

FILED

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MICHAEL K. JEANES, Clerk

By S. Brown  
S. Brown, Deputy

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2 (Firm State Bar No. 14000)  
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5 Phoenix, AZ 85007  
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6  
7 Attorneys for Plaintiff

COPY

8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

9 IN AND FOR THE COUNTY OF MARICOPA

10 STATE OF ARIZONA, *ex rel.* TERRY  
GODDARD, Attorney General,

Case No.: CV2009-035314

11 Plaintiff,

CONSENT JUDGMENT

12 vs.

13 LARBY AMIROUCHE, individually, and  
14 ROBERT THOMAS NORTON and JANE  
DOE NORTON, husband and wife, d/b/a  
15 AMIR AND SANCHEZ NUTRACEUTICALS,  
16 LLC, NATURE'S ACAIBERRY.COM,  
17 NATURE'S BEST ACAI BERRY, and  
SIMPLECLEANSER LLC; and AMIROUCHE  
AND NORTON, LLC, an Arizona limited  
liability company,

(Assigned to Hon. Dean Fink)

18 Defendants.  
19

20 The State of Arizona, having filed a complaint alleging violations of the Arizona  
21 Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*, and the Defendants having waived service of  
22 summons and complaint, having been fully advised of the right to a trial in this matter and, after  
23 receiving advice of counsel, having waived the same, admit that this Court has jurisdiction over  
24 the subject matter and the parties for purposes of entry of this Consent Judgment and  
25 acknowledge that this Court retains jurisdiction for the purpose of enforcing this Consent  
26 Judgment.

1 The Defendants have agreed to a voluntary compromise of disputed claims, and the State  
2 of Arizona and the Defendants have agreed on a basis for the settlement of these matters in  
3 dispute.

4 The Defendants deny the State's claims in its complaint that any of them violated the  
5 Arizona Consumer Fraud Act. This Consent Judgment does not constitute an admission by any  
6 of the Defendants for any purpose of any violation of any state law, rule or regulation nor does  
7 this Consent Judgment constitute evidence of any liability of the Defendants. This Consent  
8 Judgment is made without trial or adjudication of any issues of fact or law or finding of liability  
9 of any kind.

#### 10 PARTIES

11 1. The Plaintiff is the State of Arizona, *ex rel.* Terry Goddard, Attorney General, who  
12 is authorized to bring this action under the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et*  
13 *seq.*

14 2. Defendant Larby Amirouche is a member/manager of Amirouche and Norton,  
15 LLC, an Arizona limited liability company, and does business in Arizona as  
16 NaturesAcaiBerry.com, Simplecleanser LLC, and Amir and Sanchez Nutraceuticals, LLC.

17 3. Defendant Robert Thomas Norton is a member/manager of Amirouche and  
18 Norton, LLC, an Arizona limited liability company, and does business in Arizona as  
19 NaturesAcaiBerry.com, Simplecleanser LLC, and Amir and Sanchez Nutraceuticals, LLC.

20 4. Defendant Amirouche and Norton, LLC is an Arizona limited liability company.

#### 21 DEFINITIONS

22 For purposes of this Consent Judgment, the following definitions shall apply:

23 5. "Clear and Conspicuous" or "Clearly and Conspicuously" means:

24 a. in print communications, the message shall be in a type size and location  
25 sufficiently noticeable for an ordinary consumer to read and comprehend, in print that contrasts  
26 with the background against which the message appears;



1           10.    The Defendants shall not obtain any information about a consumer's credit card or  
2 debit card until the consumer first affirmatively consents to purchase a product or service. Such  
3 affirmative consent shall be in close proximity to a clear and conspicuous description of each  
4 separate product, service or program purchased. The clear and conspicuous description shall  
5 include the cost, terms, limitations, restrictions, conditions, future obligations, negative option  
6 features, and refund and cancellation policies that apply to each product, service or program, as  
7 well as a disclosure that the Defendants will share the consumer's billing information with a  
8 third party, and the name of the third party, if this will occur as a result of the consumer's  
9 purchase.

10           11.    The Defendants shall not process any order for the purchase of a product, service  
11 or program, until the consumer placing such order first gives his or her affirmative consent.  
12 Such affirmative consent shall be in close proximity to a clear and conspicuous confirmation  
13 statement of the separate and aggregate costs for each and all products, services and programs  
14 included in that order, as well as a disclosure that the Defendants will share the consumer's  
15 billing information with a third party, and the name of the third party, if this will occur as a  
16 result of the consumer's purchase.

17           12.    The Defendants shall allow consumers to make cancellation requests by calling a  
18 customer service telephone number or sending a cancellation request via e-mail to a telephone  
19 number and e-mail address, respectively, provided by the Defendants on its websites and  
20 invoices mailed with any of its products. The Defendants shall processes consumers'  
21 cancellation requests within twenty-four (24) hours of their receipt thereof and shall respond to  
22 consumers within twenty-four (24) hours from the time the consumer's message or e-mail was  
23 received, confirming that the cancellation request was received.

