



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Maximum Human Performance, Inc.  
1376 Pompton Avenue  
Cedar Grove, NJ 07009

DRAFT

Attention: Mr. Gerard Dente  
President

Dear Mr. Dente:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that Maximum Human Performance, Inc. ("MHP") of Cedar Grove, New Jersey, has committed two violations of the Export Administration Regulations (the "Regulations"),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979, as amended (the "Act").<sup>2</sup> Specifically, BIS charges that MHP committed the following violations:

**Charge 1 15 C.F.R. §764.2(c) -Attempted Export to Iran without the Required U.S. Government Authorization**

On or about March 7, 2005, MHP attempted a violation of the Regulations when it tried to export nutritional supplements, items subject to the Regulations and the Iranian Transactions Regulations, from the United States through the United Arab Emirates ("UAE") to Iran without the required U.S. Government authorization. Pursuant to Section 560.204 of the Iranian Transactions Regulations, an export to a third country intended for transshipment to Iran is a transaction subject to the Iranian Transaction Regulations. Pursuant to Section 746.7 of the Regulations, authorization was required from the Office of Foreign Assets Control, U.S. Department of Treasury ("OFAC") for the shipment of nutritional supplements from the United States to Iran. MHP knew or had reason to know that the items were destined for Iran, and no OFAC authorization was obtained for this transaction. In doing so, MHP committed one violation of Section 764.2(c) of the Regulations.

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2006). The violations charged occurred in 2005. The Regulations governing the violations at issue are found in the 2005 version of the code of Federal Regulations (15 C.F.R. Parts 730-774 (2005)). The 2006 Regulations govern the procedural aspects of this case.

<sup>2</sup> 50 U.S.C. app. §§ 2401- 2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 2, 2005, (70 Fed. Reg. 45273 (August 5, 2005)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA").



DRAFT

**Charge 2 15 C.F.R. § 764.2(g) -False Statement on Shipper's Export Declarations**

On or about March 7, 2005, MHP made false statements to the U.S. Government in connection with the submission of export control documents for the export of nutritional supplements, items subject to the Regulations and the Iranian Transactions Regulations. Specifically, MHP filed Shipper's Export Declarations (SEDs) with the U.S. Government stating that country of ultimate destination was the United Arab Emirates ("UAE"). Those representations were false, in that the country of ultimate destination was Iran. In so doing, MHP committed one violation of Section 764.2(g) of the Regulations.

\* \* \* \* \*

Accordingly, MHP is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of up to \$11,000 per violation;<sup>3</sup>

Denial of export privileges; and/or

Exclusion from practice before BIS.

If MHP fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. (Regulations, Sections 766.6 and 766.7). If MHP defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to MHP. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

MHP is further notified that it is entitled to an agency hearing on the record if MHP files a written demand for one with its answer. (Regulations, Section 766.6). MHP is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should MHP have a proposal to settle this case, MHP or its representative should transmit it to the attorney representing BIS named below.

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<sup>3</sup> See 15 C.F.R. § 6.4(a)(2).

Maximum Human Performance  
Proposed Charging Letter  
Page 3

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, MHP's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street  
Baltimore, Maryland 21202-4022

In addition, a copy of MHP's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: Gregory Michelsen  
Room H-3839  
United States Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

DRAFT

Gregory Michelsen is the attorney representing BIS in this case; any communications that MHP may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,

Michael D. Turner  
Director  
Office of Export Enforcement

Enclosure

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of:	)
	)
Maximum Human Performance, Inc.	)
1376 Pompton Avenue	)
Cedar Grove, NJ 07009	)
	)
Respondent	)

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Respondent, Maximum Human Performance, Inc. ("MHP"), and the Bureau of Industry and Security, U.S. Department of Commerce ("BIS") (collectively referred to as "Parties"), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2006)) ("Regulations")<sup>1</sup>, issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) ("Act");<sup>2</sup>

WHEREAS, BIS has notified MHP of its intention to initiate an administrative proceeding against MHP, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to MHP that alleged that MHP committed two violations of the Regulations, specifically:

<sup>1</sup> The charged violations occurred in 2005. The Regulations governing the violations at issue are found in the 2005 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2005)). The 2006 Regulations establish the procedures that apply to this matter.

<sup>2</sup> Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 3, 2006, (71 Fed. Reg. 44551 (August 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701- 1706 (2000)).

1. *One Violation of 15 C.F.R. § 764.2(d)- Attempted Export to Iran Without the Required U.S. Government Authorization:* On or about March 7, 2005, MHP attempted a violation of the Regulations when it tried to export nutritional supplements, items subject to the Regulations and the Iranian Transactions Regulations, from the United States through the United Arab Emirates ("UAE") to Iran without the required U.S. Government authorization. Pursuant to Section 560.204 of the Iranian Transactions Regulations, an export to a third country intended for transshipment to Iran is a transaction subject to the Iranian Transactions Regulations. Pursuant to Section 746.7 of the Regulations, authorization was required from the Office of Foreign Assets Control, U.S Department of Treasury ("OFAC") for the shipment of nutritional supplements to Iran. MHP knew or had reason to know that the items were destined for Iran, and no OFAC authorization was obtained for this transaction.
2. *One Violation of 15 C.F.R. § 764.2(g) – False Statement on Shipper's Export Declaration:* On or about March 7, 2005, MHP made a false statement to the U.S. Government in connection with the submission of export control documents for the export of nutritional supplement, items subject to the Regulations and the Iranian Transactions Regulations. Specifically, MHP filed a Shipper's Export Declaration ("SED") with the U.S. Government stating that the country of ultimate destination was the United Arab Emirates ("UAE"). That representation was false in that country of ultimate destination was Iran.

