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

14	FEDERAL TRADE COMMISSION,	)	Case No. 2:18-cv-10068-KS
15	<i>Plaintiff,</i>	)	
16	v.	)	<del>2</del> <b>[PROPOSED] STIPULATED</b>
17		)	<b>ORDER FOR PERMANENT</b>
18	NOBETES CORPORATION, a/k/a SIDE	)	<b>INJUNCTION AND</b>
19	EFFECTS SOLUTIONS CORPORATION,	)	<b>MONETARY JUDGMENT</b>
20	a corporation,	)	
21	MARVIN SILVER, individually and as an	)	
22	officer and director of Nobetes Corporation,	)	
23	and	)	
24	JEFFREY FLEITMAN, individually and as	)	
25	an officer and director of Nobetes	)	
26	Corporation,	)	
27	<i>Defendants.</i>	)	

27 Plaintiff, the Federal Trade Commission ("Commission"), filed its  
28 Complaint for Permanent Injunction and Other Equitable Relief ("Complaint"), for

1 a permanent injunction and other equitable relief in this matter, pursuant to Section  
2 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to  
3 obtain permanent injunctive relief for Defendants’ acts or practices in violation of  
4 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52. The Commission  
5 and Defendants stipulate to the entry of this Stipulated Order for Permanent  
6 Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in  
7 this action between them.

8 **THEREFORE, IT IS ORDERED** as follows:

9 **FINDINGS**

- 10 1. This Court has jurisdiction over this matter.
- 11 2. The Complaint charges that Defendants participated in deceptive and unfair  
12 acts or practices in violation of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45  
13 and 52, in connection with the advertising and labeling, offering for sale, sale, or  
14 distribution of Nobetes.
- 15 3. Defendants neither admit nor deny any of the allegations in the Complaint,  
16 except as specifically stated in this Order. Only for purposes of this action,  
17 Defendants admit the facts necessary to establish jurisdiction.
- 18 4. Defendants waive any claim that they may have under the Equal Access to  
19 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through  
20 the date of this Order, and agree to bear their own costs and attorney fees.
- 21 5. Defendants waive all rights to appeal or otherwise challenge or contest the  
22 validity of this Order.

23 **DEFINITIONS**

24 For the purpose of this Order, the following definitions apply:

- 25 A. **“Billing Information”** means any data that enables any person to access a  
26 consumer’s account, such as a credit card, checking, savings, share or similar  
27 account, utility bill, mortgage loan account, or credit card.

1 B. **“Charge,” “Charged,” or “Charging”** means any attempt to collect money  
2 or other consideration from a consumer, including but not limited to causing  
3 Billing Information to be submitted for payment, including against the consumer’s  
4 credit card, debit card, bank account, telephone bill, or other account.

5 C. **“Clear(ly) and Conspicuous(ly)”** means that a required disclosure is  
6 difficult to miss (i.e., easily noticeable) and easily understandable by ordinary  
7 consumers, including in all of the following ways:

- 8 1. In any communication that is solely visual or solely audible, the  
9 disclosure must be made through the same means through which the  
10 communication is presented. In any communication made through both  
11 visual and audible means, such as a television advertisement, the disclosure  
12 must be presented simultaneously in both the visual and audible portions of  
13 the communication even if the representation requiring the disclosure is  
14 made in only one means.
- 15 2. A visual disclosure, by its size, contrast, location, the length of time it  
16 appears, and other characteristics, must stand out from any accompanying  
17 text or other visual elements so that it is easily noticed, read, and understood.
- 18 3. An audible disclosure, including by telephone or streaming video,  
19 must be delivered in a volume, speed, and cadence sufficient for ordinary  
20 consumers to easily hear and understand it.
- 21 4. In any communication using an interactive electronic medium, such as  
22 the Internet or software, the disclosure must be unavoidable.
- 23 5. The disclosure must use diction and syntax understandable to ordinary  
24 consumers and must appear in each language in which the representation  
25 that requires the disclosure appears.
- 26 6. The disclosure must comply with these requirements in each medium  
27 through which it is received, including all electronic devices and face-to-face  
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1 communications.

2 7. The disclosure must not be contradicted or mitigated by, or  
3 inconsistent with, anything else in the communication.

4 8. When the representation or sales practice targets a specific audience,  
5 such as children, the elderly, or the terminally ill, "ordinary consumers"  
6 includes reasonable members of that group.

7 D. "**Close Proximity**" means immediately adjacent to the triggering  
8 representation. In the case of advertisements disseminated verbally or through  
9 audible means, the disclosure shall be made as soon as practicable after the  
10 triggering representation.

