

STATE OF OREGON  
MARION COUNTY COURTS  
APR 14 2008  
FILED

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3  
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF MARION

6 STATE OF OREGON ex rel HARDY  
7 MYERS, Attorney General for the State of  
8 Oregon,

9 Plaintiff,

10 v

11 APOTHECURE, INC and GARY OSBORN,  
12 individually,

13 Defendants.

Case No 07C23297

STIPULATED GENERAL JUDGMENT

14 **ADMINISTRATIVE PROVISIONS**

15 The parties voluntarily enter into this Stipulated General Judgment on the terms and  
16 conditions set forth below:

17 1.

18 This Stipulated General Judgment represents a settlement of a disputed matter. It shall  
19 not be considered an admission of a violation for any purpose. Defendants and Plaintiff agree  
20 that no provision of this Stipulated General Judgment shall operate as a penalty, forfeiture, or  
21 punishment under the Constitution of the United States, under the Constitution of the State of  
22 Oregon, or under any other provision of law.

23 2.

24 Defendants understand and agree that the terms and conditions of this Stipulated General  
25 Judgment apply to them, and to their principals, officers, directors, agents, employees,  
26 representatives, successors and assigns, while acting personally, or through any corporations or

1 other business entities, whose acts, practices or policies are directed, formulated or controlled by  
2 Defendants.

3 3

4 Defendants agree and understand that following the filing and entry of this Stipulated  
5 General Judgment with the court, the Oregon Department of Justice (hereinafter DOJ) may  
6 communicate directly with Defendants for the purpose of executing and enforcing the terms of  
7 this Stipulated General Judgment, resolving future complaints and conducting undercover  
8 investigations to the extent permitted by law of the Defendants

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10 Defendants understand that, if they violate the terms or conditions of any portion of this  
11 Stipulated General Judgment, DOJ may institute appropriate legal action to enforce said  
12 Stipulated General Judgment, including, but not limited to, contempt proceedings before the  
13 Court, civil or punitive penalties, and such further relief as the Court may deem appropriate.

14 5

15 Defendants and Plaintiff acknowledge that no other promises, representations or  
16 agreements of any nature have been made or entered into by the parties. The parties further  
17 acknowledge that this Stipulated General Judgment constitutes a single and entire agreement that  
18 is not severable or divisible, except that if any provision herein is found to be legally insufficient  
19 or unenforceable, the remaining provisions shall continue in full force and effect.

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21 This Stipulated General Judgment resolves all claims brought by Plaintiff in Marion  
22 County case number 07C23297 and by the Oregon Board of Pharmacy in administrative case  
23 number 2007-0152.

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1 **INJUNCTIVE RELIEF**

2 7.

3 All injunctions herein shall apply to Defendants individually and through any  
4 present or future corporation or other organization or entity whose acts, practices or policies are  
5 directed, formulated or controlled by either defendant or in which defendants are a principal or  
6 own any interest; to defendants' successors and assigns, agents, representatives and employees,  
7 directly or through any affiliate, corporation, subsidiary, division or other related entity. The  
8 injunctions herein shall not apply to Defendant Osborn's ownership of: 1) publicly traded  
9 securities with market capitalization of at least \$100,000,000.00 that Defendant Osborn does not  
10 directly or indirectly control, or; 2) mutual funds.

11 8.

12 Defendants shall not represent or imply that Plaintiff acquiesces or approves of  
13 Defendants': past business practices; current efforts to reform their practices; or, any future  
14 practices which Defendants may adopt or consider adopting Plaintiff's decision to settle this  
15 matter or to otherwise unilaterally limit current or future enforcement action does not constitute  
16 approval or imply authorization for any past, present, or future business practices of the  
17 Defendants.

18 9

19 Defendants agree to be permanently bound by the following injunction:

- 20 A. Defendants shall be enjoined and restrained from engaging in any business in Oregon  
21 until such time as Defendants have all necessary licenses, registrations, certifications,  
22 and approvals from the Oregon Board of Pharmacy that are required by Oregon law  
23 Engaging in business in Oregon shall mean promoting products for sale in Oregon  
24 and/or delivering goods or services into Oregon  
25  
26

