

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 03-80051-CIV-PAINE/JOHNSON

FEDERAL TRADE COMMISSION,

Plaintiff

v.

SLIM DOWN SOLUTION, LLC, SLIM
DOWN SOLUTION, INC., S.S.T.
MANAGEMENT, INC., THE KARA
GROUP, LLC, RONALD ALARCON,
KATHLEEN ALARCON, MADERIA
MANAGEMENT, INC.,
POLYGLUCOSAMINE, LTD., AND
STEPHEN PIERCE,

Defendants.

**STIPULATED MODIFICATION TO ORDER FOR PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF AGAINST SLIM DOWN SOLUTION, LLC, SLIM
DOWN SOLUTION, INC., S.S.T. MANAGEMENT, INC., THE KARA GROUP, LLC,
RONALD ALARCON, AND KATHLEEN ALARCON**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”) filed a complaint for permanent injunction and other relief against defendants Slim Down Solution, LLC, Slim Down Solution, Inc., S.S.T. Management, Inc., The KARA Group, LLC, Ronald Alarcon, Kathleen Alarcon, Maderia Management, Inc., Polyglucosamine, Ltd., and Stephen Pierce pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), alleging deceptive acts or practices and false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

On December 16, 2003, individual defendants Ronald Alarcon and Kathleen Alarcon (together, “Alarcons”) filed a joint voluntary petition for relief under the individual debt

adjustment provisions of Chapter 13 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, in the United States Bankruptcy Court for the Southern District of Florida, Case No. 03-36816-BKC-SHF (“Bankruptcy Case”). On May 14, 2004, this Court found that the commencement and continuation of this action against the Alarcons is not stayed by 11 U.S.C. § 362(a) because it is an exercise of the Commission’s police or regulatory power as a governmental unit pursuant to 11 U.S.C. § 362(b)(4) and thus falls within an exception to the automatic stay. (Dkt. No. 76.)

Upon motion for partial summary judgment by the Commission, on May 14, 2004, the Court issued an Order and Judgment for Permanent Injunction and Other Equitable Relief Against Defendants Slim Down Solution, LLC, Slim Down Solution, Inc., S.S.T. Management, Inc., The KARA Group, LLC, Ronald Alarcon, and Kathleen Alarcon (“Order”) (Dkt. No. 73), which, among other things, found for the Commission on Counts One through Three of its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) (Dkt. No. 1) and awarded to the Commission an equitable monetary judgment of \$30,135,784.¹

In settlement of the equitable monetary judgment contained in the Order and the still-outstanding Count Four of the Complaint, the Commission and defendants Slim Down Solution, LLC, Slim Down Solution, Inc., S.S.T. Management, Inc., The KARA Group, LLC, Ronald Alarcon, and Kathleen Alarcon (together, “defendants”) have stipulated to the entry of the following Stipulated Modification to Order for Permanent Injunction and Other Equitable Relief Against Slim Down Solution, LLC, Slim Down Solution, Inc., S.S.T.. Management, Inc., The KARA Group, LLC, Ronald Alarcon, and Kathleen Alarcon (“Modification”). Defendants deny

¹The FTC did not move for summary judgment on Count Four of the Complaint (Unauthorized Billing by the SDS Defendants).

liability for Count Four of the Complaint.

Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of the Court's Order dated May 14, 2004 as modified herein. Defendants also waive any claim that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Modification.

IT IS THEREFORE STIPULATED AND ORDERED THAT THE ORDER SHALL BE MODIFIED AS FOLLOWS:

1. Part XVIII shall be inserted on page 20 of the Order as follows:

XVIII.

CONTINUITY PROGRAMS

IT IS FURTHER ORDERED that:

- A. Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Modification, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service pursuant to a continuity program, are hereby permanently restrained and enjoined from enrolling consumers in, billing consumers for, or representing that consumers owe money for merchandise shipped pursuant to a continuity program, unless defendants have obtained the consumers' express and verified consent to participate in the continuity program and have clearly and conspicuously disclosed all material

terms of the continuity program. *Provided further* that consent to participate in a continuity program will be deemed express and verified only if:

