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17 UNITED STATES DISTRICT COURT
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA
19 WESTERN DIVISION
20

21 UNITED STATES OF AMERICA,	No.
22 Plaintiff,	COMPLAINT FOR CIVIL
23 v.	PENALTIES, INJUNCTIVE AND
24 MICHAEL S. LEVEY;	OTHER RELIEF
25 GARY BALLEEN;	
26 BENTLEY MYERS INTERNATIONAL	
CO.;	
27 PUBLISHER'S DATA SERVICES,	
INC.; AND	
28 NUTRITIONAL LIFE, INC.,	
Defendants.	

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1 Plaintiff, United States of America, acting upon
2 notification and authorization to the Attorney General by the
3 Federal Trade Commission ("Commission" or "FTC"), for its
4 Complaint alleges that:

5 1. Plaintiff brings this action under Sections 5(a), 5(1),
6 12, 13(b), and 16(a) of the Federal Trade Commission Act ("FTC
7 Act"), 15 U.S.C. §§ 45(a), 45(1), 52, 53(b), and 56(a): (a) to
8 obtain monetary civil penalties, consumer redress, injunctive and
9 other relief from defendants Michael S. Levey, Bentley Myers
10 International Co., Publisher's Data Services, Inc., and
11 Nutritional Life, Inc., for violations of a final order to cease
12 and desist issued by the Commission; and (b) to obtain
13 injunctive, redress and other relief for defendants' unfair or
14 deceptive acts and practices and false advertising in violation
15 of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and
16 52.

17 I. JURISDICTION AND VENUE

18 2. This Court has jurisdiction over this matter pursuant
19 to 15 U.S.C. §§ 45(a), 45(1), 52, 53(b), and 56(a) and under 28
20 U.S.C. §§ 1331, 1337, 1345, and 1355.

21 3. Venue in the Central District of California is proper
22 under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b-c) and
23 1395(a).

24 II. DEFENDANTS

25 4. Defendant Michael S. Levey ("Levey") is the president
26 and co-owner of defendant Bentley Myers International Co., and
27 co-owner of defendant Publisher's Data Services, Inc.
28 Individually or in concert with others, Levey formulates,

1 directs, controls, or participates in the acts and practices of
2 defendants Bentley Myers International Co., Publisher's Data
3 Services, Inc., and Nutritional Life, Inc. (collectively, "the
4 corporate defendants"), including the acts and practices set
5 forth in this Complaint, and has done so at all times pertinent
6 to this action. He resides and transacts or has transacted
7 business in the Central District of California.

8 5. Defendant Gary Ballen ("Ballen") is a director and co-
9 owner of defendant Bentley Myers International Co., president and
10 co-owner of defendant Publisher's Data Services, Inc., and owner
11 of defendant Nutritional Life, Inc. Individually or in concert
12 with others, Ballen formulates, directs, controls, or
13 participates in the acts and practices of the corporate
14 defendants, including the acts and practices set forth in this
15 Complaint, and has done so at all times pertinent to this action.
16 He resides and transacts or has transacted business in the
17 Central District of California.

18 6. Defendant Bentley Myers International Co. ("Bentley
19 Myers") is a Nova Scotia, Canada, corporation that was
20 incorporated in 1998, and was registered in British Columbia,
21 Canada, that year. Bentley Myers' office and principal place of
22 business in Canada is located at 203-2780 Granville Street,
23 Vancouver, British Columbia, Canada. Its registered office is
24 located at 1050-1188 West Georgia Street, Vancouver, British
25 Columbia, Canada. Bentley Myers is engaged in the marketing,
26 promotion and sale of dietary supplements and other health-
27 related products to U.S. consumers via direct mail solicitations
28 and telephone orders. Bentley Myers transacts or has transacted

1 business in the Central District of California and throughout the
2 United States.

3 7. Defendant Publisher's Data Services, Inc. ("Publisher's
4 Data") is a California corporation that was incorporated in 1998.
5 Its principal place of business is 9090 Burton Way, Suite 201,
6 Beverly Hills, California 90211. Publisher's Data provides data
7 and information processing services, including telephone support
8 services, to Bentley Myers. Publisher's Data transacts or has
9 transacted business in the Central District of California.

10 8. Defendant Nutritional Life, Inc. ("Nutritional Life"),
11 is or was a California corporation that was incorporated in 1981.
12 Its principal place of business is 9350 Civic Center Drive, Suite
13 140, Beverly Hills, California 90210. Although Nutritional
14 Life's corporate status is or was suspended in California,
15 defendants have continued to transact business in this name,
16 including contracting with a third-party credit card processor
17 that facilitates the transfer of funds among the various credit
18 card organizations and defendants for credit card sales to
19 consumers. Nutritional Life transacts or has transacted business
20 in the Central District of California.

21 9. The foregoing defendants have operated together as a
22 common enterprise to manufacture, advertise, package, label,
23 promote, offer for sale, sell or distribute dietary supplements
24 and other health-related products to consumers throughout the
25 United States, in or affecting commerce, as "commerce" is defined
26 in Section 4 of the FTC Act, 15 U.S.C. § 44.

27 10. Either singly or in connection with one or more members
28 of the common enterprise, defendants also have done business

1 under various names, including, but not limited to, Denman
2 Scientific Research, Cartazyne Sciences International, Serotril
3 Sciences International, Arthritis and Joint Disease Center,
4 Nutritional Fulfillment Center, Vancouver Natural Products,
5 Vancouver Health Products, and NLI Gentin.

6 **III. PRIOR COMMISSION PROCEEDING**

7 11. In a Commission proceeding bearing Docket No. C-3459,
8 the Commission's complaint charged Levey, in part, with
9 disseminating, or causing to be disseminated, false or misleading
10 television advertisements for the EuroTrym Diet Patch, the
11 Foliplexx baldness product, and the Y-Bron impotence treatment,
12 and for performing deceptive demonstrations during infomercials
13 he produced for the Magic Wand hand mixer. Ballen appeared in
14 Levey's advertisements as an endorser of the Y-Bron product. The
15 Commission charged that Levey's practices constituted unfair or
16 deceptive acts or practices, and the making of false
17 advertisements in or affecting commerce, in violation of Sections
18 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

19 12. On September 23, 1993, the Commission issued a Decision
20 and Order ("FTC Order") against Levey, individually and as an
21 officer of Positive Response Marketing, Inc., and against
22 Positive Response Marketing, Inc., also doing business as
23 Positive Response Television and Positive Response Advertising,
24 to cease and desist certain advertising and marketing practices.
25 The FTC Order was served upon Levey in the Fall of 1993, and by
26 operation of law, became final and enforceable thereafter. The
27 FTC Order has remained in full force and effect ever since.
28 Copies of the Commission's complaint and the FTC Order are

1 attached hereto as Exhibits A and B, respectively. Pursuant to
2 the requirements set forth in Part XI of the FTC Order, copies of
3 the FTC Order were distributed to, among others, Levey. At all
4 times relevant to the counts of this Complaint, Levey and the
5 corporate defendants knew of the FTC Order.

