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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CALIFORNIA SUNCARE, INC., )  
 )  
Defendant. )

94-5522  
CIVIL ACTION NO.  
FINAL JUDGMENT

Entered: November 3, 1994

Plaintiff, United States of America, having filed its  
complaint herein on August 12, 1994, and plaintiff and  
defendant, California SunCare, Inc., having consented to the  
entry of this Final Judgment without trial or adjudication  
of any issue of fact or law herein and without this Final  
Judgment constituting any evidence against or an admission  
by any party with respect to any such issue;

And whereas defendant has agreed to be bound by the  
provisions of this Final Judgment pending its approval by  
the Court;

Now, THEREFORE, before the taking of any testimony and

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CENTRAL DISTRICT OF CALIFORNIA  
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CENTRAL DISTRICT OF CALIFORNIA  
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CLERK, U.S. DISTRICT COURT  
NOV 9 1994  
CENTRAL DISTRICT OF CALIFORNIA  
DEPUTY

1 without trial or adjudication of any issue of fact or law  
2 herein, and upon consent of the parties hereto, it is hereby  
3 ORDERED, ADJUDGED AND DECREED as follows:

4 I

5 JURISDICTION

6 This Court has jurisdiction of the subject matter of  
7 this action and of the party consenting hereto. The  
8 complaint states a claim upon which relief may be granted  
9 against defendant under Section 1 of the Sherman Act (15  
10 U.S.C. § 1).

11 II

12 DEFINITIONS

13 As used in this Final Judgment:

14 A. "Person" means any individual, corporation,  
15 partnership, company, sole proprietorship, firm or other  
16 legal entity.

17 B. "Dealer" means any person, not wholly owned by  
18 California SunCare, Inc. ("California SunCare"), who  
19 purchases or acquires indoor tanning products manufactured  
20 or sold by California SunCare for resale.

21 C. "Indoor tanning product" means products applied to  
22 the skin in order to enhance, promote, preserve, or  
23 accelerate the skin tanning process or to protect the skin  
24 from adverse effects that may result from the tanning  
25 process.

26 D. "Resale price" means any price, price floor, price  
27 ceiling, price range, or any mark-up, formula or margin of  
28 profit relating to indoor tanning products sold by dealers.

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III

APPLICABILITY

A. This Final Judgment applies to defendant and to each of its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendant shall require, as a condition of the sale of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

PROHIBITED CONDUCT

A. Defendant is hereby enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any dealer to fix, stabilize, or maintain the resale prices at which indoor tanning products sold or distributed by defendant may be sold or offered for sale in the United States by any dealer.

B. Defendant is further enjoined and restrained for a period of five years from the date of entry of the final judgment from directly or indirectly announcing to the public or to any present or potential dealer of its indoor

1 tanning products that defendant has or is adopting,  
2 promulgating, suggesting, announcing or establishing any  
3 resale pricing policy for indoor tanning products that  
4 provides that: (1) defendant will sell only to a dealer  
5 that prices at or above defendant's suggested resale price,  
6 and/or (2) defendant will terminate any dealer for pricing  
7 below defendant's suggested resale price.

8 C. Defendant is further enjoined and restrained for a  
9 period of five years from the date of entry of the final  
10 judgment from (1) threatening any dealer with termination or  
11 terminating any dealer for pricing below the defendant's  
12 suggested resale price, and (2) discussing with any present  
13 or potential dealer any decision regarding termination of  
14 any other dealer for any reason directly or indirectly  
15 related to the latter dealer's pricing below defendant's  
16 suggested resale price; provided, however, that nothing  
17 herein shall prohibit the defendant during this five-year  
18 period from terminating a dealer for using any of  
19 defendant's products to promote the sale of products  
20 manufactured by other companies, or any other reasons other  
21 than pricing below defendant's suggested resale price.  
22 Furthermore, nothing in this paragraph shall be deemed to  
23 prohibit the defendant from adopting suggested resale prices  
24 and communicating such resale prices to dealers.

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V

NOTIFICATION PROVISIONS

Defendant is ordered and directed:

A. To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, within sixty (60) days of the entry of this Final Judgment, to each dealer who purchased indoor tanning products from defendant in 1992, 1993 or 1994.

B. To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, to each dealer who purchases indoor tanning products from defendant within ten (10) years of entry of this Final Judgment and who was not previously given such notice. Such notice shall be sent within thirty (30) days after the shipment of indoor tanning products is made to such dealer by the defendant.

VI

COMPLIANCE PROGRAM

Defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment.

1 The Antitrust Compliance Officer shall, on a continuing  
2 basis, supervise the review of the current and proposed  
3 activities of his or her company to ensure that it complies  
4 with this Final Judgment. The Antitrust Compliance Officer  
5 shall be responsible for accomplishing the following  
6 activities:

7 A. Furnishing a copy of this Final Judgment within  
8 thirty (30) days of entry of the Final Judgment to each of  
9 California SunCare's officers and directors and each of its  
10 employees, representatives, or agents whose duties include  
11 supervisory or direct responsibility for the sale or  
12 advertising of indoor tanning products in the United States,  
13 except those employees whose functions are purely clerical  
14 or manual.