24           13.    The Defendants shall include a clear and conspicuous disclosure in each product  
25 invoice it sends to consumers that states the cost, terms, limitations, restrictions, conditions,  
26 future obligations, negative option features, and refund and cancellation policies that apply to

1 the product and any service or program that comes with the purchase of the product.  
2 Additionally, the disclosure shall state that the Defendants will share the consumer's billing  
3 information with a third party, and the name of the third party, if this will occur as a result of the  
4 consumer's purchase.

5 14. Within ten (10) days of the court's approval of this Consent Judgment, the  
6 Defendants shall prepare a summary of the injunctive terms of this Order for all persons  
7 employed by or contracting with any of the Defendants and who will be responsible for  
8 complying with the Order. Within thirty (30) days of the court's approval of this Consent  
9 Judgment, the Defendants shall provide a copy of the summary described herein to the Attorney  
10 General.

11 15. Without admitting any liability and solely to resolve this matter without the fees,  
12 expenses, and risks of any litigation, the Defendants, jointly and severally, shall pay the  
13 Attorney General's Office twenty thousand dollars (\$20,000) as restitution. The restitution  
14 ordered herein shall be distributed to those consumers whose complaint was received by the  
15 Arizona Attorney General's Office as of the date this Consent Judgment is approved by the  
16 court. In the event that the amount of restitution ordered herein is not sufficient to fully restore  
17 eligible consumers the amount they paid to the Defendants, the amount shall be distributed to  
18 them on a pro rata basis. In the event that any portion of the restitution ordered herein cannot be  
19 distributed to eligible consumers, or exceeds the amount of monies paid or owed to the  
20 Defendants by eligible consumers as defined herein, the excess amount shall be used for  
21 consumer fraud education and for investigative and enforcement operations of the consumer  
22 protection division in accordance with A.R.S. § 44-1531.01(C).

23 16. Without admitting any liability and solely to resolve this matter without the fees,  
24 expenses, and risks of any litigation, the Defendants, jointly and severally, shall pay the  
25 Attorney General's Office one hundred and forty thousand dollars (\$140,000) as penalties  
26 pursuant to A.R.S. § 44-1531, to be used for consumer fraud education and for investigative and

1 enforcement operations of the consumer protection division in accordance with A.R.S. § 44-  
2 1531.01(C).

3 17. Without admitting any liability and solely to resolve this matter without the fees,  
4 expenses, and risks of any litigation, the Defendants, jointly and severally, shall pay to the  
5 Attorney General's Office fifteen thousand dollars (\$15,000) as investigative costs and attorneys  
6 fees pursuant to A.R.S. § 44-1534, to be used for consumer fraud education and for investigative  
7 and enforcement operations of the consumer protection division in accordance with A.R.S. § 44-  
8 1531.01(C).

9 18. In the event of a default of any payment obligation imposed by this Consent  
10 Judgment, and in addition to any other relief or remedy elected or pursued by the State, all  
11 payments set forth herein shall be accelerated and shall become due and owing in their entirety  
12 as of the date of the default, with interest accruing at the statutory rate for the full amount owing  
13 as of that date.

14 19. The Defendants shall not represent or imply that the Attorney General, the State of  
15 Arizona, or any agency thereof has approved any of their actions in Arizona or has approved any  
16 of its past, present or future business practices in Arizona, and they are enjoined from directly or  
17 indirectly representing anything to the contrary.

18 20. This Court retains jurisdiction of this matter for the purposes of entertaining an  
19 application by Plaintiff, State of Arizona, for the enforcement of this judgment.

20 21. This Consent Judgment may be modified or vacated by order of this Court. After  
21 providing at least thirty (30) days written notice and after making a good faith effort to obtain  
22 concurrence of the other party for the requested order to modify or vacate, which concurrence  
23 shall not be unreasonably withheld, the party seeking an order to modify or vacate may petition  
24 this Court therefore. The Court will modify or vacate this Consent Judgment upon a showing of  
25 good cause.

26 22. Before initiating any proceeding to enforce this Consent Judgment, the Attorney

1 General shall provide at least thirty (30) days' written notice to the Defendants of its intent to  
2 initiate such proceedings, and shall give the Defendants a reasonable opportunity to cure any  
3 alleged violation. Whenever possible, the parties shall seek to resolve an alleged violation of this  
4 Consent Judgment by discussion. In addition, in determining whether to enforce this Consent  
5 Judgment or to seek an order for monetary, civil contempt, or any other relief or sanction, the  
6 Attorney General shall give good faith consideration to whether the Defendants have taken  
7 corrective action designed to cause the claimed violation to be cured and to prevent future  
8 occurrences.