6 13. The Commission's Order includes the following
7 provisions:

8 ORDER

9 DEFINITIONS

10 For purposes of this Order:

- 11 1) "Competent and reliable scientific evidence" shall
12 mean tests, analyses, research, studies or other
13 evidence based on the expertise of professionals
14 in the relevant area, that has been conducted and
15 evaluated in an objective manner by persons
16 qualified to do so, using procedures generally
17 accepted in the profession to yield accurate and
18 reliable results.

19 * * *

20 II.

21 IT IS FURTHER ORDERED that respondent Positive
22 Response Marketing, Inc., a corporation, its successors
23 and assigns, and its officers, and respondent Michael
24 S. Levey, individually and as an officer of said
25 corporation, and respondents' agents, representatives
26 and employees, directly or through any partnership,
27 corporation, subsidiary, division or other device, do
28 forthwith cease and desist from:

1 * * *

2 B. Representing, directly or by implication, in
3 connection with the advertising, packaging,
4 labeling, promotion, offering for sale, sale
5 or distribution of any other product in or
6 affecting commerce, as "commerce" is defined
7 in the Federal Trade Commission Act, that:

8 (1) Use of the product prevents or reduces
9 feelings of hunger;

10 (2) Use of the product enables users to lose
11 substantial amounts of weight;

12 (3) Use of the product enables users to lose
13 weight in a substantial number of cases;

14 or

15 (4) Any competent or reliable test or study
16 establishes that use of the product
17 promotes weight loss,

18 unless such representation is true and, at the
19 time of making such representation, respondents
20 possess and rely upon competent and reliable
21 scientific evidence that substantiates the
22 representation.

23 * * *

24 VI.

25 IT IS FURTHER ORDERED that respondent Positive
26 Response Marketing, Inc., a corporation, its successors
27 and assigns, and its officers, and respondent Michael
28 S. Levey, individually and as an officer of said

1 corporation, and respondents' agents, representatives
2 and employees, directly or through any partnership,
3 corporation, subsidiary, division or other device, in
4 connection with the advertising, packaging, labeling,
5 promotion, offering for sale, sale or distribution of
6 any product or service in or affecting commerce, as
7 "commerce" is defined in the Federal Trade Commission
8 Act, do forthwith cease and desist from:

9 A. Making any representation, in any manner,
10 directly or by implication, regarding the
11 efficacy or safety of any food, drug or
12 device, as those terms are defined in Section
13 15 of the Federal Trade Commission Act, 15
14 U.S.C. § 55, unless at the time of making
15 such representation respondents possess and
16 rely upon competent and reliable scientific
17 evidence that substantiates the
18 representation; provided, however, that any
19 such representation for any food product that
20 is specifically permitted in labeling for
21 such food product by regulations promulgated
22 by the Food and Drug Administration pursuant
23 to the Nutrition Labeling and Education Act
24 of 1990 will be deemed to be substantiated by
25 competent and reliable scientific evidence;
26 provided further that any such representation
27 for any over-the-counter drug product in
28 Final Regulations establishing conditions

1 under which such product is safe and
2 effective promulgated by the Food, Drug and
3 Cosmetic Act, will be deemed to be
4 substantiated by competent and reliable
5 scientific evidence.

6 B. Making any representation, in any manner,
7 directly or by implication, regarding the
8 performance, benefits, efficacy or safety of
9 any product or service (other than a
10 representation covered under Subpart VI.A
11 above), unless at the time of making such
12 representation respondents possess and rely
13 upon competent and reliable evidence, which
14 when appropriate must be competent and
15 reliable scientific evidence, that
16 substantiates the representation.

17 VII.

18 IT IS FURTHER ORDERED that respondent Positive
19 Response Marketing, Inc., a corporation, its successors
20 and assigns, and its officers, and respondent Michael
21 S. Levey, individually and as an officer of said
22 corporation, and respondents' agents, representatives
23 and employees, directly or through any partnership,
24 corporation, subsidiary, division or other device, in
25 connection with the advertising, packaging, labeling,
26 promotion, offering for sale, sale or distribution of
27 any product or service in or affecting commerce, as
28 "commerce" is defined in the Federal Trade Commission

1 Act, do forthwith cease and desist from:

2 * * *

3 C. Representing, in any manner, directly or by
4 implication, by words, depictions or symbols,
5 that such product or service has been
6 endorsed by a person, group or organization
7 that is an expert with respect to the
8 endorsement message unless:

- 9 (1) The endorser is an existing person,
10 group or organization whose
11 qualifications give it the expertise
12 that the endorser is represented as
13 possessing with respect to the
14 endorsement; and
- 15 (2) The endorsement is supported by an
16 objective and valid evaluation or test
17 using procedures generally accepted by
18 experts in that science or profession to
19 yield accurate and reliable results.

20 VIII.

21 IT IS FURTHER ORDERED that respondent Positive
22 Response Marketing, Inc., a corporation, its successors
23 and assigns, and its officers, and respondent Michael
24 S. Levey, individually and as an officer of said
25 corporation, and respondents' agents, representatives
26 and employees, directly or through any partnership,
27 corporation, subsidiary, division or other device, in
28 connection with the advertising, packaging, labeling,

1 promotion, offering for sale, sale or distribution of
2 any product or service in or affecting commerce, as
3 "commerce" is defined in the Federal Trade Commission
4 Act, in connection with any advertisement depicting a
5 demonstration, experiment or test, do forthwith cease
6 and desist from making any representation, in any
7 manner, directly or by implication, that any
8 demonstration, picture, experiment or test depicted in
9 the advertisement proves, demonstrates or confirms any
10 material quality, feature or merit of any product, when
11 such demonstration, picture, experiment or test does
12 not prove, demonstrate or confirm the representation
13 for any reason, including but not limited to:

- 14 A. The undisclosed use or substitution of a
15 material mock-up or prop.
- 16 B. The undisclosed material alteration in a
17 material characteristic of the advertised
18 product or any other material prop or device
19 depicted in the advertisement.
- 20 C. The use of a visual perspective or camera,
21 film, audio or video technique that, in the
22 context of the advertisement as a whole,
23 materially misrepresents a material
24 characteristic of the advertised product or
25 any other material aspect of the
26 demonstration.

27 * * *

1 XII.

2 IT IS FURTHER ORDERED that respondent Michael S.
3 Levey shall, for a period of ten (10) years from the
4 date of issuance of this Order, notify the Commission
5 within thirty (30) days of the discontinuance of his
6 present business or employment and of his affiliation
7 with any new business or employment. Each notice of
8 affiliation with any new business or employment shall
9 include the respondent's new business address and
10 telephone number, current home address, and a statement
11 describing the nature of the business or employment and
12 his duties and responsibilities.

13 **IV. DEFENDANTS' COURSE OF CONDUCT**

14 14. Since at least 1998, defendants have manufactured,
15 advertised, packaged, labeled, promoted, offered for sale, sold
16 or distributed numerous dietary supplements and other health-
17 related products. Defendants' products include, but are not
18 limited to, the following, each of which is a "food" or "drug"
19 within the meaning of Sections 12 and 15 of the FTC Act, 15
20 U.S.C. §§ 52 and 55:

- 21 a. Zymax, a weight loss product containing the ingredient
22 Ma Huang (the herb Ephedra sinica, also known as
23 Chinese Ephedra, which contains ephedrine alkaloids
24 commonly referred to as ephedra). For example,
25 defendants have offered a thirty-day supply of Zymax
26 for \$29.95 and a ninety-day supply of Zymax for \$79.95.
27 The label lists a daily dose of two pills with each
28 pill containing 7.5 mg of ephedrine.