11 E. "**Covered Product**" means any Dietary Supplement, Food, or Drug,  
12 including Nobetes.

13 F. "**Defendants**" means all of the Individual Defendants and the Corporate  
14 Defendant, individually, collectively, or in any combination.

15 1. "**Corporate Defendant**" means Nobetes Corporation and its  
16 successors and assigns. Nobetes Corporation includes Side Effects  
17 Solutions.

18 2. "**Individual Defendants**" means Marvin Silver and Jeffrey Fleitman.

19 G. "**Diabetes Product**" means any Covered Product promoted for the  
20 prevention, mitigation, or treatment of diabetes or high blood sugar.

21 H. "**Dietary Supplement**" means: (1) any product labeled as a Dietary  
22 Supplement or otherwise represented as a Dietary Supplement; or (2) any pill,  
23 tablet, capsule, powder, softgel, gelcap, liquid, or other similar form containing one  
24 or more ingredients that are a vitamin, mineral, herb or other botanical, amino acid,  
25 probiotic, or other dietary substance for use by humans to supplement the diet by  
26 increasing the total dietary intake, or a concentrate, metabolite, constituent, extract,  
27 or combination of any ingredient described above, that is intended to be ingested,  
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1 and is not represented to be used as a conventional food or as a sole item of a meal  
2 or the diet.

3 I. **“Drug”** means: (1) articles recognized in the official United States  
4 Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or  
5 official National Formulary, or any supplement to any of them; (2) articles  
6 intended for use in the diagnosis, cure, mitigation, treatment, or prevention of  
7 disease in humans or other animals; (3) articles (other than Food) intended to affect  
8 the structure or any function of the body of humans or other animals; and (4)  
9 articles intended for use as a component of any article specified in (1), (2), or (3);  
10 but does not include devices or their components, parts, or accessories.

11 J. **“Essentially Equivalent Product”** means a product that contains the  
12 identical ingredients, except for inactive ingredients (e.g., binders, colors, fillers,  
13 excipients) in the same form and dosage, and with the same route of administration  
14 (e.g., orally, sublingually), as the Covered Product; *provided that* the Covered  
15 Product may contain additional ingredients if reliable scientific evidence generally  
16 accepted by experts in the field indicates that the amount and combination of  
17 additional ingredients is unlikely to impede or inhibit the effectiveness of the  
18 ingredients in the Essentially Equivalent Product.

19 K. **“Food”** means: (1) any article used for Food or drink for humans or other  
20 animals; (2) chewing gum; and (3) any article used for components of any such  
21 article.

22 L. **“Negative Option Feature”** means, in an offer or agreement to sell or  
23 provide any good, program, or service, a provision under which the consumer’s  
24 silence or failure to take an affirmative action to reject goods or services, or to  
25 cancel the agreement, is interpreted by the seller or provider as acceptance or  
26 continuing acceptance of the offer.

27 M. **“Telemarketing”** means any plan, program, or campaign conducted to  
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1 induce the purchase of any good, service, plan or program, by use of one or more  
2 telephones, and which involves a telephone call, whether or not covered by the  
3 Telemarketing Sales Rule, 16 C.F.R. Part 310.

4 **ORDER**

5 **I. BAN ON SALES OF NOBETES AND OTHER**  
6 **DIABETES PRODUCTS**

7 **IT IS ORDERED** that Defendants are permanently restrained and enjoined  
8 from advertising, labeling, marketing, promoting, or offering for sale Nobetes and  
9 any other Diabetes Product.

10 **II. PROHIBITED REPRESENTATIONS: HEALTH-RELATED**  
11 **CLAIMS REQUIRING HUMAN CLINICAL TESTING FOR**  
12 **SUBSTANTIATION**

13 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers,  
14 agents, employees, and attorneys, and all other persons in active concert or  
15 participation with any of them, who receive actual notice of this Order, whether  
16 acting directly or indirectly, in connection with the manufacturing, labeling,  
17 advertising, promotion, offering for sale, sale, or distribution of any Covered  
18 Product, other than a product banned under the Section entitled Ban on Sales of  
19 Nobetes and Other Diabetes Products, are permanently restrained and enjoined  
20 from making, or assisting others in making, expressly or by implication, including  
21 through the use of a product or program name, endorsement, depiction, or  
22 illustration, any representation that such product cures, mitigates, or treats any  
23 disease, unless the representation is non-misleading, and, at the time of making  
24 such representation, they possess and rely upon competent and reliable scientific  
25 evidence substantiating that the representation is true. For purposes of this  
26 Section, competent and reliable scientific evidence shall consist of human clinical  
27 testing of the Covered Product, or of an Essentially Equivalent Product, that is  
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1 sufficient in quality and quantity based on standards generally accepted by experts  
2 in the relevant disease, condition, or function to which the representation relates,  
3 when considered in light of the entire body of relevant and reliable scientific  
4 evidence, to substantiate that the representation is true. Such testing must be: (1)  
5 randomized, double-blind, and placebo-controlled; and (2) conducted by  
6 researchers qualified by training and experience to conduct such testing. In  
7 addition, all underlying or supporting data and documents generally accepted by  
8 experts in the field as relevant to an assessment of such testing as described in the  
9 Section entitled Preservation of Records Relating to Competent and Reliable  
10 Human Clinical Tests or Studies must be available for inspection and production to  
11 the Commission. Persons covered by this Section have the burden of proving that  
12 a product satisfies the definition of Essentially Equivalent Product.

