IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

17CV11267

IN THE MATTER OF:	Case No.
VITAMIN SHOPPE, INC.	ASSURANCE OF VOLUNTARY COMPLIANCE

1.

Vitamin Shoppe, Inc. does business in Oregon and is the Respondent herein. This agreement is between Respondent and the Oregon Department of Justice (DOJ) (herein "Parties"), acting pursuant to ORS 646.632.

PROCEDURE

2.

This Assurance of Voluntary Compliance (AVC) is a settlement of a disputed matter. It shall not be considered an admission of a violation for any purpose. Respondent and DOJ agree that no provision of the AVC operates as a penalty, forfeiture, or punishment under the Constitution of the United States, under the Constitution of the State of Oregon, or under any other provision of law. Neither the fact that the Parties entered into this AVC nor anything contained in this AVC is or implies an admission that the Respondent has engaged in any trade practices prohibited by the Oregon Unlawful Trade Practices Act or any other federal or state law, administrative rule or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Respondent expressly denies. Respondent does not admit any violation of ORS 646.605 to 646.656 and does not admit any wrongdoing that was or could have been alleged by DOJ under that law. Respondent is entering into this AVC solely for the purpose of settlement.

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3.

Respondent understands and agrees that this AVC applies to Respondent, its subsidiaries, Affiliates, successors, or assigns and each of their respective officers, employees, directors and agents (in both their official and personal capacities) (collectively, the "Released Parties"). "Affiliate" means any business entity that is controlled by or is under common control with the Respondent. "Controlled by" and "under common control with" as used in the definition of "Affiliate" means the power to direct or cause the direction or the management and policies of the business entity.

4.

Respondent understands and agrees that if this AVC is accepted by DOJ, it will be submitted to the Circuit Court of the State of Oregon for Multnomah County for approval, and, if approved, will be filed with the court pursuant to ORS 646.632(2).

5.

Respondent waives any further notice of submission to and filing with the court of this AVC. Respondent agrees to accept service of a conformed or court certified copy by prepaid first class mail sent to the address following its respective signature.

6.

Respondent understands that violation of any of the terms of this AVC may result in contempt of court proceedings, civil penalties of up to $25,000 for each violation, and such further relief as the court may deem appropriate, ORS 646.632(4), ORS 646.642(1) and ORS 646.642(2), provided that for the purposes of resolving disputes with respect to compliance with this AVC:

A. Should DOJ have a reasonable basis to believe that Respondent has engaged in a practice that violates a provision of this AVC subsequent to the date of the Court's approval of this AVC, then DOJ shall notify Respondent in writing of the specific objection, identify with particularity the provisions of this AVC that the practice

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appears to violate, and give Respondent ten (10) days to respond to the notification prior to filing any court action; provided, however, DOJ may act before the ten (10) days expires if DOJ concludes that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

B. Respondent's written response to DOJ shall contain either a statement explaining why Respondent believes it is in compliance with the AVC or an explanation of how the alleged violation occurred and a statement explaining how Respondent has cured or intends to cure the alleged violation.

C. Upon giving Respondent ten (10) days to respond to the notification described above, DOJ shall also be permitted reasonable access to inspect and copy relevant, non-privileged, non-work product records and documents in the possession, custody or control of Respondent that relate to Respondent's compliance with each provision of this AVC.

D. Nothing in this paragraph shall be interpreted to limit the DOJ's Civil Investigative Demand ("CID") or subpoena authority, to the extent such authority exists under applicable state law, and Respondent reserves all of its rights with respect to a CID or subpoena issued pursuant to such authority.

E. Nothing in this paragraph shall be interpreted to limit DOJ's ability to bring an action to enforce this AVC against Respondent after Respondent has provided the statement or explanation described in B above.

7.

The Parties acknowledge that no other promises, representations or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this AVC constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.

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8.

This AVC shall be inadmissible in any case for any purpose, or otherwise used to support any claim, cause of action, right asserted or request for relief of any kind in any action against Respondent, except an action to enforce this AVC. This AVC shall not create a private cause of action or confer any right to any third party for violation of any federal or state statute except that DOJ may file an action to enforce the terms of this AVC, subject to Paragraph 6. No part of this AVC, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Respondent. This AVC shall not be construed or used as a waiver or limitation of any defense otherwise available to Respondent in any action, or of Respondent's right to defend itself from, or make any arguments in, any private individual, regulatory, governmental, or class claims or suits relating to the subject matter or terms of this AVC. This AVC is made without trial or adjudication of any issue of fact or law or finding of liability of any kind.

9.

This AVC represents the full and complete terms of the settlement entered into by the Parties. In any action undertaken by DOJ, or Respondent, no prior versions of this AVC, and no prior versions of any of its terms, that were not entered by the Court in this AVC, may be introduced for any purpose whatsoever.