WHEREAS, MHP has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, MHP fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, MHP enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, MHP states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, MHP neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, MHP wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, MHP agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over MHP, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. The following sanctions shall be imposed against MHP in complete settlement of the violations of the Regulations set forth in the proposed charging letter:
  - a. MHP shall be assessed a civil penalty in the amount of \$12,000.00, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.
  - b. The timely payment of the civil penalty agreed to in paragraph 2.a. is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to MHP. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of MHP's

export privileges under the Regulations for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof,

MHP hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; (c) request any relief from the Order, if entered, including without limitation relief from the terms of a denial order under 15 C.F.R. § 764.3(a)(2); and (d) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order and timely payment of the \$12,000.00 civil penalty, BIS will not initiate any further administrative proceeding against MHP in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other

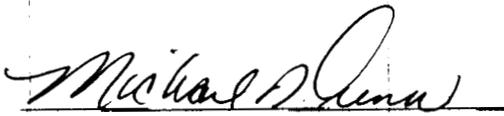
agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on BIS only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

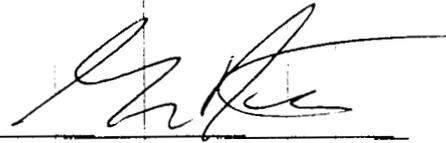
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY  
U.S. DEPARTMENT OF COMMERCE

MAXIMUM HUMAN PERFORMANCE, INC.



Michael D. Turner  
Director  
Office of Export Enforcement



Gerard Dente  
President

Date: 08/23/2006

Date: 8/12/06

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

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In the Matter of: )  
)  
Maximum Human Performance, Inc. )  
1376 Pompton Avenue )  
Cedar Grove, NJ 07009 )  
)  
Respondent. )  
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ORDER

The Bureau of Industry and Security, United States Department of Commerce (“BIS”) having notified Maximum Human Performance, Inc. (“MHP”), of its intention to initiate an administrative proceeding against MHP pursuant to Section 766.3 of the Export Administration Regulations (“Regulations”),<sup>1</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),<sup>2</sup> based on the proposed charging letter issued to MHP that alleged that MHP committed two violations of the Regulations. Specifically, the charges are:

Charge 1. *One Violation of 15 C.F.R. § 764.2(c)- Attempted Export to Iran Without the Required U.S. Government Authorization:* On or about March 7, 2005, MHP attempted a violation of the Regulations when it tried to export nutritional supplements, items subject to the Regulations and the Iranian Transactions Regulations, from the United

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2006). The alleged violations occurred in 2005. The Regulations governing the violations at issue are found in the 2005 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2005)). The 2006 Regulations establish the procedures that apply to this matter.

<sup>2</sup> 50 U.S.C. app. §§ 2401- 2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 3, 2006, (71 Fed. Reg. 44551 (August 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”).

States through the United Arab Emirates (“UAE”) to Iran without the required U.S. Government authorization. Pursuant to Section 560.204 of the Iranian Transactions Regulations, an export to a third country intended for transshipment to Iran is a transaction subject to the Iranian Transactions Regulations. Pursuant to Section 746.7 of the Regulations, authorization was required from the Office of Foreign Assets Control, U.S Department of Treasury (“OFAC”) for the shipment of nutritional supplements to Iran. MHP knew or had reason to know that the items were destined for Iran, and no OFAC authorization was obtained for this transaction.

Charge 2. *One Violation of 15 C.F.R. § 764.2(g) – False Statement on Shipper’s Export Declaration:* On or about March 7, 2005, MHP made a false statement to the U.S. Government in connection with the submission of export control documents for the export of nutritional supplement, items subject to the Regulations and the Iranian Transactions Regulations. Specifically, MHP filed a Shipper’s Export Declaration (“SED”) with the U.S. Government stating that the country of ultimate destination was the United Arab Emirates (“UAE”). That representation was false in that country of ultimate destination was Iran

WHEREAS BIS and MHP having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

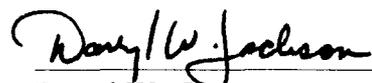
FIRST, that a civil penalty of \$12,000.00 is assessed against MHP which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, MHP will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to MHP. Accordingly, if MHP should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying MHP's export privileges for a period of one year from the date of entry of this Order.

FOURTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



Darryl W. Jackson  
Assistant Secretary of Commerce  
for Export Enforcement

Entered this 30<sup>th</sup> day of August 2006.