### 13 **III. PROHIBITED REPRESENTATIONS:**

#### 14 **OTHER HEALTH-RELATED CLAIMS**

15 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers,  
16 agents, employees, and attorneys, and all other persons in active concert or  
17 participation with any of them, who receive actual notice of this Order, whether  
18 acting directly or indirectly, in connection with the manufacturing, labeling,  
19 advertising, promotion, offering for sale, sale, or distribution of any Covered  
20 Product, other than a product banned under the Section entitled Ban on Sales of  
21 Nobetes and Other Diabetes Products, are permanently restrained and enjoined  
22 from making, or assisting others in making, expressly or by implication, including  
23 through the use of a product or program name, endorsement, depiction, or  
24 illustration, any representation, other than representations covered under the  
25 Section of this Order entitled Prohibited Representations: Health-Related Claims  
26 Requiring Human Clinical Testing For Substantiation, about the health benefits,  
27 performance, efficacy, safety, or side effects of any Covered Product, or that  
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1 diabetes causes nutrient deficiencies requiring supplementation, unless the  
2 representation is non-misleading, and, at the time of making such representation,  
3 they possess and rely upon competent and reliable scientific evidence that is  
4 sufficient in quality and quantity based on standards generally accepted by experts  
5 in the relevant disease, condition, or function to which the representation relates,  
6 when considered in light of the entire body of relevant and reliable scientific  
7 evidence, to substantiate that the representation is true.

8 For purposes of this Section, competent and reliable scientific evidence  
9 means tests, analyses, research, or studies (1) that have been conducted and  
10 evaluated in an objective manner by experts in the relevant disease, condition, or  
11 function to which the representation relates; (2) that are generally accepted by such  
12 experts to yield accurate and reliable results; and (3) that are randomized, double-  
13 blind, and placebo-controlled human clinical testing of the Covered Product, or of  
14 an Essentially Equivalent Product, when such experts would generally require such  
15 human clinical testing to substantiate that the representation is true. In addition,  
16 when such tests or studies are human clinical tests or studies, all underlying or  
17 supporting data and documents generally accepted by experts in the field as  
18 relevant to an assessment of such testing as set forth in the Section entitled  
19 Preservation of Records Relating to Competent and Reliable Human Clinical Tests  
20 or Studies must be available for inspection and production to the Commission.  
21 Persons covered by this Section have the burden of proving that a product satisfies  
22 the definition of Essentially Equivalent Product.

23 **IV. PROHIBITION AGAINST FALSE ENDORSEMENTS**

24 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers,  
25 agents, employees, and attorneys, and all other persons in active concert or  
26 participation with any of them, who receive actual notice of this Order, whether  
27 acting directly or indirectly, in connection with the manufacturing, labeling,  
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1 advertising, promotion, offering for sale, sale, or distribution of any goods or  
2 services, other than a product banned under the Section entitled Ban on Sales of  
3 Nobetes and Other Diabetes Products, are permanently restrained and enjoined  
4 from making, or assisting others in making, expressly or by implication, any  
5 misrepresentation concerning or relating to any endorser, including that any such  
6 person is an expert with respect to the endorsement message provided by that  
7 person.

8 **V. DISCLOSURE OF MATERIAL CONNECTIONS**

9 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents,  
10 and employees, and all other persons in active concert or participation with any of  
11 them, who receive actual notice of this Order, whether acting directly or indirectly,  
12 in connection with the manufacturing, labeling, advertising, promotion, offering  
13 for sale, sale, or distribution of any goods or services, are permanently restrained  
14 and enjoined from making any representation, expressly or by implication, about  
15 any consumer or other endorser of such good or service without disclosing, Clearly  
16 and Conspicuously, and in Close Proximity to the representation, any unexpected  
17 material connection between such endorser and 1) any Defendant, or 2) any other  
18 individual or entity affiliated with the good or service. For the purposes of this  
19 provision, "unexpected material connection" means any relationship that might  
20 materially affect the weight or credibility of the testimonial or endorsement and  
21 that would not reasonably be expected by consumers.