REMEDIES

10.

Respondent shall comply with ORS 646.605 *et seq.* and ORS 166.715 *et seq.* relating to the marketing, sale and promotion of dietary supplements. Respondent shall not make any false, misleading or deceptive representation regarding any dietary supplement in violation of ORS 646.605 *et seq.* and ORS 166.715 *et seq.*

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11.

Respondent agrees that it shall not sell products that contain DMAA. DMAA is also known as 1,3 DMAA; 1,3 Dimethylamylamine; 1,3 Dimethylpentylarnine; 2-Amino-4-methylhexane; 2-Hexanamine, 4-methyl- (9CI); 4-Methyl-2-23 hexanamine; 4-Methyl-2-hexylamine; Dimethylamylamine; Geranamine; Methylhexanamine; Methylhexanenamine; geranium extract; Pelargonium graveolens extract; and InChIKey=YAHRDLICUYEDAU-UHFFFAOYSA-N.

12.

Respondent agrees that it shall not sell products that contain picamilon. Picamilon is also known as nicotinoyl-GABA, pycamilon, picamilone, pikatropin, pikamilon, nicotinyl-gamma-aminobutyric acid, and pikamilon.

13.

Respondent agrees that it shall not sell products that contain oxilofrine. Oxilofrine is also known as methylsynephrine and p-hydroxyephedrine.

14.

Respondent agrees that it shall not sell products that contain aegeline. Aegeline is also known as N-[2-hydroxy-2(4-methoxyphenyl) ethyl]-3-phenyl-2-propenamide.

15.

Respondent agrees that it shall not sell products that contain the botanical cynanchum auriculatum.

16.

After the Court's approval of this AVC, in the event Respondent becomes aware of a public announcement, warning, alert, publication, notice or report issued by a governmental agency in the United States, Australia, Canada, Britain, or the European Union that does not rise to the level of an FDA Public Written Notice (as defined in Paragraph 18(A) below) asserting that a purported dietary ingredient fails to qualify as such under 21 U.S.C. § 321(ff)(1), that a

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pre-market notification should have been submitted to the U.S. Food and Drug Administration ("FDA") under 21 U.S.C. § 350b and 21 CFR § 190.6 but was not so submitted, or that a dietary ingredient is unsafe, and Respondent at that time either offers for sale any dietary supplement containing such ingredient or is considering a request by a third party to offer for sale a dietary supplement containing such ingredient ("Government Publication"), Respondent shall within thirty (30) days conduct a reasonable due diligence review of the ingredient. If Respondent reasonably determines that the purported dietary ingredient fails to qualify as such under 21 U.S.C. § 321 (ff)(1), that a pre-market notification should have been submitted to the FDA under 21 U.S.C. § 350b and 21 CFR § 190.6 but was not so submitted, or that the dietary ingredient is unsafe, then Respondent shall: (i) if Respondent has not yet commenced offering for sale the dietary ingredient, refrain from doing so in the future; or (ii) if Respondent then currently offers for sale the dietary ingredient, promptly suspend sales. When conducting its reasonable due diligence review, Respondent shall not rely exclusively on the Purchase Agreement warranties required by Paragraph 17, and shall consider the totality of the facts and circumstances relating to the product. DOJ shall be permitted to seek relevant, non-privileged, non-work product information from Respondent about its reasonable due diligence review and decision to continue or initiate sale of products containing a dietary ingredient that is the subject of a Government Publication.

17.

Each Purchase Agreement between Respondent and a third-party vendor shall require that the vendor explicitly warrant, as stated below or in substantively similar language, that each of its dietary supplements sold to Respondent shall:

A. Have cleared or be exempt from pre-market notification or approval requirements, and be manufactured, packed for shipment, stored and shipped in accordance with applicable current Good Manufacturing Practices regulations promulgated by the FDA under the federal Food, Drug and Cosmetic Act ("FDCA");

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B. Be marked with the information required by law or regulation; and

C. Be, as of the date of such shipment or delivery, on such date, not adulterated or misbranded within the meaning of the FDCA, and not an article which may not, under the provisions of section 404, 505, or 512 of the FDCA, be introduced into interstate commerce.

These warranties are understood by the Parties to mean that the vendor warrants, among other things, that each dietary supplement contains dietary ingredients and non-dietary ingredients that are in compliance with the FDCA.

18.

When Respondent receives or learns of the issuance of any FDA Public Written Notice (defined below) wherein the FDA has indicated its belief that any purported dietary supplement or any ingredient in a purported dietary supplement is not legal under federal law and/or is not safe, Respondent will take immediate action to suspend the sale of such product or products known to contain the ingredient.