- 1 B. Defendants shall notify the Oregon Department of Justice, attention Assistant  
2 Attorney General David Hart, when and if Defendants obtain a license, registration or  
3 certification to operate as a drug outlet in Oregon.
- 4 C. Defendants shall notify the Oregon Department of Justice, via certified mail, attention  
5 Assistant Attorney General David Hart, when and if Defendants resume doing  
6 business in Oregon.
- 7 D. Defendants shall be enjoined and restrained from sale of IV colchicine in Oregon
- 8 E. Defendants shall not make any express or implied statements in the offer or sale of  
9 Defendants' products in Oregon that causes likelihood of confusion or of  
10 misunderstanding or that fail to state any material fact, the omission of which causes  
11 likelihood of confusion or of misunderstanding
- 12 F. When selling prescription and over-the-counter Drugs in Oregon, Defendants shall  
13 comply with all applicable Oregon law regulating the practice of pharmacy
- 14 G. Defendants shall not sell prescription Drugs in Oregon that were compounded prior to  
15 receipt of a valid prescription for the compound drug, except as expressly permitted  
16 by Oregon law. Defendants shall not compound drugs for sale in Oregon to third  
17 parties who resell to individual patients.
- 18 H. Defendants shall not sell compounded Drugs in Oregon that, according to the Orange  
19 Book, are commercially available in the marketplace or that are essentially copies of  
20 commercially available FDA-approved drug products.
- 21 I. When producing drugs for sale in Oregon, Defendants shall fully comply with U.S.  
22 Pharmacopoeia regulations 795 and 797.
- 23 J. When doing business in Oregon, Defendants shall comply with all applicable federal  
24 regulations regarding the manufacture of prescription drugs, over-the-counter drugs,  
25 and nutritional supplements.
- 26

- 1 K Pursuant to 21 C.F.R. 216.24, defendants shall not sell drug products in Oregon that  
2 have been withdrawn from the marketplace for reasons of safety or effectiveness.
- 3 L When doing business in Oregon, Defendants shall have in place Operating Procedures  
4 sufficient to ensure that all prescription drugs, over-the-counter drugs, and nutritional  
5 supplements that they sell are of the purity, concentration, dosage, and chemical  
6 compound indicated by the drug's label or listed as ingredients.
- 7 M. Defendants, in connection with the manufacturing, labeling, advertising, promotion,  
8 offering for sale, sale, or distribution of their products in Oregon, shall not make any  
9 representation, expressly or by implication, concerning such products' efficacy,  
10 performance, safety or benefits, unless, at the time the representation is made,  
11 Defendants possess and rely upon competent and reliable scientific evidence that  
12 substantiates the representation.
- 13 N. For purposes of this Judgment, "*competent and reliable scientific evidence*" shall  
14 mean tests, analysis, research, studies, or other evidence based on the expertise of  
15 professionals in the relevant area, that have been conducted and evaluated in an  
16 objective manner by persons qualified to do so, using procedures generally accepted  
17 in the profession to yield accurate and reliable results. For prescription drugs and  
18 over-the-counter drugs, competent and reliable scientific evidence shall include at  
19 least two adequate, and well-controlled, double-blind clinical studies.

20 **MONETARY TERMS**

21 10

22 Defendants shall pay \$60,000.00 to Plaintiff for deposit into the Consumer Protection and  
23 Education Revolving Account (CP&E) established pursuant to ORS 180.095. Said sum shall be  
24 used by Plaintiff as provided by law. In addition to the \$60,000 payment to Plaintiff, Defendants  
25 shall pay \$40,000 to the Oregon Board of Pharmacy. The schedule for said payments shall be as  
26 follows: \$30,000 to Plaintiff within five business days following entry of this Stipulated General

1 Judgment; \$30,000 to Plaintiff three months after the entry this Judgment; and, \$40,000 to the  
2 Oregon Board of Pharmacy six months after entry of this Judgment.

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4 In addition to the payments described in paragraph 11 above, Defendants are assessed  
5 civil penalties in the amount of \$500,000. Said penalty shall be suspended until such time that  
6 Defendant does business in Oregon as a drug outlet, at which time the entire penalty must be  
7 paid in full to the Oregon Board of Pharmacy. Said penalty shall be used by the Oregon Board  
8 of Pharmacy as provided by law

9 **RESTITUTION**

10 12.

11 Within five business days of entry of this Stipulated General Judgment, Defendants shall  
12 pay \$17,962 00 to Plaintiff for deposit into the DOJ's client trust account.

13 13

14 Within 30 days of entry of this Stipulated General Judgment, Defendants shall send the  
15 letter attached as Exhibit I to all Oregon consumers who purchased prescription drugs or over-  
16 the-counter drugs from Defendants between January 1, 2004 and the present. Included with this  
17 letter, Defendants shall provide be a true copy of all invoices that accompanied the consumer's  
18 purchase between January 1, 2004 and the present

19 14.