22 **VI. FDA-APPROVED CLAIMS**

23 **IT IS FURTHER ORDERED** that nothing in this Order prohibits  
24 Defendants, Defendants' officers, agents, employees, and attorneys, or all other  
25 persons in active concert or participation with any of them from:

26 A. For any Drug, making a representation that is approved in labeling for  
27 such Drug under any tentative final or final monograph promulgated by the  
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1 Food and Drug Administration, or under any new drug application approved  
2 by the Food and Drug Administration; and

3 B. For any product, making a representation that is specifically  
4 authorized for use in labeling for such product by regulations promulgated  
5 by the Food and Drug Administration pursuant to the Nutrition Labeling and  
6 Education Act of 1990 or permitted under Sections 303-304 of the Food and  
7 Drug Administration Modernization Act of 1997.

8 **VII. PRESERVATION OF RECORDS RELATING TO COMPETENT**  
9 **AND RELIABLE HUMAN CLINICAL TESTS OR STUDIES**

10 **IT IS FURTHER ORDERED** that, with regard to any human clinical test  
11 or study (“test”) upon which Defendants rely to substantiate any claim covered by  
12 this Order, Defendants shall secure and preserve all underlying or supporting data  
13 and documents generally accepted by experts in the field as relevant to an  
14 assessment of the test, including:

15 A. All protocols and protocol amendments, reports, articles, write-ups, or  
16 other accounts of the results of the test, and drafts of such documents  
17 reviewed by the test sponsor or any other person not employed by the  
18 research entity;

19 B. All documents referring or relating to recruitment; randomization;  
20 instructions, including oral instructions, to participants; and participant  
21 compliance;

22 C. Documents sufficient to identify all test participants, including any  
23 participants who did not complete the test, and all communications with any  
24 participants relating to the test; all raw data collected from participants  
25 enrolled in the test, including any participants who did not complete the test;  
26 source documents for such data; any data dictionaries; and any case report  
27 forms;

1 D. All documents referring or relating to any statistical analysis of any  
2 test data, including any pretest analysis, intent-to-treat analysis, or between-  
3 group analysis performed on any test data; and

4 E. All documents referring or relating to the sponsorship of the test,  
5 including all communications and contracts between any sponsor and the  
6 test's researchers.

7 Provided, however, the preceding preservation requirement does not apply to  
8 a reliably reported test, unless the test was conducted, controlled, or sponsored, in  
9 whole or in part by: (1) any Defendant; (2) any Defendant's officers, agents,  
10 representatives, or employees; (3) any other person or entity in active concert or  
11 participation with any Defendant; (4) any person or entity affiliated with or acting  
12 on behalf of any Defendant; (5) any supplier of any ingredient contained in the  
13 product at issue to any of the foregoing or to the product's manufacturer; or (6) the  
14 supplier or manufacturer of such product.

15 For purposes of this Section, "reliably reported test" means a report of the  
16 test has been published in a peer-reviewed journal, and such published report  
17 provides sufficient information about the test for experts in the relevant field to  
18 assess the reliability of the results.

19 For any test conducted, controlled, or sponsored, in whole or in part, by  
20 Defendants, Defendants must establish and maintain reasonable procedures to  
21 protect the confidentiality, security, and integrity of any personal information  
22 collected from or about participants. These procedures must be documented in  
23 writing and must contain administrative, technical, and physical safeguards  
24 appropriate to Corporate Defendant's size and complexity, the nature and scope of  
25 Defendants' activities, and the sensitivity of the personal information collected  
26 from or about the participants.

1                   **VIII. PROHIBITION AGAINST MISREPRESENTATIONS:**  
2                                   **NEGATIVE OPTION SALES**

3           **IT IS FURTHER ORDERED** that Defendant, Defendant’s officers, agents,  
4 employees, and attorneys, and all other persons in active concert or participation  
5 with any of them, who receive actual notice of this Order, whether acting directly  
6 or indirectly, in connection with promoting or offering for sale any good or service  
7 with a Negative Option Feature, are permanently restrained and enjoined from  
8 misrepresenting or assisting others in misrepresenting, expressly or by implication:

