UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ROCA LABS, INC., a corporation; ROCA LABS NUTRACEUTICAL USA, INC., a corporation; MUST CURE OBESITY, CO., a corporation; JURAVIN, INCORPORATED, a corporation; ZERO CALORIE LABS, INC., a corporation; DON JURAVIN, individually and as an officer of Roca Labs, Inc., Roca Labs Nutraceutical USA, Inc., Must Cure Obesity, Co., and Juravin, Incorporated; and GEORGE C. WHITING, individually and as an officer of Roca Labs, Inc., Roca Labs Nutraceutical USA, Inc., and Zero Calorie Labs, Inc.,

Defendants.

Case No. 8:15-cv-02231-MSS-CPT

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO ALTER, AMEND, AND/OR CLARIFY ORDER GRANTING SUMMARY JUDGMENT FOR PLAINTIFF

Plaintiff Federal Trade Commission ("FTC") files this response to Defendants' motion [Dkt. 235] seeking clarification of the Court's September 14, 2018 order [Dkt. 234] granting the FTC's summary judgment motion [Dkt. 210].

The order is not a "judgment" because it is not an "order from which an appeal lies" under Fed. R. Civ. P. 54(a). "Normally, an order by the district court is not considered 'final' and appealable unless it 'ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment.'" *McMahon v. Presidential Airways, Inc.*, 502 F.3d 1331, 1338 (11th Cir. 2007) (citations omitted). *See also Aaro, Inc. v. Daewoo Int'l (Am.)*

Corp., 755 F.2d 1398, 1400 (11th Cir. 1985) (order that granted summary judgment on less than the entire litigation and that did not terminate the action was held to be an interlocutory order open to review on appeal of final judgment). There is still more for the parties and the Court to do in this case on monetary and final injunctive relief. Thus, no appeal will lie from the order until it is merged into a final judgment. *See Osterneck v. E.T. Barwick Indus., Inc.*, 825 F.2d 1521, 1530 (11th Cir. 1987) ("We may not hear appeals even from fully consummated decisions when they are but steps toward a final judgment into which they merge.").

Respectfully submitted,

Dated: September 28, 2018

/s/ *Carl H. Settlemyer, III*
CARL H. SETTLEMYER, III (Trial Counsel)
PAUL B. SPELMAN
MICHAEL J. DAVIS
Federal Trade Commission
600 Pennsylvania Avenue, NW
Mail Drop CC-10528
Washington, DC 20580
(202) 326-2019, -2487, -2458 (Tel.)
(202) 326-3259 (Fax)
csettlemyer@ftc.gov
pspelman@ftc.gov
mdavis@ftc.gov
Attorneys for Plaintiff Federal Trade Commission

CERTIFICATE OF SERVICE

I CERTIFY that on this 28th day of September 2018, I electronically filed the foregoing "Plaintiff's Response to Defendants' Motion to Alter, Amend, and/or Clarify Order Granting Summary Judgment for Plaintiff" with the Clerk of the Court by using the CM/ECF filing system, and this document will be served electronically through same to counsel for all parties of record.

/s/ *Carl H. Settlemyer, III*
Attorney