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NCLA Secures Truce in Federal Trade Commission’s Unjust War Against Startup Company

Federal Trade Commission v. Precision Patient Outcomes, Inc. and Margrett Lewis

Washington, DC (February 16, 2024) – The New Civil Liberties Alliance has reached an agreement with the Federal Trade Commission terminating the agency’s lawsuit against our clients, Precision Patient Outcomes, Inc. (PPO), a California-based company that develops dietary supplements, and against its CEO, Margrett Lewis. The [Order](#) signed by the court in [FTC v. PPO](#) is extraordinary in containing *no* monetary penalties and only a three-year duty to report to FTC, a departure from FTC’s long practice insisting that such settlements must last decades.

As a start-up, Ms. Lewis wrote to FTC at the pre-market stage, requesting guidance on her advertising before selling any product. FTC’s response cited warning letters to other companies. PPO and Ms. Lewis afterwards were not provided a warning letter, contrary to FTC’s usual practice. This settlement reflects steps PPO and Ms. Lewis are taking to follow FTC’s view of the law and to continue marketing high-quality dietary supplements.

The court-signed Order, noting PPO and Ms. Lewis do not admit nor deny the Amended Complaint’s allegations against them, merely requires the Defendants to make the same kinds of truthful statements about their products as the law requires of all similarly situated persons. FTC’s original Complaint falsely stated that PPO and Ms. Lewis had sold a product called Covid-Resist, but the Amended Complaint removed that inaccurate charge. The Order allows PPO and Ms. Lewis to keep selling all current products and imposes no monetary penalties. Nor does the Order limit the truthful things they can say about their products beyond what FTC states others may say.

FTC initially sought hundreds of thousands of dollars in monetary penalties, a permanent injunction, and a long period of ongoing compliance costs. This Order instead lacks such onerous provisions and is permanent only in requiring Defendants to follow the same legal requirements that apply to every other seller of dietary supplements.

NCLA pressed a Counterclaim that FTC’s structure is unconstitutional, which will be dismissed as part of this agreed-to Order. When the Supreme Court decided *Humphrey’s Executor v. FTC* in 1935, FTC did not possess the power to initiate suits or seek penalties. These core executive powers were added to FTC’s authority in the 1970s. The Court itself has recognized that its “conclusion that the FTC did not exercise executive power has not withstood the test of time.” Article II vests executive power solely in the President, who must “take Care that the Laws be faithfully executed.” As NCLA’s representation in this important case emphasized, the President cannot effectively fulfill that duty if Congress restricts his removal power over the federal officials under his command.

NCLA released the following statements:

“We are quite pleased that our clients will not be liable for any monetary penalties and the administrative burdens on the clients are also relatively light as such agreements go. FTC backed off its maximalist demands and agreed to a reasonable settlement of this matter, which never should have been brought against a small, start-up business that approached the FTC for guidance in advance, as our clients did.”

— **John Vecchione, Senior Litigation Counsel, NCLA**

“The favorable terms we secured for our clients will enable them to continue to develop and grow their business.”
— **Kara Rollins, Litigation Counsel, NCLA**

“FTC is at long last backing down from a lawsuit that it had no business bringing in the first place. The agreement our clients have reached marks a major victory for all small businesses that wish to operate free from the Commission’s bullying and imposing of unconstitutional executive authority. Let’s hope that FTC picks its battles more wisely in the future.”

— **Casey Norman, Litigation Counsel, NCLA**

“As favorable as this settlement is for our clients, FTC must know that the *Humphrey’s Executor* issue is not going away for the Commission—nor for any of the similarly constituted agencies in the executive branch. NCLA will keep pressing this claim on behalf of other clients until the Supreme Court overturns *Humphrey’s Executor*.”

— **Mark Chenoweth, President and Chief Legal Officer, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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