1 b. MillenexES, another weight loss product containing the
2 ingredient Ma Huang. For example, defendants have
3 offered a thirty-day supply of MillenexES for \$29.95
4 and a ninety-day supply of MillenexES for \$79.95. The
5 label lists a daily dose of two pills with each pill
6 containing 7.5 mg of ephedrine.

7 c. Serotril, a product containing *hypericum perforatum*
8 (the herb commonly known as St. John's wort) that
9 defendants have marketed for weight loss. For example,
10 defendants have offered a thirty-day supply of Serotril
11 for \$29.95 and a ninety-day supply of Serotril for
12 \$89.95.

13 d. CartazyneDS, an oral arthritis treatment combining
14 glucosamine sulfate and chondroitin sulfate. For
15 example, defendants have offered a thirty-day supply of
16 CartazyneDS for \$29.95 and a ninety-day supply of
17 CartazyneDS for \$79.95.

18 15. Defendants' marketing efforts have included glossy,
19 multi-page brochures mailed to millions of consumers in the
20 United States. Depending upon the product, defendants have used
21 a different name ("d/b/a") in their brochures. For example,
22 defendants have used the d/b/a "Denman Scientific Research" in
23 promotional materials for Zymax, the d/b/a "Cartazyne Sciences
24 International" in promotional materials for CartazyneDS, and the
25 d/b/a "Serotril Sciences, International" in promotional materials
26 for Serotril. These advertisements solicit consumers to:
27 (a) mail order forms and checks, credit card numbers, or money
28 orders to a Vancouver, Canada address; (b) fax in their order

1 forms to an "international fax" number; or (c) call a toll-free
2 number to order the desired products. The various toll-free
3 telephone numbers listed in defendants' promotional materials
4 ring to telephones located within the United States.

5 16. As set forth below, defendants have made numerous
6 misleading or unsubstantiated claims about the products in
7 violation of the FTC Order and Sections 5(a) and 12(a) of the FTC
8 Act.

9 **A. Defendants' Zymax Product**

10 17. Defendants have disseminated or have caused to be
11 disseminated advertisements and promotional materials for Zymax,
12 including, but not necessarily limited to, brochures titled
13 "Plastic Surgery Magazine" attached hereto as Exhibits C-1, C-2,
14 and C-3, which contain the following statements, among others:

15 a. "I thought I would never be able to lose this weight.
16 I went from a size 14 down to a sexy size 6. My
17 friends think I had plastic surgery. They're very
18 jealous!"

19 (Quotation is adjacent to photo of woman) (Exhibit C-1,
20 March 2002 edition of "Plastic Surgery Magazine,"
21 p. 131; Exhibit C-2, February-March 2001 edition of
22 "Plastic Surgery Magazine," p. 143)

23 b. "This powerful formula attacks weight loss in a unique
24 and extremely effective manner. We recognize that
25 unsightly fat deposits are usually very hard to get rid
26 of. Our goal was to make it as simple and as foolproof
27 as possible-almost automatic!"

28 * * *

1 "After much hard work, we were finally able to safely
2 increase thermogenesis and quickly promote weight
3 loss*," Dr. Perry energetically added. "Patients
4 actually enjoy taking Zymax for two reasons: It gives
5 you loads of energy for work, play and exercise, plus
6 you lose lots of weight while you still eat!"

7 * * *

8 *These statements have not been evaluated by the Food &
9 Drug Administration. This product is not intended to
10 diagnose, treat, cure or prevent any disease.

11 (Text and quotations are adjacent to photo of man in
12 white physician's coat and stethoscope, with caption
13 "Dr. David Perry, MD") (Exhibit C-1, p. 132; Exhibit C-
14 2, p. 144)

15 c. "Doctors & Scientists Discover Amazing New Fat Burning
16 Breakthrough"

17 "Subject: Female 155 lbs"

18 "Individual results will naturally vary"

19 (Text is adjacent to photos of three unclothed
20 backsides pictured side by side. The three backsides
21 are progressively thinner from left to right, and bear
22 the labels "Baseline Reference," "Mid-Test Reference,"
23 and "Final Observation," respectively) (Exhibit C-1, p.
24 132; Exhibit C-2, p. 144, which does not include
25 "Individual results will naturally vary.")

26 d. Clinical Studies Show How ZymaX Finally Ends Useless
27 Dieting!

28 (Exhibit C-1, p. 134; Exhibit C-2, p. 146)

1 e. ZymaX Actually Increases In Effectiveness The Longer
2 You Take It!

3 (Exhibit C-1, p. 135, headline; Exhibit C-2, p. 147,
4 headline)

5 f. We decided to ask a registered pharmacist, *B. Bubman*,
6 to review the Zymax formula and studies, and compare
7 Dr. Perry's new formula to the blur of bottles and
8 boxes that line drugstore shelves. Below are his
9 personal findings and his comments.

Product . . .	Comments . . .
Zymax . . .	Natural, safe, effective. Clinically tested, with guaranteed results.
Metabolite . . .	Expensive. Sold thru distributors who mark up price for big profit. Can make you jittery. Expensive!
Dexatrim . . .	Synthetic OTC drug. Common appetite suppressant. Comes with low cal diet. Side effects.
Accutrim . . .	Synthetic OTC drug. Common appetite suppressant. Comes with low cal diet. Side-effects.
Slim-Fast . . .	Powdered meal replacement drink. Comes with low-cal diet. Uses artificial sweeteners.

1 Xenical . . . Synthetic prescription drug. Can
2 cause runny & uncontrollable
3 bowel movements.

4 Meridia . . . Synthetic prescription drug.
5 Expensive appetite suppressant.
6 Has side-effects & can cause
7 chemical addiction!

8 (Exhibit C-1, p. 136; Exhibit C-2, p. 148)

9 g. "Zymax is so much more than I ever expected. I went
10 from size 12 to size 6 in a very short time-and kept
11 the weight off. I'm still full of energy and loving
12 life!"

13 (Exhibit C-1, p. 137; Exhibit C-2, p. 149)

14 h. Dear Denman Scientific Research Customer Service:

15 I apologize for being so skeptical when I called
16 and asked if Zymax really works. Your representative,
17 Lily, was so pleasant and patient with me. You see, I
18 had been 60 pounds overweight for most of my adult life
19 and embarrassed to leave my house at times. I had
20 tried so many other diet pills and all I lost was more
21 self-image and more money. I hope you understand why I
22 asked so many questions now.

23 I am writing this letter to let you know that
24 Zymax worked great for me. Each morning when I got on
25 my bathroom scale, the weight loss was obvious-but even
26 more impressive was when I looked in the mirror! I
27 could actually see myself getting thinner everyday! I
28 am almost at my goal weight and ready to switch to the

1 Zymax maintenance program.

2 . . . Best of all, it's been months now and my
3 weight is staying down, and I still have lots of
4 energy. . . .

