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10 Federal Trade Commission
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15 ATTORNEYS FOR PLAINTIFF

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 FEDERAL TRADE COMMISSION,
19
20 Plaintiff,

21 v.

22 STEVEN PATRICK GARVEY a/k/a
23 STEVE GARVEY, GARVEY
24 MANAGEMENT GROUP, INC., LARK
25 KENDALL a/k/a KENDALL CARSON,
26 MARK LEVINE, individually and as an
27 officer and director of MODERN
28 INTERACTIVE TECHNOLOGY, INC.,
29 DAVID RICHMOND, individually and as
30 an officer and director of MODERN
31 INTERACTIVE TECHNOLOGY, INC., and
32 MODERN INTERACTIVE
33 TECHNOLOGY, INC.,

34 Defendants.

35 CV 00-09358 GAF (CWx)

36 **STIPULATED FINAL**
37 **ORDER FOR**
38 **PERMANENT**
39 **INJUNCTION AND**
40 **SETTLEMENT OF**
41 **CLAIMS FOR**
42 **MONETARY RELIEF AS**
43 **TO DEFENDANTS**
44 **MODERN INTERACTIVE**
45 **TECHNOLOGY, INC.,**
46 **MARK LEVINE, AND**
47 **DAVID RICHMOND**

48 Plaintiff, the Federal Trade Commission ("Commission"), filed a complaint
49 for a permanent injunction and other equitable relief against Steven Patrick
50 Garvey a/k/a Steve Garvey, Garvey Management Group, Inc., Lark Kendall a/k/a
51 Kendall Carson, Modern Interactive Technology, Inc., and Mark Levine and

1 David Richmond, individually and as officers and directors of Modern Interactive
2 Technology, Inc., pursuant to Section 13(b) of the Federal Trade Commission Act
3 (“FTC Act”), 15 U.S.C. § 53(b), alleging violations of Sections 5 and 12 of the
4 FTC Act, 15 U.S.C. §§ 45 and 22.

5 The Commission and defendants Modern Interactive Technology, Inc.,
6 Mark Levine, and David Richmond, hereinafter referred to as “defendants,” have
7 stipulated to the entry of the following “Stipulated Final Order for Permanent
8 Injunction and Settlement of Claims for Monetary Relief as to Defendants Modern
9 Interactive Technology, Inc., Mark Levine, and David Richmond” (“Order”) in
10 settlement of the Commission’s complaint against them. The Court, being duly
11 advised in the premises, finds:
12

13 14 **FINDINGS**

15 1. This Court has jurisdiction over the subject matter of this action and
16 over the defendants. Venue in the Central District of California is proper.

17 2. The Complaint states a claim upon which relief can be granted, and
18 the Commission has authority to seek the relief it has requested under Sections 5,
19 12, and 13(b) of the FTC Act, 15 U.S.C. §§ 45, 52, and 53(b).
20

21 3. The acts and practices of the defendants were or are in or affecting
22 commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
23

24 4. Defendants waive all rights to seek judicial review of, or otherwise
25 challenge or contest the validity of, this Order. Defendants also waive any claim
26 that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412,
27

1 concerning the prosecution of this action to the date of this Order.

2 5. This action and the relief awarded herein are in addition to, and not in
3 lieu of, other remedies as may be provided by law.

4 6. Each party shall bear its own costs and attorney's fees.

5 7. Defendants, without admitting or denying the allegations of the
6 Commission's Complaint, stipulate and agree to entry of this Order under Section
7 13(b) of the FTC Act, 15 U.S.C. §53(b).

8 8. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of
9 this Order are binding upon defendants, and their officers, agents, servants,
10 employees, and attorneys, and upon all other persons or entities in active concert
11 or participation with them, who receive actual notice of this Order by personal
12 service or otherwise.

13 9. Nothing in this Order obviates defendants' obligation to comply with
14 Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52.

15 10. This Order was drafted jointly by plaintiff and defendants and reflects
16 the negotiated agreement of the parties.

17 11. The paragraphs of this Order shall be read as the necessary
18 requirements for compliance and not as alternatives for compliance and no
19 paragraph serves to modify another paragraph unless expressly so stated.