- 9           A. Any cost to the consumer to purchase, receive, use, or return the  
10 initial good or service;
- 11           B. That the consumer will not be Charged for any good or service;
- 12           C. That a good or service is offered on a “free,” “trial,” “sample,”  
13 “bonus,” “gift,” “no obligation,” “discounted” basis, or words of similar  
14 import, denoting or implying the absence of an obligation on the part of the  
15 recipient of the offer to affirmatively act in order to avoid Charges, including  
16 where a Charge will be assessed pursuant to the offer unless the consumer  
17 takes affirmative steps to prevent or stop such a Charge;
- 18           D. That the consumer can obtain a good or service for a processing,  
19 service, shipping, handling, or administrative fee with no further obligation;
- 20           E. The purpose(s) for which the consumer’s Billing Information will be  
21 used;
- 22           F. The date by which the consumer will incur any obligation or be  
23 Charged unless the consumer takes an affirmative action on the Negative  
24 Option Feature;
- 25           G. That a transaction has been authorized by the consumer;
- 26           H. Any material aspect of the nature or terms of a refund, cancellation,  
27 exchange, or repurchase policy for the good or service; or  
28

1 I. Any other material fact.

2 Compliance with this Section is separate from, and in addition to, the  
3 disclosures required by Sections entitled Required Disclosures Relating to Negative  
4 Option Features and Obtaining Express Informed Consent.

5 **IX. REQUIRED DISCLOSURES RELATING TO**  
6 **NEGATIVE OPTION FEATURES**

7 **IT IS FURTHER ORDERED** that Defendant, Defendant's officers, agents,  
8 employees, and attorneys, and all other persons in active concert or participation  
9 with any of them, who receive actual notice of this Order, whether acting directly  
10 or indirectly, in connection with promoting or offering for sale any good or service  
11 with a Negative Option Feature, are permanently restrained and enjoined from:

12 A. Representing directly or indirectly, expressly or by implication, that  
13 any good or service that includes a Negative Option Feature is being offered  
14 on a free, trial, no obligation, reduced, or discounted basis, without  
15 disclosing Clearly and Conspicuously, and immediately adjacent to, any  
16 such representation:

17 1. The extent to which the consumer must take affirmative  
18 action(s) to avoid any Charges: a) for the offered good or service, b)  
19 of an increased amount after the trial or promotional period ends, and  
20 c) on a recurring basis;

21 2. The total cost (or range of costs) the consumer will be Charged  
22 and, if applicable, the frequency of such Charges unless the consumer  
23 timely takes steps to prevent or stop such Charges; and

24 3. The deadline(s) (by date or frequency) by which the consumer  
25 must affirmatively act in order to stop all recurring Charges.

26 B. Obtaining Billing Information from a consumer for any transaction  
27 involving a good or service that includes a Negative Option Feature, without  
28

1 first disclosing Clearly and Conspicuously, and immediately adjacent to  
2 where a consumer provides Billing Information:

- 3 1. The extent to which the consumer must take affirmative  
4 action(s) to avoid any Charges: a) for the offered good or service, b)  
5 of an increased amount after the trial or promotional period ends, and  
6 c) on a recurring basis;
- 7 2. The total cost (or range of costs) the consumer will be Charged,  
8 the date the initial Charge will be submitted for payment, and, if  
9 applicable, the frequency of such Charges unless the consumer timely  
10 takes affirmative steps to prevent or stop such Charges;
- 11 3. The deadline(s) (by date or frequency) by which the consumer  
12 must affirmatively act in order to stop all recurring Charges;
- 13 4. The name of the seller or provider of the good or service and, if  
14 the name of the seller or provider will not appear on billing  
15 statements, the billing descriptor that will appear on such statements;
- 16 5. A description of the good or service;
- 17 6. Any Charge or cost for which the consumer is responsible in  
18 connection with the cancellation of an order or the return of a good;  
19 and
- 20 7. The simple cancellation mechanism to stop any recurring  
21 Charges, as required by the Section entitled Simple Mechanism to  
22 Cancel Negative Option Feature.

23 C. Failing to send the consumer:

- 24 1. Immediately after the consumer's submission of an online  
25 order, written confirmation of the transaction by email. The email  
26 must Clearly and Conspicuously disclose all the information required  
27 by Subsection IX.B, and contain a subject line reading "Order  
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1 Confirmation” along with the name of the product or service, and no  
2 additional information; or

3 2. Within two (2) days after receipt of the consumer’s order by  
4 mail or telephone, a written confirmation of the transaction, either by  
5 email or first class mail. The email or letter must Clearly and  
6 Conspicuously disclose all the information required by Subsection  
7 IX.B. The subject line of the email must Clearly and Conspicuously  
8 state “Order Confirmation” along with the name of the product or  
9 service, and nothing else. The outside of the envelope must Clearly  
10 and Conspicuously state “Order Confirmation” along with the name  
11 of the product or service, and no additional information other than the  
12 consumer’s address, the Defendant’s return address, and postage.