20 From the \$17,962 00 payment described in paragraph 12 above, Plaintiff shall provide a  
21 refund to all consumers who apply for such refund within 90 days of the execution of this  
22 agreement and who provide DOJ with adequate proof of purchase, to be determined at the sole  
23 discretion of DOJ. Defendants shall provide DOJ with reasonable assistance, upon request, to  
24 confirm purchases by consumers requesting refunds. Should refund applications exceed  
25 \$17,962.00 DOJ shall make pro rated payments to consumers, the total not to exceed \$17,962 00  
26 After 120 days from the execution of this Stipulated General Judgment, any residue from the

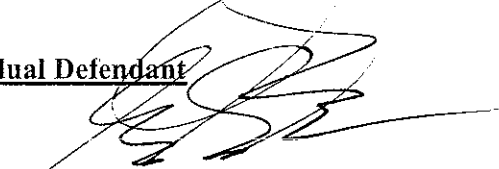
1 \$17,962.00 payment made by Defendants to Plaintiff for deposit into Plaintiff's client trust  
2 account shall be deposited into the CP&E account along with any accumulated interest from the  
3 principle.

4 **IT IS SO STIPULATED:**

5 **DEFENDANTS' SIGNATURES AND ACKNOWLEDGMENTS**

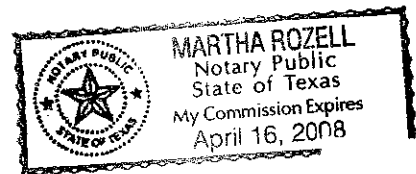
6 Defendants and their attorney have read and understand this Stipulated General Judgment  
7 and each of its terms. Defendants admit to the jurisdiction of the Court in this matter and  
8 consent to the entry of this Stipulated General Judgment. Defendants agree to each and every  
9 term contained herein.

10 **Individual Defendant**

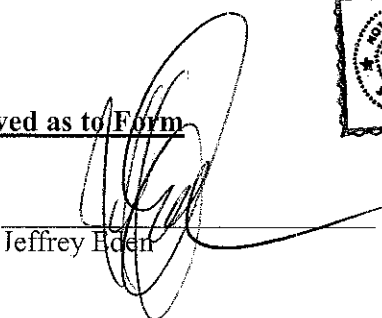
11   
12 \_\_\_\_\_  
13 Gary Osborn  
14 40 Kennington Court  
15 Dallas, Texas 75428

16 SUBSCRIBED AND SWORN to before me this 9<sup>TH</sup> day of April, 2008

17   
18 \_\_\_\_\_  
19 Notary Public  
20 My Commission Expires:



21 **Approved as to Form**

22   
23 \_\_\_\_\_  
24 Jeffrey Eden

25 **Corporate Defendant**

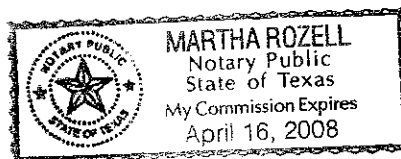
26 I, Gary Osborn, being first duly sworn on oath, depose and say that I am an officer of  
ApotheCure, Inc. and am fully authorized and empowered to sign this Stipulated General  
Judgment on behalf of ApotheCure, Inc., and bind the same to the terms hereof.

Gary Osborn, President  
ApotheCure, Inc  
4001 McEwen Re.  
Dallas, Texas 75244-5020

SUBSCRIBED AND SWORN to before me this 9<sup>th</sup> day of April, 2008.

Martha Rozell  
Notary Public  
My Commission Expires:

Approved as to Form



Jeffrey Eden  
Jeffrey Eden

**ACCEPTANCE OF THE OREGON BOARD OF PHARMACY**

Accepted this 7 day of April, 2008

Gary Miner  
Gary Miner, R.Ph.  
Compliance Director  
Oregon Board of Pharmacy

**ACCEPTANCE OF DOJ**

Accepted this 14<sup>th</sup> day of April, 2008.

HARDY MYERS  
Attorney General

David Hart  
David Hart #00275  
Assistant Attorney General

This STIPULATED GENERAL JUDGMENT is hereby accepted for entry of  
JUDGMENT for all purposes as set forth herein.

**MONEY AWARD**

A **Judgment Creditor:** STATE OF OREGON, ex rel HARDY MYERS, Attorney General  
for the STATE OF OREGON.