20 12. Entry of this Order is in the public interest.
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25 **DEFINITIONS**

26 For the purposes of this Order, the following definitions shall apply:
27

1 1. “Competent and reliable scientific evidence” shall mean tests,
2 analyses, research, studies, or other evidence based on the expertise of
3 professionals in the relevant area, that have been conducted and evaluated in an
4 objective manner by persons qualified to do so, using procedures generally
5 accepted in the profession to yield accurate and reliable results.
6

7 2. Unless otherwise specified, “defendants” shall mean:

8 A. Modern Interactive Technology, Inc. (“MIT”), a corporation,
9 its divisions and subsidiaries, its successors and assigns and its
10 officers, agents, representatives and employees;

11 B. Mark Levine, individually and as an officer and director of
12 MIT; and

13 C. David Richmond, individually and as an officer and director of
14 MIT.
15

16 3. “Covered product” shall mean the Enforma System, Fat Trapper, Fat
17 Trapper Plus, Exercise In A Bottle, or any dietary supplement, food, drug, or
18 device.
19

20 4. “Endorsement” shall mean as defined in 16 C.F.R. § 255.0.

21 5. “Food,” “drug,” and “device” shall mean as defined in Section 15 of
22 the FTC Act, 15 U.S.C. § 55.

23 6. “Employment” shall mean any affiliation with any business, non-
24 profit, or government entity, including the performance of services as an officer,
25 owner, manager, supervisor, employee, consultant, or independent contractor, and
26 “employer” shall mean any and all individuals or entities for whom defendants
27

1 Mark Levine and David Richmond perform services as an employee, consultant,
2 or independent contractor.

3 7. A requirement that any defendant “notify the Commission” or “file
4 with the Commission” shall mean that the defendant shall send the necessary
5 information via first class mail or via overnight courier, costs prepaid to:

6 Associate Director,
7 Division of Advertising Practices
8 Federal Trade Commission
9 600 Pennsylvania Avenue, NW, NJ-3212,
10 Washington, DC 20580

11 Attn: **FTC v. Modern Interactive Technology, Inc.**, Civil Action No. 00-
12 09358 GAF (CWx)

13 8. The term “including” in this Order shall mean “without limitation.”

14 9. The terms “and” and “or” in this Order shall be construed con-
15 junctively or disjunctively as necessary, to make the applicable phrase or sentence
16 inclusive rather than exclusive.

17 CONDUCT PROHIBITIONS

18 I.

19 IT IS HEREBY ORDERED that defendants, directly or through any
20 corporation, partnership, subsidiary, division, or other device, and their officers,
21 agents, servants, employees, and attorneys, and all other persons or entities in
22 active concert or participation with them who receive actual notice of this Order,
23 by personal service or otherwise, in connection with the manufacturing, labeling,
24 advertising, promotion, offering for sale, sale, or distribution of any covered
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1 product in or affecting commerce, shall not make any representation in any
2 manner, expressly or by implication, including through the use of the names "Fat
3 Trapper," "Fat Trapper Plus," and "Exercise In A Bottle," or any other trade name
4 or endorsement, that such covered product:

- 5 A. Enables consumers to lose weight, avoid weight gain or maintain
6 weight loss;
- 7 B. Prevents the absorption of fat in the human body;
- 8 C. Increases metabolism, burns sugar or carbohydrates before they turn
9 to fat, or burns off fat already in the human body; or
- 10 D. Enables consumers to lose weight even if consumers eat foods high in
11 fat, including fried chicken, pizza, cheeseburgers, butter, and sour
12 cream,
13

14 unless at the time the representation is made, defendants possess and rely upon
15 competent and reliable scientific evidence that substantiates the representation.
16

17 II.

18
19 IT IS FURTHER ORDERED that defendants, directly or through any
20 corporation, partnership, subsidiary, division, or other device, and their officers,
21 agents, servants, employees, and attorneys, and all other persons or entities in
22 active concert or participation with them who receive actual notice of this Order,
23 by personal service or otherwise, in connection with the manufacturing, labeling,
24 advertising, promotion, offering for sale, sale, or distribution of any covered
25 product in or affecting commerce, shall not misrepresent in any manner, expressly
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1 or by implication, including through the use of any endorsement, the profession,
2 expertise, training, education, experience or qualifications of any person who
3 advertises, promotes, or endorses any such product, service, or program.
4