1. Defendants obtain express written agreement by the consumer to purchase the goods or services and authorization to submit a charge on a specified billing account for payment that includes the consumer's signature (the term "signature" includes a verifiable electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal law or state contract law); or
2. Defendants obtain express oral agreement by the consumer to purchase the goods or services and authorization to submit a charge on a specified billing account for payment that is tape recorded and that meets the following criteria:
 - a. For all outbound telemarketing calls, the tape recording must include the entirety of each and every conversation involving the consumer who is making a purchase (*e.g.*, initial call, verification call);
 - b. For all inbound telemarketing calls, the tape recording must include the entirety of each and every conversation involving the consumer that relates to the goods and services that are the subject of defendants' offer;
 - c. For all inbound and outbound calls during which there is an upsell, the tape recording must include the entirety of each and every

conversation involving the consumer that relates to the goods or services that are the subject of the upsell offer;

d. A copy of the tape recording is provided upon request to the consumer, the consumer's bank, credit card company or other billing entity, state attorney general or consumer protection agency, including the FTC; and

3. Defendants clearly and conspicuously disclose, before the consumer consents to any purchase, all material terms and conditions of the continuity program, including, but not limited to:

a. The fact that periodic shipments of products will occur without further action by the consumers;

b. A description of each product or type of product to be included in each shipment;

c. The approximate interval between each shipment;

d. A description of the billing procedure to be employed, including the total cost to be charged to the consumer's credit or debit card, or otherwise billed to the subscriber, for each shipment;

e. The minimum number of purchases required under the program, if any;

f. All material terms of conditions of a guarantee, refund or return policy if any representation is made about such a policy, or, if the defendants have a policy of not making refunds or accepting

returns, a statement that this is the defendants' policy; and

- g. A description of the terms and conditions under which and the procedures by which a consumer may cancel further shipments, as set forth in subparagraph C of this Part.

B. Defendants shall convey the terms and conditions of the continuity program to the consumer in the following manner:

1. For any solicitation initiated or completed by telephone, the terms and conditions set forth in subparagraph A.3 of this Part shall be disclosed during that conversation in clear and understandable language;
2. For any solicitation by a print advertisement, direct mail, electronic mail, or by the Internet, the terms and conditions set forth in subparagraph A.3 of this Part shall be disclosed in a clear and prominent manner in close proximity to the ordering instructions, *provided that*, if the advertisement or mailing contains an order form or coupon on a separate page or document from the advertising material, the disclosure shall be made both in the advertising materials and on the order form or coupon.

C. Defendants shall provide, in conjunction with each shipment made pursuant to any continuity program, a clear and conspicuous description of the terms and conditions under which and the procedures by which the subscriber may cancel further shipments. Such description shall include either a toll-free telephone number the consumer may call or a mailing address the consumer may write to notify defendants of the consumer's cancellation of further shipments. *Provided*

however, that for purposes of this Part, if cancellation is by mail, defendants shall be deemed to be notified on the date the subscriber mails the request or other communication canceling further shipments.

D. Defendants shall not ship any product to, mail any bill or dunning communication to, or bill the credit or debit card of any consumer who, having once subscribed to a continuity program, notifies defendants by the means described in subparagraph C of this Part, or by any other reasonable means, of the consumer's cancellation of further shipments.

2. Part V, starting on page 9 of the Order, shall be modified to read as follows:

V.

MONETARY JUDGMENT AND CONSUMER REDRESS

IT IS FURTHER ORDERED that:

- A. Defendants, jointly and severally, shall pay to the Federal Trade Commission the sum of Seven Hundred and Twenty Five Thousand dollars (\$725,000).
- B. As security for the payment required by Part V.A, defendants hereby grant to the Commission a lien on and security interest in 16134 Rio Baile, Delray Beach, Florida, together with all dwelling houses, other structures, improvements, appurtenances, hereditaments, and other rights appertaining or belonging thereto, or which hereafter may be added or attached thereto, and all replacements, substitutions therefor or thereto, and all proceeds thereof, whether presently existing or hereafter arising (collectively, the "Collateral"). Defendants represent and acknowledge that the Commission is relying on the material that the

defendants are the sole owners in fee simple of the Collateral, title to the Collateral is marketable, and the Collateral currently is not encumbered by any other lien, mortgage, deed of trust, assignment, pledge, security interest, or other interest, except a mortgage held by Washington Mutual Bank in an amount equal to or less than \$594,768. Defendants agree to subordinate any liens, mortgages, deeds of trust, assignments, pledges, security interests, or other interests that defendants have in the Collateral to the lien and security interest granted herein to the Commission. Defendants further agree that as of the date on which they sign this Modification they shall refrain from transferring, converting, encumbering, selling, assigning, or otherwise disposing of the Collateral, except with the express prior written permission of counsel for the Commission.

