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11
12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**
14

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 HEALTH FORMULAS, LLC, a California
limited liability company, also doing business
19 as SIMPLE PURE NUTRITION, et al.,

20 Defendants.
21
22

Case No. 2:14-cv-01649-RFB-GWF

**~~PROPOSED~~ ORDER APPROVING
FINAL REPORT AND FINAL
ACCOUNTING, FINAL REQUEST FOR
APPROVAL AND PAYMENT OF FEES
AND EXPENSES OF RECEIVER AND
ITS PROFESSIONALS FROM MARCH 1,
2016 THROUGH CLOSING, FOR
DISCHARGE AND EXONERATION OF
BOND, AND RELATED RELIEF, AND
GRANTING RELIEF FROM NOTICE
UNDER LOCAL RULE 66-5 IN
CONNECTION THEREWITH**

23
24 The matter of the Motion for Order Approving Final Report and Final Accounting, Final
25 Request for Approval and Payment of Fees and Expenses of Receiver and Its Professionals from
26 March 1, 2016 Through Closing, for Discharge and Exoneration of Bond, and Related Relief and
27 Granting Relief from Notice under Local Rule 66-5 in Connection Therewith (“Wind Up Motion”)
28 filed by Robb Evans & Associates LLC ("Receiver"), initially appointed Temporary Receiver

1 ("Receiver") in this action pursuant to the Court's Order Granting Ex Parte Motion for Temporary
2 Restraining Order (#5) and Appointing Receiver (#9) ("Temporary Restraining Order") issued
3 October 9, 2014 (Doc. No. 12) and whose appointment was continued under the Stipulated
4 Preliminary Injunction as to Defendants Chapnick, Smukler & Chapnick, Inc., Brandon Chapnick
5 and Keith Smukler ("Stipulated Preliminary Injunction") issued November 17, 2014 (Doc. No.
6 61), the Court's Opinion and Order ("Miller Preliminary Injunction") issued May 6, 2015 (Doc.
7 No. 149), and the Stipulated Final Order for Permanent Injunction as to Defendants Jason Miller,
8 Danelle Miller, 458 Media LLC; Alpha Brands, LLC; Barrel Roll, LLC; Blue Stella, LLC;
9 Brilliant Skin LLC; BSC Marketing, LLC; Cherry Hill Marketing, LLC; CSA Ventures, LLC;
10 Diet Concepts, LLC; Discount Provisions L.L.C.; DJD Distribution, LLC; Extamax, LLC; F12
11 Media LLC; Flex Formulas, LLC; GCB Marketing LLC; Health Formulas, LLC; Health Products
12 Direct LLC; KMS Marketing LLC; Longhorn Marketing, LLC; Luminous Skin LLC; MDCC,
13 LLC; Men's Health Formulas, LLC; Metabolic Labs, LLC; Method Direct, LLC; Method Films,
14 LLC; Miracle Male, LLC; Moringa Marketing LLC; Natural Products Direct LLC; Northbound
15 Marketing LLC; Northern Health Products LLC; Pure and Natural Health Products LLC; Pure and
16 Simple Health Products LLC; Pure Vitamins, LLC; Radiant Skin LLC; Shimmering Skin LLC;
17 Skinny 7 LLC; Tindy Films LLC; Weight Loss Dojo, LLC; Wellness Labs, LLC; Wellness
18 Products, LLC; VIP Savings, LLC; and Yacon Marketing LLC filed July 12, 2016 (Doc. No. 205)
19 ("Miller Final Judgment"), came on regularly for determination before the Honorable Richard F.
20 Boulware, II, United States District Judge presiding. The Court, having reviewed and considered
21 the Wind Up Motion and all pleadings and papers filed in support thereof, the Receiver's Final
22 Report and Final Accounting, and the Notice of Filing of Receiver's Final Report and Final
23 Accounting as to Miller Receivership Entities and Opportunity to Object ("Report Notice"), and
24 any response, opposition or objection thereto, and good cause appearing therefor,

25 IT IS ORDERED that:

- 26 1. The Wind Up Motion and all relief sought therein is granted;
- 27 2. Without limiting the generality of the foregoing:

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1 A. The Receiver’s Final Report and Final Accounting as it concerns the Miller
2 Receivership Entities¹, copies of which are attached collectively as Exhibit 1 to the Declaration of
3 Brick Kane filed in support of the Wind Up Motion and as Exhibit 1 to the Report Notice on file
4 with the Court, are hereby approved;

5 B. The Receiver is authorized to wind up the receivership estate created under the
6 Stipulated Preliminary Injunction concerning the Miller Receivership Entities;

7 C. All actions and activities taken by or on behalf of the Receiver and all payments
8 made by the Receiver in connection with the administration of the receivership estate as they
9 concern the Miller Receivership Entities are hereby approved and confirmed;