5 6 **III.**

7 IT IS FURTHER ORDERED that defendants, directly or through any
8 corporation, partnership, subsidiary, division, or other device, and their officers,
9 agents, servants, employees, and attorneys, and all other persons or entities in
10 active concert or participation with them who receive actual notice of this Order,
11 by personal service or otherwise, in connection with the manufacturing, labeling,
12 advertising, promotion, offering for sale, sale, or distribution of any covered
13 product in or affecting commerce, shall not make any representation, in any
14 manner, expressly or by implication, including through the use of any trade name
15 or endorsement, about the health or weight loss benefits, performance, safety, or
16 efficacy of such product, unless, at the time the representation is made, defendants
17 possess and rely upon competent and reliable scientific evidence that substantiates
18 the representation.
19

20 21 **IV.**

22 IT IS FURTHER ORDERED that defendants, directly or through any
23 corporation, partnership, subsidiary, division, or other device, and their officers,
24 agents, servants, employees, and attorneys, and all other persons or entities in
25 active concert or participation with them who receive actual notice of this Order,
26

1 by personal service or otherwise, in connection with the manufacturing, labeling,
2 advertising, promotion, offering for sale, sale, or distribution of any covered
3 product in or affecting commerce, shall not misrepresent, in any manner, expressly
4 or by implication, including through the use of any trade name or endorsement, the
5 existence, contents, validity, results, conclusions or interpretations of any test,
6 study, or research.
7

8
9 **V.**

10 Nothing in this Order shall prohibit defendants from making any
11 representation for any drug that is permitted in the labeling for such drug under
12 any tentative final or final standard promulgated by the Food and Drug
13 Administration, or under any new drug application approved by the Food and
14 Drug Administration. Nothing in this Order shall prohibit defendants from
15 making any representation for any product that is specifically permitted in labeling
16 for such product by regulations promulgated by the Food and Drug Administration
17 pursuant to the Nutrition Labeling and Education Act of 1990.
18

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20 **VI.**

21 **RIGHT TO REOPEN**

22 **IT IS FURTHER ORDERED** that:

- 23 A. The Commission's agreement to this Order, requiring that the
24 defendants be liable for less than the full amount of consumer injury,
25 is expressly premised on the truthfulness, accuracy, and completeness
26

1 of their sworn financial statements and supporting documents
2 submitted to the Commission, namely:

- 3 1. the documentation transmitted September 21, 2004, *i.e.*, the
4 2003 tax returns for Mark Levine, David J. Richmond, Spendor
5 Products, Inc., Revolutionary Products, Inc., Tiger Fitness, Inc.,
6 Evolutionary Products, Inc., Modern Interactive Technologies,
7 Inc., Main Event, Inc., Modern Health Labs, Inc., Torso Tiger,
8 Inc., and Total Tiger, Inc.;
- 9 2. the documentation transmitted November 1, 2004, *i.e.*, the FTC
10 financial disclosure statements of David Richmond and Mark
11 Levine, tax returns for David Richmond for the years 1999-
12 2003, balance sheet for David Richmond as of 06/30/2004,
13 Assets and Liabilities statement for David Richmond, tax
14 returns for Mark Levine for the years 1999-2003, balance sheet
15 for Mark Levine of 06/30/2004, Assets and Liabilities
16 statement for Mark Levine, financial statement of MIT, tax
17 returns for MIT (d/b/a Modern Media) for 2001-2003,
18 California Franchise income tax return for MIT for the years
19 2001-2003, balance sheet for MIT as of 09/30/2004, cash flow
20 reports MIT from 01/01/2004 to 09/30/2004, balance sheets for
21 MIT as of 12/31/2003, cash flow reports for MIT from
22 01/01/01 thru 01/01/03, and balance sheets for MIT from
23 12/31/2001 and 12/31/2002; and
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1 3. the documentation transmitted November 29, 2004, *i.e.*, the
2 11/23/2004 letter from Mark D. Friedman, and marital
3 settlement agreement of David Richmond.

4 Such financial statements and supporting documents contain material
5 information upon which the Commission relied in negotiating and
6 agreeing to this Order.