15 B. Distributing in a timely manner a copy of this  
16 Final Judgment to any owner, officer or employee who  
17 succeeds to a position described in Section VI A.

18 C. Briefing annually those persons designated in  
19 Sections VI A and B on the meaning and requirements of this  
20 Final Judgment and the antitrust laws.

21 D. Obtaining from each owner, officer or employee  
22 designated in Section VI A and B certification that he or  
23 she (1) has read, understands, and agrees to abide by the  
24 terms of this Final Judgment; (2) understands that failure  
25 to comply with this Final Judgment may result in conviction  
26 for criminal contempt of court; and (3) is not aware of any

1 violation of the Final Judgment that has not been reported  
2 to the Antitrust Compliance Officer.

3 E. Maintaining a record of recipients from whom the  
4 certification in Section VI D has been obtained.

5 VII

6 CERTIFICATION

7 A. Within 75 days of the entry of this Final Judgment,  
8 defendant shall certify to plaintiff whether the defendant  
9 has designated an Antitrust Compliance Officer and has  
10 distributed the Final Judgment in accordance with Section VI  
11 A above.

12 B. For ten years after the entry of this Final  
13 Judgment, on or before its anniversary date, the defendant  
14 shall file with the plaintiff an annual statement as to the  
15 fact of its compliance with the provisions of Sections V and  
16 VI.

17 C. If defendant's Antitrust Compliance Officer learns  
18 of any violations of any of the terms and conditions  
19 contained in this Final Judgment, defendant shall  
20 immediately notify the plaintiff and forthwith take  
21 appropriate action to terminate or modify the activity so as  
22 to comply with this Final Judgment.

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VIII

PLAINTIFF ACCESS

A. For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of plaintiff shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, be permitted, subject to any legally recognized privilege:

1. Access during the defendant's office hours to inspect and copy all records and documents in the possession or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment.

2. To interview the defendant's officers, employees and agents, who may have counsel present, regarding any such matters. The interviews shall be subject to the defendant's reasonable convenience.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to defendant at its principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.



1 C. No information or documents obtained by the means  
2 provided in this Section VIII shall be divulged by any  
3 representative of the Department of Justice to any person  
4 other than a duly authorized representative of the Executive  
5 Branch of the United States, except in the course of legal  
6 proceedings to which the United States is a party, or for  
7 the purpose of securing compliance with this Final Judgment,  
8 or as otherwise required by law.

9 D. If at the time information or documents are  
10 furnished by defendant to plaintiff, defendant represents  
11 and identifies in writing the material in any such  
12 information or documents to which a claim of protection may  
13 be asserted under Rule 26(c)(7) of the Federal Rules of  
14 Civil Procedure, and defendant marks each pertinent page of  
15 such material, "Subject to claim of protection under Rule  
16 26(c)(7) of the Federal Rules of Civil Procedure," then ten  
17 (10) days notice shall be given by plaintiff to defendant  
18 prior to divulging such material in any legal proceeding  
19 (other than a grand jury proceeding), so that defendant  
20 shall have an opportunity to apply to this Court for  
21 protection pursuant to Rule 26(c)(7) of the Federal Rules of  
22 Civil Procedure.

23 E. Within ten (10) days after receiving any request  
24 under Sections VIII A or VIII B, defendant may apply to this  
25 Court for an order to quash or limit the scope of the  
26 request, and after providing plaintiff with an opportunity  
27

1 to respond to such application, this Court shall enter such  
2 order or directions as may be necessary or appropriate for  
3 carrying out and ensuring compliance with this Final  
4 Judgment.

5 IX

6 DURATION OF FINAL JUDGMENT

7 Except as otherwise provided hereinabove, this Final  
8 Judgment shall remain in effect until ten (10) years from the  
9 date of entry.

10 X

11 CONSTRUCTION, ENFORCEMENT, MODIFICATION AND COMPLIANCE

12 Jurisdiction is retained by the Court for the purpose of  
13 enabling any of the parties to this Final Judgment to apply  
14 to this Court at any time for such further orders or  
15 directions as may be necessary or appropriate for the  
16 construction or carrying out of this Final Judgment, for the  
17 modification of any of its provisions, for its enforcement  
18 or compliance, and for the punishment of any violation of  
19 its provisions.

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XI

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: Nov 3, 1994

Angus D. Collins  
UNITED STATES DISTRICT COURT JUDGE

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APPENDIX A

Dear California SunCare Dealer:

The Antitrust Division of the United States Department of Justice filed a civil suit alleging that from November 1992, through April 1994, California SunCare, Inc. ("California SunCare") entered into agreements with certain dealers to fix and maintain the resale prices of California SunCare products. California SunCare has agreed, without admitting any violation of the law and without being subject to any monetary penalties, to the entry of a civil Consent Order prohibiting certain pricing practices in the United States, including for a period of five years prohibiting California SunCare from announcing to the public or to any dealer that California SunCare has a resale pricing policy that contains any provision that provides that: (a) California SunCare will sell only to a dealer that prices at or above California SunCare's suggested resale price, and/or (2) California SunCare will terminate any dealer for pricing below California SunCare's suggested resale price. A copy of the Order is enclosed.

Should you have any questions concerning this letter, please feel free to contact me.

Sincerely,

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7337CB