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MICHAEL K. JEANES, Clerk  
By L. Furrillo  
Deputy

1 TERRY GODDARD  
2 Attorney General  
3 Firm Bar No. 14000  
4 Cherie L. Howe  
5 Assistant Attorney General  
6 State Bar No. 013878  
7 1275 W. Washington Street  
8 Phoenix, Arizona 85007B2997  
9 Telephone: (602) 542-7725  
10 Fax: (602) 542-4377  
11 consumer@azag.gov  
12 Attorneys for the State of Arizona

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14  
15 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

16 **IN AND FOR THE COUNTY OF MARICOPA**

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

Case No: CV2008-033069

19 Plaintiff,

**CONSENT JUDGMENT**

20 -vs-

(Assigned to Hon. Richard J. Trujillo)

21 CENTRAL COAST NUTRACEUTICALS,  
22 INC, a foreign corporation, and GRAHAM  
23 GIBSON and JANE DOE GIBSON, husband  
24 and wife,

25 Defendants.

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

The Defendants have agreed to a voluntary compromise of disputed claims, and the

1 State of Arizona and the Defendants have agreed on a basis for the settlement of these  
2 matters in dispute.

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

### 9 PARTIES

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

13 2. Defendant Central Coast Nutraceuticals, Inc. is a California corporation with  
14 its principal place of business located at 2375 East Camelback Road, 5<sup>th</sup> Floor, Phoenix,  
15 Arizona 85016.

16 3. Defendant Graham Gibson is the President, Chief Executive Officer and  
17 Director of Central Coast Nutraceuticals, Inc. and resides in Phoenix, Arizona.

### 18 DEFINITIONS

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

20 4. "Clear and Conspicuous" or "Clearly and Conspicuously" means:

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

24 b. in communications made through an electronic medium,  
25 including but not limited to, software, the internet, or online services, the message must be  
26 presented prior to a consumer incurring any financial obligation, and shall be of a size and  
shade that contrasts with the background against which it appears, and shall appear on the

1 screen for a duration and in a location sufficiently noticeable for an ordinary consumer to  
2 read and comprehend;

3 c. regardless of the medium used to disseminate it, the message  
4 shall be in understandable language and syntax and shall not contradict, or be otherwise  
5 inconsistent with, other messages in the same offer or agreement to sell.

6 5. "Negative Option Feature" means, in an offer or agreement to sell or provide  
7 a product or service, a provision under which a consumer's silence or failure to take  
8 affirmative action to reject the product or service, or to cancel the agreement, is treated by  
9 the seller or provider as the consumer's acceptance of the offer.

### 10 ORDER

11 6. This Order applies to Central Coast Nutraceuticals, Inc., any entity controlled  
12 by Central Coast Nutraceuticals, Inc., any successor entity or entities, whether by  
13 acquisition, merger or otherwise, and to its current and future principals, officers and  
14 directors, assigns and successors, managerial or supervisory employees, and to any other  
15 employees or agents having responsibilities with respect to the subject matter of this Order,  
16 but not in any individual capacity.

17 7. Central Coast Nutraceuticals, Inc. shall comply with the Arizona Consumer  
18 Fraud Act, A.R.S. § 44-1521 *et seq.*, as it is currently written, and as it may be amended.

19 8. Central Coast Nutraceuticals, Inc. shall not represent or imply that a product  
20 or service is offered without any obligation on the part of a recipient of the offer to  
21 affirmatively act to avoid charges if, in fact, a charge will be assessed pursuant to the offer  
22 unless the recipient takes affirmative action to cancel the offer.

23 9. Central Coast Nutraceuticals, Inc. shall not represent through, among other  
24 means, billings, credit card charges, or checking account debits that a consumer purchased  
25 or agreed to purchase a product or service, or otherwise agreed to a particular transaction,  
26 unless the consumer has affirmatively consented to such purchase or transaction.

10. Central Coast Nutraceuticals, Inc. shall not represent that consumers will be

1 able to easily cancel an order before they will be assessed additional charges, unless it  
2 allows consumers to make cancellation requests by calling a dedicated customer service  
3 telephone number and, if the consumer is unable to speak to a representative, leaving a  
4 message, or by sending a cancellation request via website or an e-mail to an address  
5 provided by Central Coast Nutraceuticals, Inc., and Central Coast Nutraceuticals, Inc.  
6 processes said requests within twenty-four (24) hours of its receipt thereof.

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

16 12. Central Coast Nutraceuticals, Inc. shall not process any order for the purchase  
17 of a product, service or program, until the consumer placing such order first gives his or her  
18 affirmative consent. Such affirmative consent shall be in close proximity to a clear and  
19 conspicuous confirmation statement of the separate and aggregate costs for each and all  
20 products, services and programs included in that order, as well as a disclosure that Central  
21 Coast Nutraceuticals, Inc. will share the consumer's billing information with a third party,  
22 and the name of the third party, if this will occur as a result of the consumer's purchase.