9 23. The State acknowledges by its execution hereof that this Consent Judgment  
10 constitutes a complete settlement of its allegations against the Defendants, their employees or  
11 agents, and it agrees that it shall not institute any additional civil action against any of the  
12 aforementioned based on their alleged violations of the Arizona Consumer Fraud Act or any  
13 other civil statutory or common law claims, as described in the State's Complaint or relating to  
14 other acts or conduct constituting Defendants' advertising, promoting, offering for sale, or sale  
15 of products or services that could have been alleged as such violations or claims, to the date this  
16 Consent Judgment is approved by the court.

17 24. Notwithstanding the foregoing, the State may institute an action or proceeding to  
18 enforce the terms and provisions of this Consent Judgment or to take action based on future  
19 conduct by the Defendants.

20 25. This Consent Judgment shall not limit the rights of any private party to pursue any  
21 remedies allowed by law, subject the provisions of paragraph twenty-seven below.

22 26. This Consent Judgment is entered as a result of a compromise and a settlement  
23 agreement between the parties. Only the parties to this action may seek enforcement of this  
24 Consent Judgment. Nothing herein is intended to create a private right of action by other parties.

25 27. Prior to distribution of restitution to any eligible consumer, the Attorney General's  
26 Office shall obtain from each such consumer: 1) a declaration that the consumer has not

1 previously received a refund for any of the funds sought for restitution; and 2) a release and  
2 waiver of any and all future claims for restitution against Defendants which may be asserted by  
3 or on behalf of such consumer in any private or public action of any kind, including but not  
4 limited to individual lawsuits, consumer class actions, or law enforcement actions by other state  
5 Attorneys General or the Federal Trade Commission.

6 28. The payments required herein shall be due in the form of a cashier's check made  
7 payable to the Arizona Attorney General's Office as follows:

8 a. \$65,000.00 within thirty (30) days of the court's approval of this Consent  
9 Judgment;

10 b. \$55,000.00 within six (6) months of the court's approval of this Consent  
11 Judgments; and

12 c. \$55,000.00 within twelve (12) months of the court's approval of this  
13 Consent Judgment.

14 29. The amounts paid pursuant to paragraph twenty-eight above shall be distributed by  
15 the Attorney General first as restitution, then as investigative costs and attorney's fee, and  
16 finally as civil penalties. All monies paid as restitution shall be deposited by the Attorney  
17 General into an interest bearing trust account.

18 DATED this 20<sup>th</sup> day of Nov., 2009.

21 [S] Dean M. Fink  
22 Judge of the Superior Court  
23  
24  
25  
26

1 CONSENT TO JUDGMENT

2 1. The Defendants state that no promise of any kind or nature whatsoever was made  
3 to them to induce them to enter into this Consent Judgment and that they have entered into the  
4 Consent Judgment voluntarily.

5 2. The Defendants have fully read and understood this Consent Judgment,  
6 understand the legal consequences involved in signing it, assert that this is the entire agreement  
7 of the parties, and that there are no other representations or agreements not stated in writing  
8 herein, and no force, threats, or coercion of any kind have been used to obtain their signatures.

9 3. The Defendants acknowledge that Plaintiff's, State of Arizona's, acceptance of  
10 this Consent Judgment is solely for the purpose of settling this litigation and any other potential  
11 civil claims relating to Defendants' methods or substance of advertising, promoting, offering for  
12 sale, or sale of products or services, and does not preclude the Plaintiff, or any other agency or  
13 officer of this State, or subdivision thereof, from instituting other civil or criminal proceedings  
14 as may be appropriate now or in the future, consistent with the limitations contained in  
15 paragraph twenty-three of this Consent Judgment.

16 4. Amirouche and Norton, LLC represents and warrants that the person signing  
17 below on its behalf is duly appointed and authorized to do so.

18 DATED this 30 day of October, 2009.

19  
20 **Amirouche and Norton, LLC**

21  
22 By: Larby Amirouche

23  
24  
25 Larby Amirouche  
26 **Larby Amirouche**

Robert Thomas Norton  
**Robert Thomas Norton**

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13 officer of this State, or subdivision thereof, from instituting other civil or criminal proceedings  
14 as may be appropriate now or in the future, consistent with the limitations contained in  
15 paragraph twenty-three of this Consent Judgment.

16 4. Amirouche and Norton, LLC represents and warrants that the person signing  
17 below on its behalf is duly appointed and authorized to do so.

18 DATED this 29<sup>th</sup> day of October, 2009.

19  
20 **Amirouche and Norton, LLC**

21  
22 By: Robert Norton  
23 RA Norton

24  
25  
26 Larby Amirouche

Robert Thomas Norton  
Robert Thomas Norton

1 **APPROVED AS TO FORM AND CONTENT:**

2 TERRY GODDARD  
3 Attorney General

4  
5 By:   
6 Cherie L. Howe  
7 Assistant Attorney General  
8 Counsel for Plaintiff

9  
10   
11 Thomas A. Cohn  
12 Venable LLP  
13 Counsel for Defendants