Defendants shall cooperate fully with the Commission and be responsible (at their expense) for preparing, executing, and recording the necessary instruments and documents, including financing statements and continuation statements, doing whatever else the Commission deems necessary or desirable to perfect, evidence, and continue its lien on and security interest in the Collateral, and paying all related fees and costs, including attorneys' fees and filing fees. Not later than five (5) days after the date on which the Commission authorizes staff to sign this Modification, defendants shall prepare (at their expense), execute, and deliver to the Commission a mortgage, security agreement, and other documents in form and substance satisfactory to the Commission, record such documents (at their expense), and take such other steps as the Commission deems necessary or

desirable to perfect or evidence its lien on and security interest in the Collateral and to carry out the purposes of this Modification. Upon defendants' timely and complete satisfaction of the payment required by Part V.A or, if applicable, Part V.C.4, and at defendants' written request, the Commission agrees to release the lien and security interest granted herein and defendants shall be responsible for preparing and filing (at their expense) any termination or other statements reasonably required in connection therewith. The Commission also shall promptly release such lien and security interest to the extent necessary to permit the sale or encumbrance of part or all of the Collateral if the proceeds of such sale or financing are remitted directly to the Commission immediately upon closing of such sale or financing in partial or complete satisfaction of this Modification and defendants shall pay all fees and costs related to such release, including filing fees. Defendants shall be responsible for paying all fees and costs relating to the preparation, execution, delivery, filing, recording, continuation, and termination of the lien and security interest granted herein, including filing fees.

For purposes of complying with this Part or in subsequent litigation arising therefrom, defendants waive their right to declare the Collateral to be their homestead under Florida's constitutional homestead exemption, Fla. Const., Art. X, § 4.

C. Payment shall be made as follows:

1. Within ten (10) days from the May 14, 2004 entry of the Order, the corporate defendants must turn over title to all assets, as required by Part

VII of the Order.

2. Not later than five (5) days after the date of entry of this Modification, the Alarcons shall file a motion to dismiss the Bankruptcy Case, with prejudice to refiling for a period of not less than two hundred and forty (240) days.
3. Not later than December 28, 2004, defendants shall pay the balance of the \$725,000 judgment to the Commission, or such agent as the Commission may direct, all funds by wire transfer, certified check, cashier's check, or other guaranteed funds payable to and delivered to the Commission in accord with directions provided by the Commission. As provided in Part V.B., the proceeds of any sale or encumbrance of part or all of the Collateral described in Part V.B shall be remitted directly to the Commission immediately upon closing of such sale or financing in partial or complete satisfaction of this Modification.
4. Time is of the essence for the payment specified above. In the event that defendants do not fulfill, or only partially fulfill, the payment or security obligations set forth in this Modification, the original judgment amount of \$30,135,784, minus any payments previously made under Part V.C of this Modification, plus interest, computed pursuant to 28 U.S.C. § 1961(a) and accruing from the date of default to the date of payment, shall immediately become due and payable. In addition, the facts as alleged in the Complaint filed in this action must be taken as true in any subsequent

litigation filed by the Commission to collect such unpaid amount or otherwise enforce the Order as modified, including but not limited to a default or a nondischargeability complaint filed in any bankruptcy case.

- C. Defendants relinquish all dominion, control, and title to the funds paid to the Commission pursuant to the Order as modified. Defendants shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise.
- D. In accordance with 31 U.S.C. § 7701, defendants are hereby required, unless they have done so already, to furnish to the Commission their taxpayer identifying numbers and/or social security numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of defendants' relationship with the government.

- 3. Upon payment by the defendants of \$725,000 to the Commission as specified in Part V of this Modification, the equitable monetary judgment therein shall be deemed satisfied as to defendants Slim Down Solution, LLC, Slim Down Solution, Inc., S.S.T. Management, Inc., The KARA Group, LLC, Ronald Alarcon, and Kathleen Alarcon only. *Provided that* within five (5) days from the date of entry of this Modification, defendants shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of the Order and this Modification, and shall reaffirm and attest to the truth, accuracy, and completeness of the financial statements and supporting documents previously submitted by defendants as described in Paragraph 4, below.