23 13. Central Coast Nutraceuticals, Inc. shall include a clear and conspicuous  
24 disclosure in each product invoice it sends to consumers that states the cost, terms,  
25 limitations, restrictions, conditions, future obligations, negative option features, and refund  
26 and cancellation policies that apply to the product and any service or program that comes  
with the purchase of the product. Additionally, the disclosure shall state that Central Coast

1 Nutraceuticals, Inc. will share the consumer's billing information with a third party, and the  
2 name of the third party, if this will occur as a result of the consumer's purchase.

3 14. Central Coast Nutraceuticals, Inc. shall not charge a consumer's credit card,  
4 debit card, or any other financial account (either directly or through a third party) for any  
5 product, subsequent to a consumer's initial purchase of the product on a trial basis, until the  
6 trial period has expired and the additional period of seven days has passed, to allow the  
7 consumer to return any unused trial product to Central Coast Nutraceuticals, Inc. and cancel  
8 any future shipments of the product.

9 15. Central Coast Nutraceuticals, Inc. shall not use conflicting or contradictory  
10 language on its website, in other promotional materials, or on invoices included with  
11 product shipments, regarding the length of the trial period for a given product or service or  
12 the time frame within which consumers must return items or cancel services in order to  
13 obtain refunds or avoid future billings for such product or service, or fail to clearly state  
14 such time frames.

15 16. Central Coast Nutraceuticals, Inc. shall respond to consumers who leave  
16 telephone messages or send e-mails to its "customer care" or customer service department  
17 within at least twenty-four (24) hours from the time the consumer's message was left or e-  
18 mail received.

19 17. Within ten (10) days of the court's approval of this Consent Judgment,  
20 Central Coast Nutraceuticals, Inc. shall prepare a summary of the injunctive terms of this  
21 Order for all persons employed by or contracting with Central Coast Nutraceuticals, Inc.  
22 who will be responsible for complying with the Order. Within thirty (30) days of the  
23 court's approval of this Consent Judgment, Central Coast Nutraceuticals, Inc. shall provide  
24 a copy of the summary described herein to the Attorney General.

25 18. Without admitting any liability and solely to resolve this matter without the  
26 fees, expenses, and risks of any litigation, the Defendants, jointly and severally, shall pay  
the Attorney General's Office three hundred and fifty thousand dollars (\$350,000) as

1 restitution, which includes any attendant expenses a third party retained by the Plaintiff  
2 incurs in administering the distribution of said restitution. The restitution ordered herein  
3 shall be distributed to those nationwide consumers whose complaint was received by the  
4 Arizona Attorney General's Office as of the date this Consent Judgment is approved by the  
5 court and to those nationwide consumers who submit a complaint with the Attorney  
6 General's Office, or its designated third party, within sixty (60) days of the Court's  
7 approval of this Consent Judgment. In the event that the amount of restitution ordered  
8 herein is not sufficient to fully restore eligible consumers from across the United States the  
9 amount they paid to Central Coast Nutraceuticals, Inc., the amount shall be distributed to  
10 them on a *pro rata* basis. In the event that any portion of the restitution ordered herein  
11 cannot be distributed to eligible consumers, or exceeds the amount of monies paid or owed  
12 to Central Coast Nutraceuticals, Inc. by eligible consumers as defined herein, the excess  
13 amount shall to be used for consumer fraud education and for investigative and  
14 enforcement operations of the consumer protection division in accordance with A.R.S.  
15 § 44-1531.01(C).

16 19. Without admitting any liability and solely to resolve this matter without the  
17 fees, expenses, and risks of any litigation, the Defendants, jointly and severally, shall pay  
18 the Attorney General's Office one million dollars (\$1,000,000) as penalties pursuant to  
19 A.R.S. § 44-1531, to be used for consumer fraud education and for investigative and  
20 enforcement operations of the consumer protection division in accordance with A.R.S.  
21 § 44-1531.01(C).

22 20. Without admitting any liability and solely to resolve this matter without the  
23 fees, expenses, and risks of any litigation, the Defendants, jointly and severally, shall pay to  
24 the Attorney General's Office twenty-five thousand dollars (\$25,000) as investigative costs  
25 and attorneys fees pursuant to A.R.S. § 44-1534, to be used for consumer fraud education  
26 and for investigative and enforcement operations of the consumer protection division in  
accordance with A.R.S. § 44-1531.01(C).

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

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

10          23. This Court retains jurisdiction of this matter for the purposes of entertaining  
11 an application by Plaintiff, State of Arizona, for the enforcement of this judgment.