7
8 B. If, upon motion by the Commission, this Court finds that:

9 1. Defendants have failed to disclose any material asset, or made
10 any other material misrepresentation or omission in the above-
11 referenced financial statements and related documents
12 described in Paragraph A of this Part VI, the Court shall enter
13 judgment against defendants, jointly and severally, in the
14 amount of Two Million Dollars (\$2,000,000) in U.S. currency,
15 which amount would be rendered immediately due and
16 payable. Interest computed at the rate prescribed in 28 U.S.C.
17 § 1961 shall immediately begin to accrue on the balance. For
18 the purposes of this Part VI and any subsequent proceedings to
19 enforce payment, the defendants waive any right to contest any
20 of the allegations in the Complaint filed in this action.

21 *Provided however*, that in all other respects this Order shall
22 remain in full force and effect unless otherwise ordered by the
23 Court; and *provided further*, that proceedings instituted under
24 this Part VI are in addition to, and not in lieu of, any other civil
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1 or criminal remedies that may be provided by law, including
2 any other proceedings the Commission may initiate to enforce
3 this Order.
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5 **VII.**

6 **COMPLIANCE MONITORING**

7
8 IT IS FURTHER ORDERED that, for the purpose of monitoring and
9 investigating compliance with any provision of this Order,

10 A. Within ten (10) days of receipt of written notice from a representative
11 of the Commission, Mark Levine, David Richmond, and MIT each
12 shall submit additional written reports, sworn to under penalty of
13 perjury; produce documents for inspection and copying; appear for
14 deposition; and/or provide entry during normal business hours to any
15 business location in such defendant's possession or direct or indirect
16 control to inspect the business operation;

17
18 B. In addition, the Commission is authorized to monitor compliance with
19 this Order by all other lawful means, including but not limited to the
20 following:

- 21 1. obtaining discovery from any person, without further leave of
22 court, using procedures proscribed by Fed. R. Civ. P. 30, 31,
23 33, 34, 36, and 45;
24
25 2. posing as consumers and suppliers to defendants, their
26 employees, or any other entity managed or controlled in whole
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1 or in part by Mark Levine, David Richmond, and MIT, without
2 the necessity of identification or prior notice; and

- 3 C. Mark Levine, David Richmond, and MIT shall permit representatives
4 of the Commission to interview any employer, consultant,
5 independent contractor, representative, agent, or employee who has
6 agreed to such an interview, relating in any way to any conduct
7 subject to this Order. The person interviewed may have counsel
8 present.
9

10 *Provided, however,* that nothing in this Order shall limit the Commission's
11 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act,
12 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things,
13 testimony, or information relevant to unfair or deceptive acts or practices in or
14 affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).
15

16 VIII.

17 COMPLIANCE REPORTING BY DEFENDANTS

18 **IT IS FURTHER ORDERED** that, in order that compliance with the
19 provisions of this Order may be monitored:
20

- 21 A. For a period of five (5) years from the date of entry of this Order,
22 1. Mark Levine and David Richmond shall notify the Commission
23 of the following:
24 a. Any changes in residence, mailing addresses, and
25 telephone numbers of Mark Levine and David Richmond
26

1 within ten (10) days of the date of such change;

2 b. Any changes in employment status (including self-
3 employment) of Mark Levine and David Richmond and
4 any change in the ownership of Mark Levine and David
5 Richmond in any business entity, within ten (10) days of
6 the date of such change. Such notice shall include the
7 name and address of each business that Mark Levine and
8 David Richmond is affiliated with, employed by, creates
9 or forms, or performs services for; a statement of the
10 nature of the business; and a statement of Mark Levine's
11 and David Richmond's duties and responsibilities in
12 connection with the business or employment; and

13 c. Any changes in Mark Levine's and David Richmond's
14 name or use of any aliases or fictitious names; and

15
16
17 2. Mark Levine, David Richmond, and MIT shall notify the
18 Commission of any changes in corporate structure of MIT or
19 any business entity that Mark Levine or David Richmond
20 directly or indirectly control(s), or has an ownership interest in,
21 that may affect compliance obligations arising under this
22 Order, including but not limited to a dissolution, assignment,
23 sale, merger, or other action that would result in the emergence
24 of a successor entity; the creation or dissolution of a subsidiary,
25 parent, or affiliate that engages in any acts or practices subject
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1 to this Order; the filing of a bankruptcy petition; or a change in
2 the corporate name or address, at least thirty (30) days prior to
3 such change, *provided* that, with respect to any proposed
4 change in such entity about which defendants learn less than
5 thirty (30) days prior to the date such action is to take place,
6 defendants shall notify the Commission as soon as is
7 practicable after obtaining such knowledge.
8