A. FDA Public Written Notice means: (i) a document identified by the FDA as a "Warning Letter" (a) that is addressed directly to and received by Respondent or is addressed to any other company or individual and is accessible to the general public on the FDA's website and (b) that explicitly calls for Respondent or such other company or individual to cease distribution of a dietary supplement product; (ii) an FDA Public Health Advisory that is accessible to the general public on the FDA's website; (iii) the commencement of legal action by the U.S. Department of Justice that is announced to the general public on the FDA's website; or (iv) a Declaration by an official of the FDA acting in an official capacity that concludes that a purported dietary ingredient does not qualify as a dietary ingredient under 21 U.S.C. § 321(ff)(1) which is received by Respondent.

B. This provision is subject to the Parties' understanding that, in the event the FDA

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in a written statement subsequent to the FDA Public Written Notice concludes or determines that the dietary supplement or ingredient is legal under federal law and/or is safe, Respondent shall be permitted to resume sales of such supplement or ingredient in a manner consistent with the FDA's subsequent written statement.

19.

Within fifteen (15) days of the Court's approval of this AVC, Respondent shall pay the sum of $545,000 for deposit to the Department of Justice Account established pursuant to ORS 180.095 to be used by DOJ as provided by law.

RELEASE

20.

The State of Oregon, by DOJ's execution of this AVC, releases the Released Parties from the following: all known and unknown claims, causes of action, damages, restitution, fines, costs, requests for injunctive relief, and penalties that were or could have been asserted by the State of Oregon pursuant to ORS 646.605 *et seq.* and ORS 166.715 *et seq.* up to and including the date of the Court's approval of this AVC, arising from the Covered Conduct that is the subject of this AVC. "Covered Conduct" shall mean the marketing, promotion and sale of dietary supplement products.

JURISDICTION

21.

Nothing in this AVC shall require Respondent to take an action that is prohibited by the FDCA or any regulation promulgated thereunder, or by the FDA; or fail to take an action that is required by the FDCA or any regulation promulgated thereunder, or by FDA.

22.

This Court retains jurisdiction of this AVC and the Parties hereto for the purpose of enforcing and modifying this AVC. Either Party may propose a modification to this AVC to the other Party. If the other Party agrees, the proposed revised AVC shall be submitted jointly to

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this Court for approval. If the other Party does not agree, the proposing Party may petition this Court for modification and the objecting Party shall have sixty (60) days within which to submit an objection. Any modification will not be in effect until such time as it is approved by this Court.

NOTICE

23.

Any written notice required or permitted to be given by one Party to the other Party under this AVC shall be sent by facsimile or by an overnight courier service to the person(s) named below:

If to Respondent:

Vitamin Shoppe, Inc.
ATTN: General Counsel
300 Harmon Meadow Blvd.
Secaucus, NJ 07094
Fax: (201) 552-6464

If to DOJ:

David A. Hart, Assistant Attorney-in-Charge
Oregon Department of Justice
100 SW Market Street
Portland, OR 97201
Fax: (971) 673-1884

And

ATTN: Attorney-in-Charge
Consumer Protection Section
Oregon Department of Justice
1162 Court Street
Salem, OR 97301

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Notice shall be considered given when (1) for facsimile, the facsimile is sent with confirmation of complete transmission or (2) for overnight courier service, when the notice is received.

APPROVAL BY COURT

APPROVED FOR FILING and SO ORDERED this 16 day of March, 2017.

NAN G. WALLER

Circuit Court Judge

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REVIEW BY RESPONDENTS' ATTORNEY

Approved as to form.

Michael J. Sandmire
Ater Wynne LLP
1331 NW Lovejoy Street, Suite 900
Portland, OR 97209-3280
503-226-8639 direct
mjs@aterwynne.com

Attorney for Respondent

RESPONDENT

I, David M. Kastin, being first duly sworn on oath depose and say that I am the Senior Vice President, General Counsel, and Corporate Secretary of Vitamin Shoppe, Inc., and am fully authorized and empowered to sign this Assurance of Voluntary Compliance on behalf of Vitamin Shoppe, Inc., and bind the same to the terms hereof.

Signature

David M. Kastin
Print Name

The Vitamin Shoppe
300 Harmon Meadow Blvd.
2nd Floor
Secaucus, NJ 07094
Address

SUBSCRIBED AND SWORN to before me this 13 day of March, 2017.

SHATESHA S HUGGINS
Notary Public, State of New Jersey
No. 50039759
Qualified in Bergen County
Commission Expires June 9, 2021

Notary Public for New Jersey

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ACCEPTANCE OF DOJ

Accepted this 15th day of March, 2017.

ELLEN F. ROSENBLUM
Attorney General

David A. Hart OSB #002750
Assistant Attorney General
Department of Justice
Of Attorneys for Plaintiff
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