10 D. The Court hereby approves and authorizes payment of all actual fees and expenses
11 incurred by the Receiver related to the Miller Receivership Entities for the period from March 1,
12 2016 through the closing of the Miller Receivership Entities receivership estate, estimated to be in
13 the total sum of \$240,454.92 to be paid from assets of the Miller Receivership Entities, including
14 (1) for the services by the Receiver and the Receiver’s professionals from March 1, 2016 through
15 and including December 31, 2016 (a) fees of \$30,588.95 and costs of \$42,782.24 incurred by the
16 Receiver during that period, including costs of \$41,550.05 incurred for the services of the
17 Receiver’s outside accountant Squar Milner LLP (“Squar Milner”) which prepare tax returns and
18 receivership tax returns, and (b) fees of \$25,367.25 and costs of \$171.60 for attorneys' fees and
19 expenses for the services of the Receiver's counsel Dentons US LLP, (c) fees of \$42,533.30 and
20 costs of \$825.41 for the services of the Receiver's lead counsel Diamond McCarthy LLP, (d) fees
21 of \$525.00 and costs of \$642.48 for attorneys’ fees and expenses for the services of the Receiver’s
22 Nevada counsel Kolesar & Leatham, Chtd. (“Kolesar Firm”); and (2) a reserve for estimated fees
23 and expenses of the Receiver and its professionals incurred from January 1, 2017 through the
24 closing of the Miller Receivership Entities estate, comprised of (a) estimated Receiver fees of

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26 ¹ The Miller Receivership Entities include 36 entities involved in the personal care products
27 business, comprised of 18 sales entities, two support entities and 16 entities with merchant credit
28 card processing relationships identified on the first page of Tab 1 to the Receiver's Report filed
November 12, 2014, along with Method Films, Inc.

1 \$16,519.75 and estimated costs of \$57,498.94, including estimated accountant fees of \$54,400 for
2 the services of Squar Milner for the preparation of 2016 final tax returns for the Miller
3 Receivership Entities and tax returns for the receivership estate for 2016 and 2017, (b) estimated
4 Receiver attorneys' fees of \$20,000 and legal expenses of \$1,500 anticipated to be incurred to
5 Diamond McCarthy, and (c) estimated attorneys' fees of \$750 and costs of \$750 anticipated to the
6 Kolesar Firm, all as set forth in the Final Accounting included in Exhibit 1 to the Declaration of
7 Brick Kane;

8 E. The Receiver is authorized to make payment from the Miller Receivership Entities
9 funds on hand after payment of receivership expenses, including all administrative expenses ("Net
10 Funds on Hand"), the allowed claims of the local, state and federal taxing agencies identified on
11 the Tax Claims Schedule, Tab 2 of the Receiver's Final Report attached as Exhibit 1 to the
12 Declaration of Brick Kane, in the amounts set forth on the Tax Claims Schedule, prior to turn over
13 of the remaining assets of the Miller Receivership Entities estate to plaintiff Federal Trade
14 Commission ("FTC");

15 F. The Receiver is authorized to distribute the remaining assets of the receivership
16 estate held by the Receiver after payment of receivership expenses, including administrative
17 expenses, and after payment of the taxing agencies as set forth in the Tax Claims Schedule, to
18 plaintiff FTC in accordance with Section XIII.D. and E. of the Miller Final Judgment, upon the
19 closing of the receivership;

20 G. The Receiver is authorized to destroy all records of the Miller Receivership Entities
21 in the Receiver's possession or custody within 30 days after the Receiver serves written notice on
22 the FTC of the Receiver's intention to destroy such records, unless the FTC requests possession
23 and custody of such records or another government agency issues a subpoena for such records, in
24 which case the Receiver is authorized to turn over the Miller Receivership Entities' records to the
25 FTC or to the government agency which issued the subpoena;

26 H. Effective upon completion of the administration of the Miller Receivership
27 Defendants' receivership estate and distribution of the remaining funds in the Receiver's
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1 possession and custody to the FTC, (1) neither the Receiver nor any agent, employee, member,
2 officer, independent contractor, attorney or representative of the Receiver shall have any liability
3 to any person or entity for any action taken in connection with carrying out the Receiver's
4 administration of the receivership estate, and the exercise of any powers, duties and
5 responsibilities in connection therewith, and (b) the Receiver, its agents, employees, members,
6 officers, independent contractors, attorneys and representatives shall be: (i) discharged; (ii)
7 released from all claims and liabilities arising out of and/or pertaining to the Miller Receivership
8 Entities' receivership; and (iii) relieved of all duties and responsibilities pertaining to the Miller
9 Receivership Entities' receivership;

10 I. The bond posted by the Receiver in this cases shall be exonerated effective upon
11 completion of the administration of the Miller Receivership Defendants' receivership estate and
12 distribution of the remaining funds in the Receiver's possession and custody to the FTC;

13 J. Notice of the filing of the Receiver's Final Report and Final Accounting is hereby
14 deemed sufficient based on the Receiver's service of the Report Notice on all parties and all
15 known pre-receivership non-consumer creditors, including taxing agencies, vendor creditors and
16 others identified on the certificate of service of the Report Notice but not on the thousands of
17 potential and as yet unknown consumer creditors of the estate; and

18 K. Notice of the Wind Up Motion is hereby deemed to be sufficient under Local Civil
19 Rule 66-5 based on the service of the notice of the Wind Up Motion and the Wind Up Motion on
20 all parties and service of the notice of the filing of the Wind Up Motion on all parties and all
21 known non-consumer creditors of the estate concurrent with the filing of the Wind Up Motion
22 with the Court.

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Dated: June 7, 2017.



RICHARD F. BOULWARE, II
United States District Judge