversions" as used herein is a type of Negative Option Marketing that means a "Free Trial" or "Risk Free Trial" offer converts after a period of time to a "pay" offer, and the consumer's initial consent to receive the Free Trial and pay nominal shipping and handling charges is consent to a later charge for the full cost of the product.

15. "Free" as used herein means without obligation, financial or otherwise. *See*, *FTC's Guide Concerning Use of the Word "Free" and Similar Representations*, 16 C.F. R. § 251.1(a)(2) (In using the word "free," an offeror must exert "extreme care so as to avoid any possibility that consumers will be misled or deceived.")

16. "Clear and Conspicuous" means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure. More specifically, it means that the disclosure must be: (a) disclosed in such size, contrast (shade) and location that it is readily noticeable and readable; (b) does not contradict any other information provided by DEFENDANTS in any manner; and (c) presented in close proximity to any other statement that it modifies, explains, or clarifies. With respect to any visual disclosures, to be "clear and conspicuous" they must be of sufficient size and contrast and of a sufficient duration to be easily read. *See*, 16 C.F.R. § 313.3(b).

PERMANENT INJUNCTION

17. The Court enters a permanent injunction ENJOINING the DEFENDANTS, individually, and any other person under their control or at their direction, including but not limited to any principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, contractors, and assigns who receives actual notice of this Court's order, from the following:

> A. Suggesting or directly stating in their advertising or any other marketing materials that DEFENDANTS' products and services are "Free" or "Risk Free" unless consumers can order and receive the products and services at no cost or for only the advertised shipping and handling costs and without risk of being charged later for products shipped with or after the trial offer. DEFENDANTS must clearly and conspicuously disclose the terms and conditions of trial offers in any and all of

their advertisements of such offers. By way of example and not limitation, DEFENDANTS could use the phrase "30-day trial offer" instead of "free, 30-day trial offer" so long as the terms and conditions are clearly and conspicuously disclosed.

B. Charging consumers any amount more than the advertised shipping and handling fee associated with any Internet or online trial offers, or offering an enrollment into an auto ship or continuity programs and/or clubs to consumers that automatically renew unless DEFENDANTS obtain express authorization from consumers during the initial order process to charge their credit or bank cards the cost associated with any product shipped with or after the initial Internet or online trial offer. DEFENDANTS shall not charge the consumer's credit or bank card or ship any product to the consumer without obtaining the express authorization described in this paragraph. The express authorization required under this paragraph shall consist of, at a minimum:

i.) The clear and conspicuous listing on the billing page of each and every charge associated with the transaction, including but not limited to charges that will be levied subsequent to the initial order, and the date on or time in which the consumer will be billed for the respective charge;

ii.) A clear and conspicuous disclosure on the billing page located adjacent to the listing of each and every charge associated with the transaction that provides the following information: (a) the terms and conditions of the trial offer; (b) that the auto ship program will be renewed and the date on which it will be renewed; (c) that the consumer will be automatically charged the renewal fee, unless the consumer cancels the membership prior to the date the service will renew; (d) that the auto ship program will last no longer than 12 months; and (e) the amount of the renewal fee.

iii.) A checkbox located adjacent to or below the information required in paragraphs 16(B)(i-ii), that, once checked by the consumer, will serve as proof of a consumer's express authorization required herein.

D. Charging consumers any fees associated with any auto ship program unless, at least 24 hours after the initial order, DEFENDANTS send consumers a notice, via electronic mail, clearly and conspicuously disclosing the terms of renewal and cancelation. DEFENDANTS shall include the same information, clearly and conspicuously, with any invoice sent with products. The terms of renewal and cancelation shall include the following information: (a) that the auto ship membership will be automatically renewed, and the date on which it will next be renewed; (b)that the consumer will automatically be charged fees on a date certain, unless the consumer cancels his or her enrollment in the auto ship program prior to the date the

next product is shipped; (c) the amount of the shipment if the consumer does not cancel; and (d) an explanation of how to cancel the auto shipment, including providing the consumer with a phone number and an e-mail address that consumers may use to notify DEFENDANTS of their intent to cancel.

18. Further, DEFENDANTS must affirmatively do the following:

A. Obtain express authorization from consumers who are enrolled in DEFENDANTS auto ship program after 12 months to reenroll the consumers into the auto shipment program for another 12 months. The express authorization required under this paragraph shall be the same or substantially similar to the express authorization described in Paragraph 17(B) herein.

B. Maintain a refund policy that allows for a full refund of monthly auto shipments for at least 30 days after each shipment. The 30 days begins tolling no earlier than the date on which the consumer receives the product or five days after shipping. If shipping and handling is to be excluded from the "full refund" then such exclusion must be stated at the time the policy is disclosed to the consumer.

C. Allow for cancelation of any product and any auto shipment in the same method and manner that the consumer agreed to the offer.