5 Thanks, Love Alice Wilcox, New York, NY
6 (Exhibit C-1, p. 138; Exhibit C-2, p. 150)

7 i. SAFE AND EFFECTIVE ZYMAX IS AVAILABLE WITHOUT A
8 PRESCRIPTION

9 * * *

10 "I woke up in the morning one full dress size smaller!"

11 * * *

12 Amazing Success of New Fat Burning Formula Now
13 CONFIRMED By 8 Major Clinical Tests
14 (Exhibit C-2, p. 153)

15 j. WARNING Losing weight is extremely easy with new
16 Zymax. It is important that you set a target weight
17 before you begin the Zymax program.

18 Do Not Lose Too Much Weight

19 Weigh yourself often when using Zymax. As your weight
20 begins to plummet, reduce your dose and follow the
21 Zymax maintenance instructions. Please look at the
22 chart to the right and identify your ideal weight prior
23 to taking Zymax.

24 Being too thin can be just as dangerous as being
25 overweight!

26 (Text is adjacent to chart of height and weigh)

27 (Exhibit C-3, February 2000 edition of "Plastic Surgery
28 Magazine," p. 163)

1 k. Below are the most frequently asked questions received
2 by the Denman Scientific Research consultants, and
3 answers provided by their medical and professional
4 staff.

5 Q: "I have tried those appetite suppressants that you
6 can buy in stores and they really don't work for me.
7 Why will Zymax work when I've failed with so many other
8 methods to lose weight?"

9 A: This is one of the most frequently asked
10 questions.... Zymax works by naturally increasing
11 thermogenesis and directing your body to use stubborn
12 stored fat as energy. The result is a flood of new
13 energy plus weight loss you can count on. You're not
14 alone-many of those in the clinical studies also had
15 failed using other methods, and were quite surprised at
16 how easy it was to lose weight quickly with Zymax.

17 * * *

18 Q: "How much and how fast will I lose weight with
19 Zymax? Is there a diet you have to follow?"

20 A: Since results naturally vary, this is a difficult
21 question to accurately answer. Weight loss often
22 begins in about 48-hours after taking Zymax and then
23 accelerates over the next few days to a week. You
24 should set a target weight prior to starting Zymax. As
25 your weight begins to plummet, switch to the *Phase 2*
26 dose, explained in the instruction booklet. Losing too
27 much weight can be just as unhealthy as being
28 overweight! There is absolutely no fad, starvation

1 diet to follow.

2 (Exhibit C-2, p. 151)

- 3 1. SAFE & EFFECTIVE ZYMAX NOW AVAILABLE WITHOUT A
4 PRESCRIPTION!

5 (Exhibit C-2, p. 153; Exhibit C-3, p. 165)

6 18. Defendants' advertisements, in numerous instances, do
7 not refer to ephedra or ephedrine and instead include "other ECA
8 stack components" in fine print as one of many ingredients.

9 (Exhibit C-2, p. 150; Exhibit C-3, p. 162). ECA stands for
10 "ephedra, caffeine and aspirin."

11 19. In numerous instances when ordering Zymax by telephone,
12 consumers who asked defendants' customer service representatives
13 about the risks associated with Zymax have been told that the
14 product is natural, safe, and without side effects. Ephedra,
15 however, can have side effects, such as jitteriness and increased
16 blood pressure. In addition, the risk of side effects due to
17 ingestion of ephedra increases with increased dosage.

18 **B. Defendants' MillenexES Product**

19 20. Defendants have disseminated or have caused to be
20 disseminated advertisements and promotional materials for
21 MillenexES, including, but not necessarily limited to, the
22 brochure titled "Diet News" attached hereto as Exhibit D, which
23 contains the following statements, among others:

- 24 a. "I lost 38 pounds and found more romance than I ever
25 thought possible. I'm loving life now!" "This Pill is
26 Amazing!"

27 (Exhibit D, Summer 2001 edition of "Diet News," p. 167)

- 28 b. New Safe Fat-Fighting Pill

1 * * *

2 Dr. [Robert] Aldan and his team had been searching for
3 an effective way to lower life-threatening serum
4 triglyceride and cholesterol levels, when they made the
5 discovery that made them the talk of the entertainment
6 world - at least behind the scenes. "The discovery of
7 MillenexES (*Mill-in-ex Extra Strength*) was actually an
8 accident. Honest!"

9 * * *

10 Weight Loss Has Never Been So Easy
11 Now, for the first time, here's a clinically proven,
12 dynamic approach that's both fast and very effective
13
14 "The MillenexES formula also contains a group of
15 natural ingredients that boost your energy level
16 without giving you the jitters.* Having plenty of
17 energy and a strong feeling of well-being is important
18 when losing weight," added Dr. Aldan. "You can feel
19 MillenexES working. You actually feel good while
20 losing!"

21 * * *

22 *These statements have not been evaluated by the Food &
23 Drug Administration. This product is not intended to
24 diagnose, treat, cure or prevent any disease.
25 (Exhibit D, p. 168)

26 c. Virtually Automatic Weight Loss
27 [Dr. Aldan explains:] ". . . . Best of all, weight
28 loss can begin automatically."

1 (Exhibit D, p. 169)

2 d. No Will Power? NO PROBLEM! MillenexES Lets You Eat
3 Without Feeling Guilty

4 * * *

5 *"I wanted to eat what I want to eat, without the fat*
6 *sticking to my hips and thighs! That's why I tried*
7 *MillenexES. It's amazing!"*

8 * * *

9 "The MillenexES system works at a cellular level and
10 prevents fat from being digested and then stored in all
11 the wrong places.*" Dr. Aldan continues, "You should
12 never have to crash diet again. MillenexES can become
13 a part of your life. This dietary supplement formula
14 is safe, even for prolonged use, when used according to
15 instructions.["]

16 * * *

17 *These statements have not been evaluated by the Food &
18 Drug Administration. This product is not intended to
19 diagnose, treat, cure or prevent any disease.

20 (Exhibit D, p. 172)

21 e. Dear Dr. Aldan:

22 I was fat in high school. I was fat all through
23 college. . . . I'm writing this letter today with a
24 smile on my face after just getting off my bathroom
25 scale. Since I started the MillenexES system, I've
26 lost 39 pounds! This is amazing! I still enjoy most
27 of the foods I love, and the weight just kept melting
28 off. . . .

1 Thank you,

2 Stacy Delmonica (TV actress)

3 Hey Doc!

4 I took you up on your offer to try MillenexES and I
5 have to say it performed exactly as stated. . . .

6 After just a few weeks on MillenexES, I've lost 55
7 pounds! . . . Thank you for this weight loss miracle!

8 Mr. Don Jeffreys & Randy

9 (Exhibit D, p. 175)

10 f. MillenexES Lets YOU Decide How Much Weight You Want To
11 Lose

12 What's your weight loss goal?

13 Go ahead, set your goal. Save this page and look back
14 at it

15 at it in a month after you start on the MillenexES
16 system.

17 You'll be pleasantly surprised!

18 10 pounds

19 20 pounds

20 40 pounds

21 50 pounds

22 80 pounds +

23 (Exhibit D, p. 175)

24 g. We never thought a little pill could promote such fast
25 and effortless weight loss. Before we knew it, I lost
26 28 pounds and Jim lost 43 pounds and we're full of
27 energy. We never had to follow any stupid diet.