13 **X. OBTAINING EXPRESS INFORMED CONSENT**

14 **IT IS FURTHER ORDERED** that Defendant, Defendant’s officers, agents,  
15 employees, and attorneys, and all other persons in active concert or participation  
16 with any of them, who receive actual notice of this Order, whether acting directly  
17 or indirectly, in connection with promoting or offering for sale any good or service  
18 with a Negative Option Feature, are permanently restrained and enjoined from  
19 using, or assisting others in using, Billing Information to obtain payment from a  
20 consumer, unless Defendant first obtains the express informed consent of the  
21 consumer to do so. To obtain express informed consent, Defendants must:

22 A. For all written offers (including over the Internet or other web-based  
23 applications or services), obtain consent through a check box, signature, or  
24 other substantially similar method, which the consumer must affirmatively  
25 select or sign to accept the Negative Option Feature, and no other portion of  
26 the offer. Defendant shall disclose Clearly and Conspicuously, and  
27 immediately adjacent to such check box, signature, or substantially similar  
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1 method of affirmative consent, only the following, with no additional  
2 information:

- 3 1. The extent to which the consumer must take affirmative  
4 action(s) to avoid any Charges: a) for the offered good or service, b)  
5 of an increased amount after the trial or promotional period ends, and  
6 c) on a recurring basis;
- 7 2. The total cost (or range of costs) the consumer will be Charged  
8 and, if applicable, the frequency of such Charges unless the consumer  
9 timely takes affirmative steps to prevent or stop such Charges; and
- 10 3. The deadline(s) (by date or frequency) by which the consumer  
11 must affirmatively act in order to stop all recurring Charges.

12 B. For all oral offers, prior to obtaining any Billing Information from the  
13 consumer:

- 14 1. Clearly and Conspicuously disclose the information contained  
15 in Subsection IX.B.; and
- 16 2. Obtain affirmative unambiguous express oral confirmation that  
17 the consumer: a) consents to being Charged for any good or service,  
18 including providing, at a minimum, the last four (4) digits of the  
19 consumer's account number to be Charged, b) understands that the  
20 transaction includes a Negative Option Feature, and c) understands the  
21 specific affirmative steps the consumer must take to prevent or stop  
22 further Charges.

23 *Provided further that*, for transactions conducted through Telemarketing,  
24 Defendant shall maintain for three (3) years from the date of each  
25 transaction an unedited voice recording of the entire transaction, including  
26 the prescribed statements set out in Subsection IX.B. Each recording must  
27 be retrievable by date and by the consumer's name, telephone number, or  
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1 Billing Information, and must be provided upon request to the consumer, the  
2 consumer's bank, or any law enforcement entity.

3 **XI. SIMPLE MECHANISM TO CANCEL**  
4 **NEGATIVE OPTION FEATURE**

5 **IT IS FURTHER ORDERED** that Defendant, Defendant's officers, agents,  
6 employees, attorneys, and all other persons in active concert or participation with  
7 any of them, who receive actual notice of this Order, whether acting directly or  
8 indirectly, in connection with promoting or offering for sale any good or service  
9 with a Negative Option Feature, are permanently restrained and enjoined from  
10 failing to provide a simple mechanism for the consumer to: (1) avoid being  
11 Charged, or Charged an increased amount, for the good or service and (2)  
12 immediately stop any recurring Charges. Such mechanism must not be difficult,  
13 costly, confusing, or time consuming, and must be at least as simple as the  
14 mechanism the consumer used to initiate the Charge(s). In addition:

15 A. For consumers who entered into the agreement to purchase a good or  
16 service including a Negative Option Feature over the Internet or through  
17 other web-based applications or services, Defendant must provide a  
18 mechanism, accessible over the Internet or through such other web-based  
19 application or service that consumers can easily use to cancel the product or  
20 service and to immediately stop all further Charges.

21 B. For consumers who entered into the agreement to purchase a good or  
22 service including a Negative Option Feature through an oral offer and  
23 acceptance, Defendants must maintain a telephone number and a postal  
24 address that consumers can easily use to cancel the product or service and to  
25 immediately stop all further Charges. Defendants must assure that all calls  
26 to this telephone number shall be answered during normal business hours  
27 and that mail to the postal address is retrieved regularly.

**XII. MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that:

A. Judgment in the amount of \$182,000 is entered in favor of the Commission against Individual Defendants and Corporate Defendant, jointly and severally, as equitable monetary relief.

B. Defendants are ordered to pay to the Commission \$182,000 which, as Defendants stipulate, their undersigned counsel holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.