9 B. Ninety (90) days after the date of entry of this Order, Mark Levine,
10 David Richmond, and MIT shall provide a written report to the FTC,
11 sworn to under penalty of perjury, setting forth in detail the manner
12 and form in which they have complied and are complying with this
13 Order. This report shall include, but not be limited to:

14 1. For Mark Levine and David Richmond:

- 15 a. The then-current residence address, mailing addresses,
16 and telephone numbers of Mark Levine and David
17 Richmond;
18
19 b. The then-current employment and business addresses
20 and telephone numbers of Mark Levine and David
21 Richmond, a description of the business activities of
22 each such employer or business, and the title and
23 responsibilities of Mark Levine and David Richmond,
24 for each such employer or business; and
25
26 c. Any other changes required to be reported under
27
28

1 Paragraph A of this Part.

- 2 2. For Mark Levine, David Richmond, and MIT:
- 3 a. A copy of each acknowledgment of receipt of this Order,
- 4 obtained pursuant to Part X.
- 5 b. Any other changes required to be reported under
- 6 Paragraph A of this Part.
- 7 c. Copies of all then current advertisements, sales scripts,
- 8 training materials, or other marketing materials used by
- 9 any defendant(s) in the advertising, marketing,
- 10 promotion, offering for sale, distribution, or sale of any
- 11 covered product in the United States; and
- 12
- 13 C. For purposes of the compliance reporting and monitoring
- 14 required by this Order, the Commission is authorized to
- 15 communicate directly with Mark Levine, David Richmond, and
- 16 MIT.
- 17
- 18

19 **IX.**

20 **RECORD KEEPING PROVISIONS**

21 IT IS FURTHER ORDERED that, for a period of eight (8) years from the

22 date of entry of this Order, defendants MIT, Mark Levine and David Richmond

23 and their agents, employees, officers, corporations, successors, and assigns, and

24 those persons in active concert or participation with them who receive actual

25 notice of this Order by personal service or otherwise, in connection with any

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1 business where (a) any defendant is the majority owner of the business, or directly
2 or individually manages or controls the business, and (b) the business is engaged
3 in the advertising, marketing or promotion, offering for sale, distribution or sale of
4 any covered product, are hereby restrained and enjoined from failing to create and
5 retain the following records:
6

- 7 A. Personnel records accurately reflecting: the name, address, and
8 telephone number of each person employed in any capacity by such
9 business, including as an independent contractor; that person's job
10 title or position; the date upon which the person commenced work;
11 and the date and reason for the person's termination, if applicable;
- 12 B. Accounting records that reflect the cost of goods or services sold,
13 revenues generated, and the disbursement of such revenues;
- 14 C. Complaints and refund requests (whether received directly, indirectly
15 or through any third party) and any responses to those complaints or
16 requests;
- 17 D. Copies of all sales scripts, training materials, advertisements,
18 promotions, or other marketing materials;
- 19 E. Copies of all substantiation relied on to support advertising claims
20 subject to Parts I through IV; and
- 21 F. All other records and documents necessary to demonstrate full
22 compliance with each provision of this Order, including but not
23 limited to, copies of acknowledgments of receipt of this Order,
24 required by Part X and Part XI, and all reports submitted to the FTC
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1 pursuant to Part VIII.
2

3 **X.**

4 **DISTRIBUTION OF ORDER BY DEFENDANTS**

5 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the
6 date of entry of this Order, defendants shall deliver copies of the Order as directed
7 below:
8

9 A. MIT must deliver a copy of this Order to all of its principals, officers,
10 directors, and managers. MIT also must deliver copies of this Order
11 to all of its employees, agents, and representatives who engage in
12 conduct related to the subject matter of the Order. For current
13 personnel, delivery shall be within five (5) days of service of this
14 Order upon defendants. For new personnel, delivery shall occur prior
15 to them assuming their responsibilities.
16