28 This MillenexES is really going to catch on. Best of

1 all, it's safe! What a winner! Keep up the good work,
2 Doc. - Jim and Betty Wilson
3 (Exhibit D, p. 177)

4 21. Defendants' advertisements, in numerous instances, do
5 not refer to ephedra or ephedrine and instead includes "ECA" in
6 very small type as just one ingredient among a long list of "Fat
7 Modulators." (Exhibit D, p. 173)

8 **C. Defendants' Serotril Product**

9 22. Defendants have disseminated or have caused to be
10 disseminated advertisements and promotional materials for
11 Serotril, including, but not necessarily limited to,
12 brochures titled "Serotril Sciences" attached hereto as
13 Exhibits E-1 through E-3, which contain the following
14 statements, among others:

15 a. Serotril A and Serotril B: Next, as part of the
16 Serotril System you'll take Serotril A and B daily.
17 These are not magic, miracle pills. Rather, these are
18 pharmaceutical grade supplements which have some pretty
19 amazing properties.

20 (Exhibit E-1, "Special Edition" of "Serotril Sciences"
21 Vol 3 - No. 5, p. 181)

22 b. Now losing weight is so easy!
23 PLUS - New formulas that really make a difference.

24 (Exhibit E-1, p. 193)

25 c. Many medical researchers and professionals contributed
26 to the formulation of the two natural components,
27 Serotril A and Serotril B. As mentioned in the special
28 announcement you received, the main ingredient in

1 Serotril A (High Grade Hypericum Perforataum) has been
2 studied and found to be beneficial for naturally
3 stimulating serotonin production. . . .

4 * * *

5 Follow the simple rules and you will lose weight.

6 There is no question about it -- you will lose weight
7 with Serotril. . . . It's safe, natural, healthy and
8 it works.

9 (Exhibit E-2, Winter/Spring 1999 edition of "Serotril
10 Sciences" Vol 2 - No. 4, p. 201)

11 d. Barbara lost 36 lbs Dr. J. lost 48 lbs.

12 (Text is immediately below photos) (Exhibit E-2, p.
13 203; Exhibit E-3, Serotril brochure, p. 213)

14 e. Overweight Person:

15 Always Hungry, Depressed, Low Energy, Sad.

16 Abnormally Low Serotonin Level

17 (Text is immediately above line graph showing dramatic
18 changes in "Serotonin level," frequently dropping below
19 and rising above a line labeled "Hunger Stimulation
20 Point (Must Eat)")

21 Above: Female, 42 years old, 48 lbs. overweight. Has
22 tried 8 different starvation diets, 3 prescription
23 drugs, intensive exercise with little or no
24 improvement. . . .

25 Below: Same person after 28 days on natural *Serotril*.
26 Lost 19 lbs. so far. Looks noticeably younger. Happy,
27 energetic again!

28 After Using *Serotril* 1 Month

1 Automatically losing weight daily. Happy & Energetic!

2 Normal Daily Serotonin Cycle

3 (Text is immediately above second line graph, showing
4 constant "Serotonin level," never dropping below a line
5 labeled "Hunger Stimulation Point (Must Eat)").

6 (Exhibit E-2, p. 203; Exhibit E-3, p. 213)

7 f. *Serotril* contains a delicate, small molecule that has
8 some very amazing properties. For years this natural
9 miracle has been used in Europe and was proven safe.

10 * * *

11 *Serotril* naturally stimulates the production of
12 serotonin, causing spontaneous weight loss without
13 useless dieting! Since *Serotril* is not a drug, there
14 are no unpleasant side effects, even with prolonged
15 usage.

16 People report losing weight quickly with *Serotril*.
17 Even though *Serotril* is so effective, it's not a drug!
18 This new breakthrough is now available, and without a
19 doctor's prescription (though you should always check
20 with your doctor before starting this or any other
21 weight loss regimen).

22 (Exhibit E-2, p. 204)

23 g. The most exciting part of Dr. [Jean-Paul] Rappaport's
24 discovery is that *Serotril* is really a "Wellness
25 Formula." Though users are thrilled about their rapid
26 and effortless weight loss, *Serotril* is also providing
27 many other critically important health benefits.

28 Like most, this reporter is most anxious to use

1 Serotril for its weight-loss benefits. (After all, if
2 *Serotril* is being used by TV stars and is natural, why
3 not give it a try?) However, as Dr. Rappaport
4 explained, there is much more to his discovery than
5 just easy weight loss. Wellness!

6 (Exhibit E-2, p. 205)

7 h. Dear Reader:

8 I am proud of the team of scientists in France and
9 Canada that have worked to perfect the *Serotril* system.
10 This is truly a long awaited breakthrough. . . .
11 My formula does not contain ephedrine, caffeine or any
12 drug stimulants. *Serotril* is 100% natural and safe.
13 The extremely clean and pure natural elements we
14 discovered in Canada and Europe contribute to the
15 quality and success of the *Serotril* formula. . . .

16 *Your Friend, - Dr. Jean-Paul Rappaport*

17 (Text is adjacent to photo of man in business attire
18 leaning on desk, with caption "Jean-Paul Rappaport, MD,
19 Paris, France") (Exhibit E-2, p. 206)

20 i. "Stars panic when they're getting ready to attend award
21 shows like TV's Golden Globe because they must look
22 their best," calmly explained Dr. Jean-Paul Rappaport.
23 "They know that my natural weight loss formula,
24 *Serotril*, works without dieting and without side
25 effects that might affect their performances and
26 careers."

27 (Text is adjacent to photo of man, with caption "Dr.
28 Jean Paul-Rappaport, France") (Exhibit E-3, p. 208)

1 j. New Natural "Super" Pill -†-

2 The biggest break-through for weight-loss since the
3 scale!

4 Plus, Drug Company's FEN-PHEN coverup revealed (See p.
5 5).

6 "When you correct the biochemical cause of weight gain,
7 you can lose weight effortlessly, without dieting

8 . . . 312-435-5544 george." (See p. 9)

9 (Exhibit E-3, p. 207)

10 **D. Defendants' CartazyneDS Product**

11 23. Defendants have disseminated or have caused to be
12 disseminated advertisements and promotional materials for
13 CartazyneDS, including, but not necessarily limited to, brochures
14 titled "Longevity Sciences Report" attached hereto as Exhibits F-
15 1 and F-2, which contain the following statements and depictions,
16 among others:

17 a. Rare, Natural Formula Floods Painful Joints With
18 Soothing Lubricants

19 Doctor's New, Tiny "Super Pill" May Actually . . .

20 Eliminate Agonizing Joint Pain In Just Days

21 Amazing Compound Called The "Cure" For Arthritis!

22 (Exhibit F-1, CartazyneDS brochure, p. 222)

23 b. The PAIN of Arthritis Healthy! - NO More Pain!

24 Doctor's Observation

Doctor's Observation

25 ✓ Joints Swollen & Red

Joints Healthy!

26 ✓ Gross Deformities

Normal Size Again!

27 ✓ Cracking Cartilage

Cartilage Healthy!

28 ✓ SEVERE PAIN

NO PAIN!