D. When creating any website, advertisement, marketing or promotional material for any of their products, DEFENDANTS shall abide by all applicable FTC guidelines, and any revisions or supplements thereto, including but not limited to the PNOR, the *Report by the Staff of the FTC's Division of Enforcement on Negative Options* issued in January 2009, the Telemarketing Sales Rule set forth at 16 C.F.R. § 310, and the *FTC's Guide Concerning Use of the Word "Free" and Similar Representations,* 16 C.F. R. § 251.1(a)(2). DEFENDANTS must adhere to such rules and in addition to the CCPA and any requirements stated herein.

E. Within four months of entry of this Order, contact and offer to reimburse all consumers who submitted written complaints about DEFENDANTS directly to the DEFENDANTS, the Better Business Bureau(s), and to State Attorneys General Offices between December 1, 2006 and April 30, 2010.

F. Within four months of entry of this Order, reimburse all consumers who requested but did not obtain a refund or, instead, were given nonmonetary refunds such as credit/coupons to purchase other products from DEFENDANTS during the period between December 1, 2008 and April 30, 2010.

G. Provide to the STATE a master list within ten days of entry of this Order that lists the names of all consumers to be refunded pursuant to this Order, the consumers' contact information and refund amounts requested.

H. Provide to the STATE a written report on the first day of each month for four months after entry of this Order that indicates which consumers on the master list have been refunded, the amount of each refund, and certification that the consumers have in fact been fully reimbursed. The first written report is due to the STATE no later than the first day of the month immediately following the entry of this Order. The last written report is due to the STATE no later than the first day of the fifth month after entry of this Order. If DEFENDANTS fully reimburse all consumers subject to this Order earlier than four months after entry of this Order, they may submit the last written report to the STATE prior to the first day of the fifth month after entry of this Order.

I. Immediately cease fulfilling DEFENDANTS' auto ship plans and debiting the accounts of consumers enrolled in such plans.

MONETARY PROVISIONS

19. DEFENDANTS agree to pay to the Colorado Department of Law, and Respondent JOSHUA BEZONI agrees to personally guarantee such payment, in the amount of $100,000. The STATE agrees to suspend $50,000.00 of the payment for a period of five years from the date of this Order so long as DEFENDANTS have not (a) falsified their financial information provided to the STATE, and DEFENDANTS do not (b) violate the permanent injunction ordered by the Court. Upon learning of any such falsification within the financial disclosures or of any violation of the injunctive terms within five years from the date of this Order, the STATE may enforce such penalty payment against the DEFENDANTS in addition to any and all remedies available to the STATE under § 6-1-112(2), C.R.S. (2009). Notwithstanding the five-year suspended penalty term, the injunction ordered herein is permanent and survives such term.

20. Thus, upon entry of this Order, DEFENDANTS agree to pay $50,000.00 which shall be paid to the Colorado Attorney General to be held along with any interest thereon in trust to, first, reimburse the state for its reasonable costs and attorneys fees; and second, for future consumer education, consumer fraud and antitrust enforcement efforts. § 6-1-110, C.R.S. (2009).

21. The $50,000.00 payment will be payable in four monthly installments commencing the first day of the month immediately following the entry of this Order by the Court. The payment shall be paid by certified funds and directed to the State of Colorado Department of

Law and include a reference of "Nutra Pills, Inc." Deliver payments to: 1525 Sherman Street, 7th Floor, Denver, CO 80203, Attention Olivia DeBlasio.

22. Failure to pay in full and on time as per the monetary terms of this Consent Judgment will constitute contempt of this Court. In the event of such non-payment, DEFENDANTS agree to pay the costs of any legal action instituted to carry out successful recovery of the agreed amounts, pursuant to § 6-1-113, C.R.S. (2009).

23. DEFENDANTS acknowledge that they have thoroughly reviewed this Consent Judgment with their attorneys, that they understand and agree to its terms, and that they agree that it shall be entered as the Order of this Court.

SO ORDERED and SIGNED this _____ day of _____, 2010.

BY THE COURT:

_____
District Court Judge

This Consent Judgment Concerning Nutra Pills, Inc. and Joshua D. Bezoni, signed and agreed to this 17th day of March, 2010.

RICHARD BENENSON, Esq.
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Ste. 2200
Denver, CO 80202-4432
on behalf of
NUTRA PILLS, INC.

JOSHUA D. BEZONI, individually

In all respects, on behalf of the Plaintiff the State of Colorado, *ex rel.*
JOHN W. SUTHERS, Attorney General

OLIVIA C. DEBLASIO, 35867*
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Attorney for Plaintiff

As to form, on behalf of the Defendants

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This document constitutes a ruling of the court and should be treated as such.

Court:	CO Jefferson County District Court 1st JD
Judge:	Christopher J Munch
Alternate Judge:	Unassigned
File & Serve Transaction ID:	30119955
Current Date:	Mar 19, 2010
Case Number:	2010CV1266
Case Name:	COLORADO ATTORNEY GENERAL vs. NUTRA PILLS et al
Court Authorizer:	Christopher J Munch

Court Authorizer Comments:

Approval of Expedited Consent Judgment Concerning Nutra Pills, Inc., et al -- CJM 3/19/10

/s/ Judge Christopher J Munch