**XIII. ADDITIONAL MONETARY PROVISIONS**

**IT IS FURTHER ORDERED** that:

A. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

C. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

D. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be

1 used for equitable relief, including consumer redress and any attendant  
2 expenses for the administration of any redress fund. If a representative of  
3 the Commission decides that direct redress to consumers is wholly or  
4 partially impracticable or money remains after redress is completed, the  
5 Commission may apply any remaining money for such other equitable relief  
6 (including consumer information remedies) as it determines to be reasonably  
7 related to Defendants' practices alleged in the Complaint. Any money not  
8 used for such equitable relief is to be deposited to the U.S. Treasury as  
9 disgorgement. Defendants have no right to challenge any actions the  
10 Commission or its representatives may take pursuant to this Subsection.

#### 11 **XIV. CUSTOMER INFORMATION**

12 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers,  
13 agents, and employees, and all other persons in active concert or participation with  
14 any of them, who receive actual notice of this Order, are permanently restrained  
15 and enjoined from directly or indirectly:

16 A. Failing to provide sufficient customer information to enable the  
17 Commission to efficiently administer consumer redress. If a representative  
18 of the Commission requests in writing any information related to redress,  
19 Defendants must provide it, in the form prescribed by the Commission,  
20 within 14 days.

21 B. Disclosing, using, or benefitting from customer information,  
22 including the name, address, telephone number, email address, social  
23 security number, other identifying information, or any data that enables  
24 access to a customer's account (including a credit card, bank account, or  
25 other financial account), that any Defendant obtained prior to entry of this  
26 Order in connection with the sale of Nobetes; and

27 C. Failing to destroy such customer information in all forms in their  
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1 possession, custody, or control within 30 days after receipt of written  
2 direction to do so from a representative of the Commission.

3 Provided, however, that customer information need not be disposed of, and may be  
4 disclosed, to the extent requested by a government agency or required by law,  
5 regulation, or court order.

6 **XV. ORDER ACKNOWLEDGMENTS**

7 **IT IS FURTHER ORDERED** that Defendants obtain acknowledgments of  
8 receipt of this Order:

9 A. Each Defendant, within 7 days of entry of this Order, must submit to  
10 the Commission an acknowledgment of receipt of this Order sworn under  
11 penalty of perjury.

12 B. For 5 years after entry of this Order, each Individual Defendant for  
13 any business that such Defendant, individually or collectively with any other  
14 Defendants, is the majority owner or controls directly or indirectly, and the  
15 Corporate Defendant, must deliver a copy of this Order to: (1) all principals,  
16 officers, directors, and LLC managers and members; (2) all employees  
17 having managerial responsibilities for conduct related to the subject matter  
18 of the Order or who engage in Telemarketing, and all agents and  
19 representatives who participate in conduct related to the subject matter of the  
20 Order; and (3) any business entity resulting from any change in structure as  
21 set forth in the Section titled Compliance Reporting. Delivery must occur  
22 within 7 days of entry of this Order for current personnel. For all others,  
23 delivery must occur before they assume their responsibilities.

24 C. From each individual or entity to which a Defendant delivered a copy  
25 of this Order, that Defendant must obtain, within 30 days, a signed and dated  
26 acknowledgment of receipt of this Order.

**XVI. COMPLIANCE REPORTING**

**IT IS FURTHER ORDERED** that Defendants make timely submissions to the Commission:

A. Sixty days after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

1 B. For 10 years after entry of this Order, each Defendant must submit a  
2 compliance notice, sworn under penalty of perjury, within 14 days of any  
3 change in the following:

4 1. Each Defendant must report any change in: (a) any designated  
5 point of contact; or (b) the structure of any Corporate Defendant or  
6 any entity that Defendant has any ownership interest in or controls  
7 directly or indirectly that may affect compliance obligations arising  
8 under this Order, including: creation, merger, sale, or dissolution of  
9 the entity or any subsidiary, parent, or affiliate that engages in any  
10 acts or practices subject to this Order.

11 2. Additionally, each Individual Defendant must report any  
12 change in: (a) name, including aliases or fictitious name, or residence  
13 address; or (b) title or role in any business activity, including any  
14 business for which such Defendant performs services whether as an  
15 employee or otherwise and any entity in which such Defendant has  
16 any ownership interest, and identify the name, physical address, and  
17 any Internet address of the business or entity.

18 C. Each Defendant must submit to the Commission notice of the filing of  
19 any bankruptcy petition, insolvency proceeding, or similar proceeding by or  
20 against such Defendant within 14 days of its filing.

21 D. Any submission to the Commission required by this Order to be  
22 sworn under penalty of perjury must be true and accurate and comply with  
23 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of  
24 perjury under the laws of the United States of America that the foregoing is  
25 true and correct. Executed on: \_\_\_\_\_" and supplying the date, signatory's  
26 full name, title (if applicable), and signature.