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

18          25. Before initiating any proceeding to enforce this Consent Judgment, the  
19 Attorney General shall provide at least thirty (30) days' written notice to Central Coast  
20 Nutraceuticals, Inc. of its intent to initiate such proceedings, and shall give Central Coast  
21 Nutraceuticals, Inc. a reasonable opportunity to cure any alleged violation. Whenever  
22 possible, the parties shall seek to resolve an alleged violation of this Consent Judgment by  
23 discussion. In addition, in determining whether to enforce this Consent Judgment or to seek  
24 an order for monetary, civil contempt, or any other relief or sanction, the Attorney General  
25 shall give good faith consideration to whether Central Coast Nutraceuticals, Inc. has taken  
26 corrective action designed to cause the claimed violation to be cured and to prevent future  
occurrences.

1           26.    The State acknowledges by its execution hereof that this Consent Judgment  
2 constitutes a complete settlement of its allegations against Central Coast Nutraceuticals,  
3 Inc., its employees or agents, and Graham Gibson, and it agrees that it shall not institute  
4 any additional civil action against any of the aforementioned based on their alleged  
5 violations of the Arizona Consumer Fraud Act or any other civil statutory or common law  
6 claims, as described in the State's Verified Complaint or relating to other acts or conduct  
7 constituting Central Coast Nutraceuticals, Inc.'s advertising, promoting, offering for sale,  
8 or sale of products or services that could have been alleged as such violations or claims, to  
9 the date this Consent Judgment is approved by the court.

10           27.    Notwithstanding the foregoing, the State may institute an action or  
11 proceeding to enforce the terms and provisions of this Consent Judgment or to take action  
12 based on future conduct by Central Coast Nutraceuticals, Inc. or Graham Gibson.

13           28.    This Consent Judgment is entered as a result of a compromise and a  
14 settlement agreement between the parties. Only the parties to this action may seek  
15 enforcement of this Consent Judgment. Nothing herein is intended to create a private right  
16 of action by other parties.

17           29.    Prior to distribution of restitution to any nationwide consumer that files a  
18 timely complaint with the Attorney General's Office, the Attorney General's Office shall  
19 obtain from each such consumer: 1) a declaration that the consumer has not previously  
20 received a refund for any of the funds sought for restitution; and 2) a release and waiver of  
21 any and all future claims for restitution against Defendants which may be asserted by or on  
22 behalf of such consumer in any private or public action of any kind, including but not  
23 limited to individual lawsuits, consumer class actions, or law enforcement actions by other  
24 state Attorneys General or the Federal Trade Commission.

25           30.    The payments required herein shall be due in the form of a cashier's check  
26 made payable to the Arizona Attorney General's Office and shall be deposited by the  
Attorney General into an interest bearing trust account as follows:

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- a. \$475,000.00 within thirty (30) days of the court's approval of this Consent Judgment;
- b. \$450,000.00 within six (6) months of the court's approval of this Consent Judgment; and
- c. \$450,000.00 within twelve (12) months of the court's approval of this Consent Judgment.

31. IT IS FURTHER ORDERED that upon entry of this Consent Judgment, the Stipulated Preliminary Injunction, and all of its provisions, entered in this case on January 12, 2009, shall be lifted permanently as to all Defendants and other persons or entities subject thereto.

DATED this 16 day of June, 2009.

**Hon. Richard J. Trujillo**  
\_\_\_\_\_  
Judge of the Superior Court

1 CONSENT TO JUDGMENT

2 1. Central Coast Nutraceuticals, Inc. and Graham Gibson state that no promise  
3 of any kind or nature whatsoever was made to them to induce them to enter into this  
4 Consent Judgment and that they have entered into the Consent Judgment voluntarily.

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

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

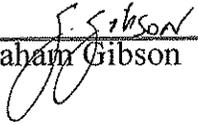
18 4. Central Coast Nutraceuticals, Inc. represents and warrants that the person  
19 signing below on its behalf is duly appointed and authorized to do so.

20 DATED this 10<sup>th</sup> day of June, 2009.

21  
22 **Central Coast Nutraceuticals, Inc.**

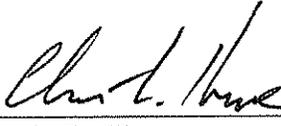
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25 By: Gibson  
Graham Gibson, President

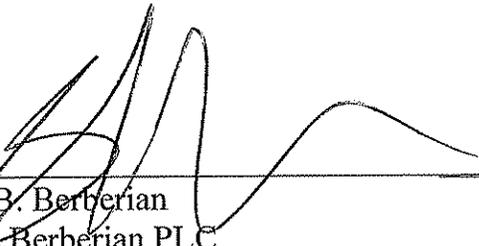
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By:   
Graham Gibson

**APPROVED AS TO FORM AND CONTENT:**

**TERRY GODDARD**  
**Attorney General**

By:   
Cherie L. Howe  
Assistant Attorney General  
Counsel for Plaintiff

By:   
Sean B. Berberian  
White Berberian PLC  
Counsel for Defendants