- 1 a. **Address of Judgment Creditor:** Oregon Department of Justice, 1162 Court  
2 Street NE, Salem, OR 97301-4096  
3 b. **Judgment Creditor's Attorney:** David Hart # 00275, Assistant Attorney  
4 General  
5 c. **Address of Judgment Creditor's Attorney:** Oregon Department of  
6 Justice, 1162 Court Street NE, Salem, OR 97301-4096. Telephone: (503) 947-  
7 4333.

8 **B Judgment Debtors:** Gary Osborn and ApotheCure, Inc

- 9 a. **Address of Judgment Debtors:** ApotheCure, Inc : 4001 McEwen Road,  
10 Suite 100 , Dallas, Texas 75244 Gary Osborn: 40 Kennington Court, Dallas  
11 Texas 75428  
12 b. **Date of Birth:**08-20-43  
13 c. **Social Security Number:** REDACTED  
14 d. **Driver's License No./State of Issuance:** Texas 10000468  
15 e. **Judgment Debtors' Attorney:** Jeff Eden  
16 f. **Address of Debtors' Attorney:** BullivantHouserBaily PC, 888 S.W Fifth  
17 Ave. Suite 300, Portland, Oregon 97204.

18 **C. Other person(s) or public body entitled to a portion of payment:** The Oregon Board  
19 of Pharmacy is entitled to a \$40,000 00 portion of the Paragraph 10 payment

20 **D. Monetary Payments:** Total: \$ 117,962 00

- 21 a) Paragraph 10 Monetary payment : \$100,000 00  
22 b) Paragraph 12 Restitution payment \$17,962 00

23 **E. Pre-judgment Interest:** None

24 **F Post-judgment Interest:** At the rate of 9% (nine percent) per annum thereof from the  
25 date judgment is entered until fully paid provided however that interest shall not be  
26

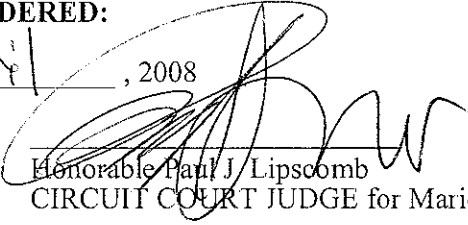
1 charged twice for the same month and no interested shall be charged so long as  
2 Defendants comply with the payment schedule provided in paragraph 10 above

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4 G. Restitution: \$17,962 00

5 **IT IS SO ADJUDGED AND ORDERED:**

6 DATED this 14<sup>th</sup> day of April, 2008

  
Honorable Paul J. Lipscomb  
CIRCUIT COURT JUDGE for Marion County

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<ApotheCure Letterhead>

«First\_Name» «Last\_Name»  
«Address\_Line\_1»  
«Address\_Line\_2»  
«City» «State» «ZIP\_Code»

Re: Refund Opportunity

Dear «SalutationName»:

Pursuant to a recent settlement agreement between ApotheCure, Inc and the Oregon Department of Justice, Oregon consumers who purchased products from ApotheCure, Inc after January 1, 2004 are eligible for a refund of the purchase price of the product. Our records indicate that you may be eligible for such a refund

Enclosed with this letter is a copy of the invoice for the purchase which may be eligible for a refund as well as a Refund Claim Form. To maintain your confidentiality, the Oregon Department of Justice has not been provided with your name and contact information. To receive a refund, you must complete and submit the Refund Claim Form no later than «date 90 days from execution of the judgment»

If you have any questions regarding this refund program, please call Alesia Suarez at the Consumer Protection section of the Oregon Department of Justice at (503) 934-4400

Sincerely,

ApotheCure Inc

Refund Claim Form

To claim your refund, you must:

- Complete this Refund Claim Form;
- Provide a copy of all invoices for which you are requesting a refund;
- Submit this application and corresponding invoice(s) to Alicia Suarez, Enforcement Officer, Oregon Department of Justice, Consumer Protection/Financial Fraud, 1162 Court Street NE, Salem, OR 97301-4096. **To be considered, your completed application must be received by the Department of Justice no later than July 10, 2008.**
- Sign the certification

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

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Invoice Number:	Date:	Cost
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(attach additional sheet(s) if necessary)

Refund Total: \_\_\_\_\_

CERTIFICATION

By my signature, I hereby swear/affirm that I made the above listed purchase(s) for my own use or for use by a family member and I am entitled to receive this refund. I understand that purchases that made for purpose of resale are no eligible for a refund.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

Exhibit   1  

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