1 (Text in left column refers to picture of arthritic
2 hand and arthritic hand x-ray; Text in right column
3 refers to picture of healthy hand and healthy hand x-
4 ray) (Exhibit F-1, p. 222)

5 c. Beverly Hills Doctor Discovers Solution to Common
6 Arthritis Pain

7 Natural combination of essential ingredients actually
8 helps rebuild new cartilage.

9 * * *

10 Arthritis Sufferer Shares Her Agonizing Pain & Plea for
11 Cure

12 She was skeptical at first, but discovers a new life
13 when her joint pain completely ended.

14 (Exhibit F-1, p. 223)

15 d. It Can Stop Arthritis Pain & Send New Cartilage to
16 Joints Within Days

17 Available Now Without a Prescription

18 * * *

19 Dr. Leonard Rapoport, Board Certified surgeon, has for
20 years prescribed what is now called "*CartazyneDS*"
21 (cart-a-zeen, Double Strength) to his patients, friends
22 and family who suffer from joint pain caused by
23 osteoarthritis, the most common form of arthritis. The
24 results have been miraculous. Within days, pain stops
25 and new, healthy cartilage begins to develop.

26 (Text is adjacent to photo of man in white physician's
27 coat and stethoscope pointing to vertebrae model, with
28 caption "Dr. Leonard Rapoport, Beverly Hills

1 Homeopathic Healthcare.") (Exhibit F-1, p. 224)

2 e. CartazyneDS Rebuilds Cartilage Naturally

3 "It's like WD-40 for your joints!"

4 In Just A Few Days Your Joint

5 Pain Could End Forever

6 Before CartazyneDS	Normal & Pain Free
7 Excess synovial fluid	Perfect fluid level
8 buildup causing	
9 tightness, discomfort	
10 inflammation &	
11 shooting <u>PAIN</u>	
12	
13 Subchronal bone	Healthy Cartilage providing
14 breaking down causing	cushion to bone - Completely
15 grinding and PAIN	PAIN FREE movement
16	
17 Worn & deteriorating	Good circulation
18 cartilage (cushion)	
19 - <u>PAIN!</u>	

20 (Text in left column refers to picture of arthritic
21 shoulder; Text in right column refers to picture of
22 healthy shoulder) (Exhibit F-1, p. 225)

23 * * *

24 "CartazyneDS, a completely natural approach, addresses
25 the arthritis affected cartilage and bone itself,"
26 explains Dr. Rapoport. "You can actually begin to re-
27 grow new, healthy, smooth cartilage. Movement can
28 become fluid and pain free again. It doesn't just

1 cover-up joint pain, it gets to the cause - once and
2 for all! That's the miracle."

3 (Exhibit F-1, p. 225)

4 f. . . . As a surgeon, Dr. Rapoport cautions those
5 considering hip, knee and other joint replacement. . .
6 . ["]I always recommend addressing joint pain first
7 with CartazyneDS before considering surgery. The
8 formula is completely drug free and without side
9 effects. It is vital that doctors begin recognizing
10 natural treatments."

11 Joint Replacement Draw Backs

12 # Temporary

13 # Very Painful

14 # Costly

15 # Questionable success rate

16 No risk or side effects with natural, drug free:

17 CartazyneDS (Double Strength)

18 Natural, Safe & Effective!

19 (Exhibit F-1, p. 228)

20 g. [Dr. Rapoport's] research and understanding of the
21 usage of natural remedies has presented his patients
22 with options seldom offered by most physicians.
23 CartazyneDS is just one of Dr. Rapoport's many
24 commendable achievements.

25 (Exhibit F-1, p. 231)

26 h. My Dear friend:

27 Even if you've suffered from arthritis pain for
28 years, CartazyneDS provides precious resources so your

1 body can rebuild cartilage and reduce painful
2 inflammation in a very short time. There is no doubt
3 about it. CartazyneDS works!

4 Cartazyne Sciences is a division of Bentley-Myers
5 International of Vancouver, Canada. My role as Medical
6 Director of Bentley-Myers is to insure that you are
7 receiving the highest quality of pharmaceutical grade
8 ingredients in all our formulas. My team is also
9 responsible for monitoring worldwide research involving
10 natural products that can improve your health and raise
11 your quality of life.

12 You are holding our latest catalog of international
13 discoveries. Each of these formulas have gone through
14 rigorous clinical studies. Only after my department
15 has thoroughly reviewed these tests, do we release
16 these formulas to you.

17 We have carefully developed these formulas to deliver
18 benefits without side effects common with prescription
19 drugs. I personally use many of these products daily
20 and hope you too will take advantage of all that nature
21 has to offer through these proven formulas. . . .

22 Thank you,

23 Leonard Rapoport, M.D., F.A.C.S.

24 (Exhibit F-2, "Longevity Sciences Report" Vol. 3 No. 4,
25 p. 234)

1 **V. VIOLATIONS OF THE FTC ORDER**

2 **FIRST CAUSE OF ACTION**

3 Violation of FTC Order - Unsubstantiated No Side Effects Claims
4 for Zymax and MillenexES
5 (against Levey, Bentley Myers, Publisher's Data,
6 and Nutritional Life)

7 24. Through the means described in Paragraphs 17 through
8 21, defendants, in connection with the manufacturing,
9 advertising, packaging, labeling, promotion, offering for sale,
10 sale or distribution of Zymax and MillenexES, on numerous
11 occasions, have represented, expressly or by implication, that:

- 12 a. Zymax, containing Ma Huang, or ephedra, has no side
13 effects; and
14 b. MillenexES, containing Ma Huang, or ephedra, has no
15 side effects.

16 25. The representations set forth in Paragraph 24 were not
17 substantiated at the time the representations were made.

18 Therefore, defendants Levey, Bentley Myers, Publisher's Data, and
19 Nutritional Life have made the representations set forth in
20 Paragraph 24 in violation of Part VI.A of the FTC Order.

21 **SECOND CAUSE OF ACTION**

22 Violation of FTC Order - False or Unsubstantiated Weight Loss
23 Claims for Zymax and MillenexES

24 (against Levey, Bentley Myers, Publisher's Data,
25 and Nutritional Life)

26 26. Through the means described in Paragraphs 17 and 20,
27 defendants, in connection with the manufacturing, advertising,
28 packaging, labeling, promotion, offering for sale, sale or

1 distribution of Zymax and MillenexES, on numerous occasions, have
2 represented, expressly or by implication, that:

3 a. Zymax enables users to lose substantial amounts of
4 weight in a short period of time without the need to
5 increase exercise or reduce caloric intake, enabling
6 users, for example, to go from a size 14 or 12 to a
7 size 6; and

8 b. MillenexES enables users to lose substantial amounts of
9 weight in a short period of time without the need to
10 increase exercise or reduce caloric intake, enabling
11 users, for example, to lose 30 to 50 pounds or more.

12 27. The representations set forth in Paragraph 26 are false
13 or were not substantiated at the time the representations were
14 made. Therefore, defendants Levey, Bentley Myers, Publisher's
15 Data, and Nutritional Life have made the representations set
16 forth in Paragraph 26 in violation of Parts II.B and VI.A of the
17 FTC Order.