17 B. Mark Levine and David Richmond as Control Person: For any
18 business that Mark Levine or David Richmond controls, directly or
19 indirectly, or in which Mark Levine or David Richmond has a
20 majority ownership interest, Mark Levine or David Richmond must
21 deliver a copy of this Order to all principals, officers, directors, and
22 managers of that business. Mark Levine and David Richmond must
23 also deliver copies of this Order to all employees, agents, and
24 representatives of that business who engage in conduct related to the
25 subject matter of the Order. For current personnel, delivery shall be
26

1 within five (5) days of service of this Order upon defendants. For
2 new personnel, delivery shall occur prior to them assuming their
3 responsibilities.

4 C. Mark Levine and David Richmond as employee or non-control
5 person: For any business where Mark Levine and David Richmond is
6 not a controlling person of a business but otherwise engages in
7 conduct related to the subject matter of this Order, Mark Levine and
8 David Richmond must deliver a copy of this Order to all principals
9 and managers of such business before engaging in such conduct.

10 D. Mark Levine, David Richmond, and MIT must secure a signed and
11 dated statement acknowledging receipt of the Order, within thirty (30)
12 days of delivery, from all persons receiving a copy of the Order
13 pursuant to this Part.
14

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16 **XI.**

17 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

18 IT IS FURTHER ORDERED that each Mark Levine, David Richmond, and
19 MIT within five (5) business days of receipt of this Order as entered by the Court,
20 must submit to the Commission a truthful sworn statement acknowledging receipt
21 of this Order.
22

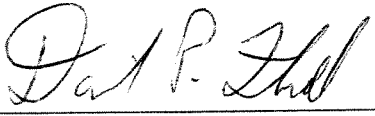
23 **XII.**

24 **RETENTION OF JURISDICTION**

25 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this
26
27

1 matter for purposes of construction, modification and enforcement of this Order.

2 SO STIPULATED:

3
4 

5 DAVID P. FRANKEL
6 THEODORE H. HOPPOCK
7 Federal Trade Commission
8 601 Pennsylvania Ave., NW, S-4002
9 Washington, DC 20580
10 (202) 326-3812, -3087, -3244 (voice)
11 (202) 326-3259 (facsimile)
12 Attorneys for Plaintiff
13 FEDERAL TRADE COMMISSION

MODERN INTERACTIVE
TECHNOLOGY, INC.

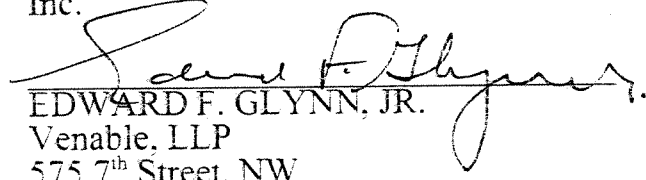


BY: Mark Levine

MARK LEVINE, individually and on
behalf of Modern Interactive Technology,
Inc.



DAVID RICHMOND, individually and on
behalf of Modern Interactive Technology,
Inc.



EDWARD F. GLYNN, JR.
Venable, LLP
575 7th Street, NW
Washington, DC 20004-1601
(202) 344-4805 (voice)
(202) 344-8300 (facsimile)



HARVEY SAFERSTEIN
Mintz Levin
Water Garden Phase 1
1620 26th Street, Suite 2068 North
Santa Monica, CA 90404
(310) 586 3200 (voice)
(310) 586 3202 (facsimile)

Attorneys for Defendants

24 SO ORDERED:

25 DATED: 2/17/05

GARY ALLEN FEESS

HONORABLE GARY A. FEESS
UNITED STATES DISTRICT JUDGE

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APPENDIX A
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

STEVEN PATRICK GARVEY a/k/a
STEVE GARVEY, GARVEY
MANAGEMENT GROUP, INC., LARK
KENDALL a/k/a KENDALL CARSON,
MARK LEVINE, individually and as an
officer and director of MODERN
INTERACTIVE TECHNOLOGY, INC.,
DAVID RICHMOND, individually and as
an officer and director of MODERN
INTERACTIVE TECHNOLOGY, INC., and
MODERN INTERACTIVE
TECHNOLOGY, INC.,

Defendants.