4. The Commission's agreement to this Modification is expressly premised upon the truthfulness, accuracy, and completeness of the defendants' sworn financial statements dated November 26, 2002 (SST), January 13, 2003 (SDS), January 28, 2003 (SDSI, KARA, HTR Management, Inc., and Television Media Professionals), and January 29, 2003, as amended February 19, 2003 and October 27, 2003 (Ronald and Kathleen Alarcon), and supporting documents submitted to the Commission, including but not limited to balance sheets for SST dated November 21, 2002 and December 21, 2002, a balance sheet for SDS dated December 6, 2002, and profit and loss statements for SDS for August 1, 2001 through February 28, 2003. Such financial statements and supporting documents contain material information upon which the Commission relied in negotiating and agreeing to this Modification. If, upon motion by the Commission, this Court finds that defendants have failed to disclose any material asset with a value of \$10,000 or less, or materially misstated the value of any asset by \$10,000 or less, in the above-referenced financial statements, the Court shall enter a judgment against defendants in favor of the Commission for the value of the omitted item or the difference between the represented and actual value of the asset in question. *Provided further that* if, upon motion by the Commission, this Court finds that the defendants failed to disclose any material asset with a value of more than \$10,000, or materially misstated the value of any asset in the financial statements by more than \$10,000, the Court shall enter judgment against the defendants jointly and severally, in the amount of \$30,135,784 in U.S. currency, minus any payments previously made under Part V.B of this Modification, which amount would be rendered immediately due and payable. For the purposes of this

Paragraph, the defendants waive any right to contest any of the allegations in the Complaint filed in this action. *Provided further that* proceedings initiated under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including but not limited to proceedings for submission of false statements to the government and any other proceedings the Commission may initiate to enforce the Order as modified herein.

5. In all other respects, the Order shall remain in full force and effect as to all defendants.

SO STIPULATED:

KAREN MUOIO
SERENA VISWANATHAN
FEDERAL TRADE COMMISSION
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Attorneys for Plaintiff

SLIM DOWN SOLUTION, LLC
by: Ronald Alarcon, Managing Partner

SLIM DOWN SOLUTION, INC.
by: Kathleen Alarcon, President

S.S.T. MANAGEMENT, INC.
by: Ronald Alarcon, President

RONALD ALARCON, individually and as
an officer or director of the above companies

KATHLEEN ALARCON, individually and
as
an officer or director of the above companies

JAMES E. COPELAND, ESQ.
631 U.S. Highway 1, Suite 403
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Attorney for Defendants

SO ORDERED:

HON. JAMES C. PAINE
UNITED STATES DISTRICT JUDGE

Dated: _____

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 03-80051-CIV-PAINE/JOHNSON

FEDERAL TRADE COMMISSION,

Plaintiff

v.

SLIM DOWN SOLUTION, LLC, SLIM
DOWN SOLUTION, INC., S.S.T.
MANAGEMENT, INC., THE KARA
GROUP, LLC, RONALD ALARCON,
KATHLEEN ALARCON, MADERIA
MANAGEMENT, INC.,
POLYGLUCOSAMINE, LTD., AND
STEPHEN PIERCE,

Defendants.

_____ /

AFFIDAVIT OF DEFENDANT _____

_____, being duly sworn, hereby states and affirms:

1. My name is _____. 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 declaration, and if called as a witness, I could and would competently testify as to the matters stated herein. I am a defendant in the above captioned action.

2. My current business address is _____. My current business telephone number is _____. My current residential address is _____. My current residential telephone number is _____.

3. On (date) _____, 2004 I received a copy of the Order dated May 14, 2004 and the Stipulated Modification to Order for Permanent Injunction and Other Equitable Relief Against Slim Down Solution, LLC, Slim Down Solution, Inc., S.S.T.. Management, Inc., The KARA Group, LLC, Ronald Alarcon, and Kathleen Alarcon, both of which were signed by the Honorable James C. Paine, United States District Court Judge for the Southern District of Florida. A true and correct copy of the two orders that I received are appended to this Affidavit.

4. I reaffirm and attest to the truthfulness, accuracy and completeness of the financial statements and supporting documents that I submitted to the Federal Trade Commission dated August 1, 2001 - February 28, 2003, November 21, 2002, December 6, 2002, December 21, 2002, November 26, 2002, January 13, 2003, January 28, 2003, January 29, 2003, February 19, 2003, and October 27, 2003.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date) _____, 2004 at (city) _____, FL.

(defendant's signature) /s/ _____

(defendant's name) _____

Defendant

STATE OF _____

COUNTY OF _____

BEFORE ME this day personally appeared _____, who being first duly sworn, deposes and says that s/he has read and understands the foregoing statement and that s/he has executed the same for the purposes contained therein.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2004 by _____ . S/he is personally known to me or has presented (state identification) _____ as identification.

(print name)

NOTARY PUBLIC

Commission Number

Affix Seal