18 **THIRD CAUSE OF ACTION**

19 Violation of FTC Order - Unsubstantiated Clinical Study Claims
20 for Zymax and MillenexES

21 (against Levey, Bentley Myers, Publisher's Data,
22 and Nutritional Life)

23 28. Through the means described in Paragraphs 17 and 20,
24 defendants, in connection with the manufacturing, advertising,
25 packaging, labeling, promotion, offering for sale, sale or
26 distribution of Zymax and MillenexES, on numerous occasions, have
27 represented, expressly or by implication, that:

28 a. Clinical studies prove that Zymax enables users to lose

1 substantial amounts of weight in a short period of time
2 without the need to increase exercise or reduce caloric
3 intake; and

4 b. Clinical studies prove that MillenexES enables users to
5 lose substantial amounts of weight in a short period of
6 time without the need to increase exercise or reduce
7 caloric intake.

8 29. The representations set forth in Paragraph 28 were not
9 substantiated at the time the representations were made.

10 Therefore, defendants Levey, Bentley Myers, Publisher's Data, and
11 Nutritional Life have made the representations set forth in
12 Paragraph 28 in violation of Part VI.A of the FTC Order.

13 **FOURTH CAUSE OF ACTION**

14 Violation of FTC Order - False or Unsubstantiated Weight Loss
15 Claims for Serotril
16 (against Levey, Bentley Myers, Publisher's Data,
17 and Nutritional Life)

18 30. Through the means described in Paragraph 22,
19 defendants, in connection with the manufacturing, advertising,
20 packaging, labeling, promotion, offering for sale, sale or
21 distribution of Serotril, on numerous occasions, have
22 represented, expressly or by implication, that Serotril enables
23 users to lose substantial amounts of weight in a short period of
24 time without the need to increase exercise or reduce caloric
25 intake.

26 31. The representation set forth in Paragraph 30 is false
27 or was not substantiated at the time the representations were
28 made. Therefore, defendants Levey, Bentley Myers, Publisher's

1 Data, and Nutritional Life have made the representation set forth
2 in Paragraph 30 in violation of Parts II.B and VI.A of the FTC
3 Order.

4 **FIFTH CAUSE OF ACTION**

5 Violation of FTC Order - Fictitious Experts
6 (against Levey, Bentley Myers, Publisher's Data,
7 and Nutritional Life)

8 32. Through the means described in Paragraphs 17, 20, and
9 22, defendants, in connection with the manufacturing,
10 advertising, packaging, labeling, promotion, offering for sale,
11 sale or distribution of Zymax, MillenexES, and Serotril, on
12 numerous occasions, have represented, expressly or by
13 implication, that such products have been endorsed by "Dr. David
14 Perry," "Dr. Jean-Paul Rappaport," and "Dr. Robert Aldan."

15 33. In fact:

16 a. "Dr. David Perry," "Dr. Jean-Paul Rappaport," and "Dr.
17 Robert Aldan" are fictitious persons and thus are not
18 existing persons whose qualifications give them the
19 expertise that they are represented as possessing with
20 respect to the endorsement; and

21 b. These fictitious persons' endorsements, pertaining to
22 the efficacy and the lack of side effects of Zymax,
23 MillenexES, and Serotril, are not supported by an
24 objective and valid evaluation or test using procedures
25 generally accepted by experts in that science or
26 profession to yield accurate and reliable results.

27 34. Therefore, defendants Levey, Bentley Myers, Publisher's
28 Data, and Nutritional Life have made the representations set

1 forth in Paragraph 32 in violation of Part VII.C. of the FTC
2 Order.

3 **SIXTH CAUSE OF ACTION**

4 Violation of FTC Order - Unsubstantiated Efficacy Claims for
5 CartazyneDS

6 (against Levey, Bentley Myers, Publisher's Data,
7 and Nutritional Life)

8 35. Through the means described in Paragraph 23,
9 defendants, in connection with the manufacturing, advertising,
10 packaging, labeling, promotion, offering for sale, sale or
11 distribution of CartazyneDS, on numerous occasions, have
12 represented, expressly or by implication, that:

- 13 a. CartazyneDS cures arthritis;
14 b. CartazyneDS rebuilds cartilage in human joints within
15 days; and
16 c. CartazyneDS is an effective alternative to joint
17 replacement surgery.

18 36. The representations set forth in Paragraph 35 were not
19 substantiated at the time the representations were made.
20 Therefore, defendants Levey, Bentley Myers, Publisher's Data, and
21 Nutritional Life have made the representations set forth in
22 Paragraph 35 in violation of Part VI.A of the FTC Order.

23 **SEVENTH CAUSE OF ACTION**

24 Violation of FTC Order - False Demonstrations for Zymax and
25 CartazyneDS

26 (against Levey, Bentley Myers, Publisher's Data,
27 and Nutritional Life)

28 37. Through the means described in Paragraphs 17 and 23,

1 defendants, in connection with the manufacturing, advertising,
2 packaging, labeling, promotion, offering for sale, sale or
3 distribution of Zymax and CartazyneDS, on numerous occasions,
4 have represented, expressly or by implication:

5 a. That the results shown in "before/after" photographs or
6 visual images of a person's unclothed backside depicted
7 in advertisements for Zymax accurately represent the
8 performance of Zymax in causing substantial weight
9 loss; and

10 b. That the results shown in "before/after" pictures,
11 medical illustrations, and other visual images,
12 including x-ray film, depicted in the advertisements
13 for CartazyneDS accurately represent the performance of
14 CartazyneDS on human joints.

15 38. The representations set forth in Paragraph 37 are
16 false. Therefore, defendants Levey, Bentley Myers, Publisher's
17 Data, and Nutritional Life have made the representations set
18 forth in Paragraph 37 in violation of Part VIII of the FTC Order.

19 **EIGHTH CAUSE OF ACTION**

20 Violation of FTC Order - Failure to Notify FTC of New Business
21 Affiliation
22 (against Levey)

23 39. After the FTC Order became final in 1993, Levey became
24 an owner, officer, employee, and/or consultant for defendants
25 Bentley Myers and Publishers' Data some time prior to 2001. By a
26 letter dated May 8, 2001, from his attorney, Levey provided
27 written notice to the FTC of his affiliation with Bentley Myers
28 and Publishers' Data.

1 40. Defendant Levey failed to notify the Commission within
2 thirty (30) days of his affiliation with the new business or
3 employment, i.e., that he became an owner, officer, employee,
4 and/or consultant for defendants Bentley Myers and Publishers'
5 Data, thereby violating Part XII of the FTC Order.

6 **VI. VIOLATIONS OF THE FTC ACT**

7 41. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
8 prohibits unfair or deceptive acts or practices in or affecting
9 commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a),
10 prohibits the dissemination of any false advertisement in or
11 affecting commerce for the purpose of inducing, or which is
12 likely to induce, the purchase of food, drugs, devices, or
13 cosmetics. For the purposes of Section 12 of the FTC Act, 15
14 U.S.C. § 52, Zymax, MillenexES, Serotril, and CartazyneDS are
15 each either a "food" or "drug" pursuant to Section 15(b) and (c)
16 of the FTC Act, 15 U.S.C. § 55(b) and (c). As set forth below,
17 defendants have engaged in such unlawful practices in connection
18 with the manufacturing, advertising, packaging, labeling,
19 promotion, offering for sale, sale, or distribution of Zymax,
20 MillenexES, Serotril and CartazyneDS.