CV 00-09358 GAF (CWx)

**STIPULATED FINAL
ORDER FOR
PERMANENT
INJUNCTION AND
SETTLEMENT OF
CLAIMS FOR
MONETARY RELIEF AS
TO DEFENDANTS
MODERN INTERACTIVE
TECHNOLOGY, INC.,
MARK LEVINE, AND
DAVID RICHMOND**

AFFIDAVIT OF DAVID RICHMOND

David Richmond, being duly sworn, hereby states and affirms:

1. My name is David Richmond. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the matters discussed in this affidavit, and if called as a witness, I could and would competently testify

1 as to the matters stated herein. I am a defendant in the above-captioned action.

2 2. On (date) _____, 2005, I received a copy of the
3 Stipulated Final Order and Settlement of Claims for Monetary Relief as to
4 Defendants Modern Interactive Technology, Inc., Mark Levine, and David
5 Richmond, which was signed by the Honorable Gary A. Feess, United States
6 District Court Judge for the Central District of California. A true and correct copy
7 of the Order that I received is appended to this Affidavit.
8
9

10 3. I reaffirm and attest to the truthfulness, accuracy and completeness of
11 the financial statements referenced in Part VIA of the Order.
12

13 I hereby declare under penalty of perjury that the foregoing is true and
14 correct. Executed on (date) _____, at (city, state) _____,
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19 _____
20 David Richmond
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APPENDIX B
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

STEVEN PATRICK GARVEY a/k/a
STEVE GARVEY, GARVEY
MANAGEMENT GROUP, INC., LARK
KENDALL a/k/a KENDALL CARSON,
MARK LEVINE, individually and as an
officer and director of MODERN
INTERACTIVE TECHNOLOGY, INC.,
DAVID RICHMOND, individually and as
an officer and director of MODERN
INTERACTIVE TECHNOLOGY, INC., and
MODERN INTERACTIVE
TECHNOLOGY, INC.,

Defendants.

CV 00-09358 GAF (CWx)

**STIPULATED FINAL
ORDER FOR
PERMANENT
INJUNCTION AND
SETTLEMENT OF
CLAIMS FOR
MONETARY RELIEF AS
TO DEFENDANTS
MODERN INTERACTIVE
TECHNOLOGY, INC.,
MARK LEVINE, AND
DAVID RICHMOND**

AFFIDAVIT OF MARK LEVINE

Mark Levine, being duly sworn, hereby states and affirms:

1. My name is Mark Levine. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the matters discussed in this affidavit, and if called as a witness, I could and would competently testify as

1 to the matters stated herein. I am a defendant in the above-captioned action.

2 2. On (date) _____, 2005, I received a copy of the
3
4 Stipulated Final Order and Settlement of Claims for Monetary Relief as to
5 Defendants Modern Interactive Technology, Inc., Mark Levine, and David
6 Richmond, which was signed by the Honorable Gary A. Feess, United States
7 District Court Judge for the Central District of California. A true and correct copy
8 of the Order that I received is appended to this Affidavit.
9

10 3. I reaffirm and attest to the truthfulness, accuracy and completeness of
11
12 the financial statements referenced in Part VIA of the Order.

13 I hereby declare under penalty of perjury that the foregoing is true and
14
15 correct. Executed on (date) _____, at (city, state) _____,
16
17 _____.

18
19 _____
20 Mark Levine
21
22
23
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28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 15, 2005, a true and correct copy of the foregoing STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND SETTLEMENT OF CLAIMS FOR MONETARY RELIEF AS TO DEFENDANTS MODERN INTERACTIVE TECHNOLOGY, INC., MARK LEVINE, AND DAVID RICHMOND was served in the manner indicated on:

Edward F. Glynn, Jr., Esq. **(via Federal Express - priority overnight)**
Venable, LLP
575 7th Street, N.W.
Washington, D.C. 20004-1601
ATTORNEY FOR DEFENDANTS

Harvey Saferstein **(via Federal Express - priority overnight)**
Mintz Levin
Water Garden Phase I
1620 26th Street, suite 2068 North
Santa Monica, CA 90404



Devenette Cox, Investigator
Federal Trade Commission
Division of Advertising Practices