27 E. Unless otherwise directed by a Commission representative in writing,  
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1 all submissions to the Commission pursuant to this Order must be emailed to  
2 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service)  
3 to: Associate Director for Enforcement, Bureau of Consumer Protection,  
4 Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington,  
5 DC 20580. The subject line must begin: FTC v. Nobetes Corporation.

6 **XVII. RECORDKEEPING**

7 **IT IS FURTHER ORDERED** that Defendants must create certain records  
8 for 10 years after entry of the Order, and retain each such record for 5 years.  
9 Specifically, Corporate Defendant if a going concern, in connection with the sale  
10 of any goods or services, and each Individual Defendant for any business that such  
11 Defendant, individually or collectively with any other Defendants, is a majority  
12 owner or controls directly or indirectly, must create and retain the following  
13 records:

- 14 A. Accounting records showing the revenues from all goods or services  
15 sold;
- 16 B. Personnel records showing, for each person providing services,  
17 whether as an employee or otherwise, that person's: name; addresses;  
18 telephone numbers; job title or position; dates of service; and (if applicable)  
19 the reason for termination;
- 20 C. Records of all consumer complaints concerning the subject matter of  
21 the order and all refund requests, whether received directly or indirectly,  
22 such as through a third party, and any response;
- 23 D. All records necessary to demonstrate full compliance with each  
24 provision of this Order, including all submissions to the Commission; and
- 25 E. A copy of each unique advertisement or other marketing material.

26 **XVIII. COMPLIANCE MONITORING**

27 **IT IS FURTHER ORDERED** that, for the purpose of monitoring  
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1 Defendants' compliance with this Order:

2 A. Within 14 days of receipt of a written request from a representative of  
3 the Commission, each Defendant must: submit additional compliance  
4 reports or other requested information, which must be sworn under penalty  
5 of perjury; appear for depositions; and produce documents for inspection  
6 and copying. The Commission is also authorized to obtain discovery,  
7 without further leave of court, using any of the procedures prescribed by  
8 Federal Rules of Civil Procedure 29, 30 (including telephonic depositions),  
9 31, 33, 34, 36, 45, and 69.

10 B. For matters concerning this Order, the Commission is authorized to  
11 communicate directly with each Defendant. Defendant must permit  
12 representatives of the Commission to interview any employee or other  
13 person affiliated with any Defendant who has agreed to such an interview.  
14 The person interviewed may have counsel present.

15 C. The Commission may use all other lawful means, including posing,  
16 through its representatives as consumers, suppliers, or other individuals or  
17 entities, to Defendants or any individual or entity affiliated with Defendants,  
18 without the necessity of identification or prior notice. Nothing in this Order  
19 limits the Commission's lawful use of compulsory process, pursuant to  
20 Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

21 D. Upon written request from a representative of the Commission, any  
22 consumer reporting agency must furnish consumer reports concerning  
23 Individual Defendants, pursuant to Section 604(1) of the Fair Credit  
24 Reporting Act, 15 U.S.C. §1681b(a)(1).

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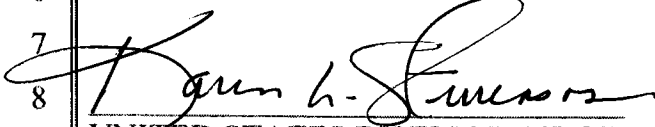


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**XIX. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

**SO ORDERED** this 13<sup>th</sup> day of December, 2018.

  
UNITED STATES DISTRICT JUDGE  
*Magistrate*

**SO STIPULATED AND AGREED:**

**FOR PLAINTIFF:**

*Janet Evans* Date: December 3, 2018  
JANET M. EVANS,  
ATTORNEY  
600 Pennsylvania Ave., N.W.  
Mail Drop CC-10528  
Washington, D.C. 20580  
Telephone (202) 326-2125  
Facsimile: (202) 326-3259  
Email: jevans@ftc.gov

**FOR DEFENDANTS:**

*Burton C. Jacobson* Date: 9/14/18  
Burton C. Jacobson  
424 S Beverly Dr.,  
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Counsel for Nobetes Corporation a/k/a  
Side Effects Solution Corporation,  
Marvin Silver, and Jeffrey Fleitman



Date: 9-14-2018

Marvin Silver, Individually and as  
an Officer and Director of  
Nobetes Corporation a/k/a Side Effects  
Solution Corporation



Date: 9/14/2018

Jeffrey Fleitman, Individually and as  
an Officer and Director of  
Nobetes Corporation a/k/a Side Effects  
Solution Corporation