21 **NINTH CAUSE OF ACTION**

22 False or Unsubstantiated Claims for Zymax, MillenexES, Serotril
23 and CartazyneDS

24 (against all defendants)

25 42. Through the means described in Paragraphs 17, 20, 22
26 and 23, defendants, on numerous occasions, have represented that:

- 27 a. Zymax enables users to lose substantial amounts of
28 weight in a short period of time without the need to

- 1 increase exercise or reduce caloric intake;
- 2 b. MillenexES enables users to lose substantial amounts of
- 3 weight in a short period of time without the need to
- 4 increase exercise or reduce caloric intake;
- 5 c. Serotrill enables users to lose substantial amounts of
- 6 weight in a short period of time without the need to
- 7 increase exercise or reduce caloric intake;
- 8 d. Clinical studies prove that Zymax enables users to lose
- 9 substantial amounts of weight in a short period of time
- 10 without the need to increase exercise or reduce caloric
- 11 intake;
- 12 e. Clinical studies prove that MillenexES enables users to
- 13 lose substantial amounts of weight in a short period of
- 14 time without the need to increase exercise or reduce
- 15 caloric intake;
- 16 f. Zymax has no side effects;
- 17 g. MillenexES has no side effects;
- 18 h. CartazyneDS cures arthritis;
- 19 i. CartazyneDS rebuilds cartilage in human joints within
- 20 days; and
- 21 j. CartazyneDS is an effective alternative to joint
- 22 replacement surgery.

23 43. The representations set forth in Subparagraphs 42.a

24 through 42.e are false or were not substantiated at the time the

25 representations were made. The representations set forth in

26 Subparagraphs 42.f through 42.j were not substantiated at the

27 time the representations were made. Therefore, the making of the

28 representations set forth in Paragraph 42 constitutes a deceptive

1 practice, and the making of false advertisements, in or affecting
2 commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15
3 U.S.C. §§ 45(a) and 52.

4 **TENTH CAUSE OF ACTION**

5 Fictitious Product Endorsements and Testimonials

6 (against all defendants)

7 44. Through the means described in Paragraphs 17, 20, and
8 22, defendants, on numerous occasions, have represented,
9 expressly or by implication:

- 10 a. That "Dr. David Perry," "Dr. Jean-Paul Rappaport," and
11 "Dr. Robert Aldan" are actual experts providing
12 endorsements pertaining to the efficacy and the lack of
13 side effects of Zymax, MillenexES, and Serotril,
14 respectively; and
- 15 b. That persons depicted or described in the
16 advertisements, including, but not limited to, "Barb
17 and Jim Zaine," "Nancy W.," "Alice Wilcox," in Zymax
18 advertisements, "Don Jeffreys & Randy" and "Jim and
19 Betty Wilson" in the MillenexES advertisements,
20 "Barabara" and "Dr. J." in the Serotril advertisements,
21 and others not specifically identified, are existing
22 persons whose actual and current opinions, findings,
23 beliefs, and/or experiences are related in the
24 advertisements.

25 45. The representations set forth in Paragraph 44 are
26 false. Therefore, the making of the representations set forth in
27 Paragraph 44 constitutes a deceptive practice, and the making of
28 false advertisements, in or affecting commerce, in violation of

1 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

2 **ELEVENTH CAUSE OF ACTION**

3 False Demonstrations for Zymax and CartazyneDS

4 (against all defendants)

5 46. Through the means described in Paragraphs 17 and 23,
6 defendants, on numerous occasions, have represented, expressly or
7 by implication:

8 a. That the results shown in "before/after" photographs or
9 visual images of a person's unclothed backside depicted
10 in advertisements for Zymax accurately represent the
11 performance of Zymax in causing substantial weight
12 loss; and

13 b. That the results shown in "before/after" pictures,
14 medical illustrations, and other visual images,
15 including x-ray film, depicted in the advertisements
16 for CartazyneDS accurately represent the performance of
17 CartazyneDS on human joints.

18 47. The representations set forth in Paragraph 46 are
19 false. Therefore, the making of the representations set forth in
20 Paragraph 46 constitutes a deceptive practice, and the making of
21 false advertisements, in or affecting commerce, in violation of
22 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

23 **VII. CONSUMER INJURY**

24 48. Consumers have suffered substantial monetary loss and
25 significant health risks as a result of defendants' unlawful acts
26 or practices. Absent injunctive relief by this Court, defendants
27 are likely to continue to injure consumers and harm the public
28 interest.

1 VIII. CIVIL PENALTIES, REDRESS, INJUNCTIVE

2 AND OTHER EQUITABLE RELIEF

3 49. For the five years preceding the filing of this
4 complaint, each dissemination by defendants Levey, Bentley Myers,
5 Publisher's Data, and Nutritional Life of any advertisement or
6 promotional material in violation of the FTC Order, in one or
7 more of the ways described above, and each failure by Levey to
8 notify the Commission of his affiliation with a new business or
9 employment constitutes a separate violation for which plaintiff
10 seeks monetary civil penalties.

11 50. Sections 5(1) of the FTC Act, 15 U.S.C. §§ 45(1), as
12 modified by Section 4 of the Federal Civil Penalties Inflation
13 Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(c) of
14 the Commission's Rules of Practice, 16 C.F.R. § 1.98(c),
15 authorizes this Court to award monetary civil penalties of not
16 more than \$11,000 for each such violation of the FTC Order that
17 occurs on or after November 20, 1996.

18 51. Sections 5(1) and 13(b) of the FTC Act, 15 U.S.C. §§
19 45(1) and 53(b), authorize this Court to issue a permanent
20 injunction against defendants' violating the FTC Order, the FTC
21 Act, and to grant ancillary relief, including consumer redress,
22 disgorgement, and restitution to prevent and remedy any
23 violations of any provision of law enforced by the Commission.

24 52. This Court, in the exercise of its equitable
25 jurisdiction, may award other ancillary relief to remedy the
26 injury caused by defendants' violations of the law.

1 IX. PRAYER FOR RELIEF

2 WHEREFORE, plaintiff requests that this Court, pursuant to
3 15 U.S.C. §§ 45(a), 45(l), 53(b), and 56(a), and pursuant to this
4 Court's own equitable powers:

5 1. Enter judgment against defendants and in favor of
6 plaintiff for each violation alleged in this Complaint;

7 2. Award plaintiff monetary civil penalties from
8 defendants Levey, Bentley Myers, Publisher's Data, and
9 Nutritional Life for each violation of the FTC Order alleged in
10 this Complaint;

11 3. Permanently enjoin defendants from violating the FTC
12 Order issued in FTC Docket No. C-3459;

13 4. Permanently enjoin defendants from engaging in, or
14 assisting others engaged in, violations of the FTC Act;

15 5. Award such relief as the Court finds necessary to
16 redress injury to consumers resulting from defendants' violations
17 of the FTC Order and the FTC Act; including, but not limited to,
18 rescission of contracts, the refund of monies paid, and the
19 disgorgement of ill-gotten monies;

20 6. Award plaintiff the costs of bringing this action, as
21 well as such other and additional relief as the Court may
22 determine to be just and proper; and

23 7. Grant such equitable relief as the Court may determine
24 to be just and proper.

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1 DATED: June 30, 2003

Respectfully Submitted

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