


**Form 6. Civil Appeals Docketing Statement**
**USCA DOCKET # (IF KNOWN)**

**UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT  
CIVIL APPEALS DOCKETING STATEMENT**

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

<b>TITLE IN FULL:</b>  FEDERAL TRADE COMMISSION,  v.  STEVEN PATRICK GARVEY a/k/a STEVE GARVEY, GARVEY MANAGEMENT GROUP, INC., MARK LEVINE, DAVID RICHMOND, AND MODERN INTERACTIVE TECHNOLOGY, INC.	DISTRICT: Central District of California      JUDGE: Hon. Gary Allen Feess	
	DISTRICT COURT NUMBER: CV 00-9358-GAF (CWx)	
	DATE NOTICE OF APPEAL FILED: January 23, 2003	IS THIS A CROSS-APPEAL? <b>9</b> YES
	IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY):	
<b>BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:</b> Action brought by the Federal Trade Commission seeking a permanent injunction and monetary equitable relief (disgorgement) in connection with the creation and dissemination of allegedly false and deceptive advertising of weight loss products.		
<b>PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL:</b> (1) Whether the district court erred in granting summary judgment in favor of defendants Levine, Richmond, and Modern Interactive on <i>res judicata</i> grounds, based upon the FTC's prior settlement of claims against independent parties also responsible for the challenged advertising; and (2) Whether the district court erred in ruling that defendants Garvey and Garvey Management had adequate substantiation, consisting of scientific proof, for the extravagant weight loss claims made for the products at issue, and thus had not acted with reckless indifference to the truth or falsity of the challenged advertising claims.		
<b>PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDE PENDING DISTRICT COURT POST-JUDGMENT MOTIONS):</b> Federal Trade Commission v. Enforma Natural Products, Inc., Andrew Grey, and Fred Zinos, CV 00-04376 JSL (CWx)		

**DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:**

1 Possibility of settlement

9 Likelihood that intervening precedent will control outcome of appeal

9 Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (Specify) \_\_\_\_\_

9 Any other information relevant to the inclusion of this case in the Mediation Program \_\_\_\_\_

9 Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges

**LOWER COURT INFORMATION**

JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT/ORDER APPEALED	RELIEF
<p><u>:</u> FEDERAL QUESTION</p> <p><u>9</u> DIVERSITY</p> <p><u>9</u> OTHER (SPECIFY):</p>	<p><u>:</u> FINAL DECISION OF DISTRICT COURT</p> <p><u>9</u> INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT</p> <p><u>9</u> INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY):</p> <p><u>9</u> OTHER (SPECIFY):</p>	<p><u>9</u> DEFAULT JUDGMENT</p> <p><u>9</u> DISMISSAL/JURISDICTION</p> <p><u>9</u> DISMISSAL/MERITS</p> <p><u>:</u> SUMMARY JUDGMENT</p> <p><u>:</u> JUDGMENT/COURT DECISION</p> <p><u>9</u> JUDGMENT/JURY VERDICT</p> <p><u>9</u> DECLARATORY JUDGMENT</p> <p><u>9</u> JUDGMENT AS A MATTER OF LAW</p> <p><u>9</u> OTHER (SPECIFY):</p>	<p><u>:</u> DAMAGES: SOUGHT \$ <u>equitable disgorgement of ill-gotten gains</u> AWARDED \$ <u>0</u></p> <p><u>:</u> INJUNCTIONS: <u>9</u> PRELIMINARY <u>:</u> PERMANENT <u>9</u> GRANTED <u>:</u> DENIED</p> <p><u>9</u> ATTORNEY FEES: SOUGHT \$ _____ AWARDED \$ _____</p> <p><u>9</u> PENDING</p> <p><u>9</u> COSTS: \$ _____</p>

**CERTIFICATION OF COUNSEL**

**I CERTIFY THAT:**

1. COPIES OF ORDER/JUDGMENT APPEALED FROM ARE ATTACHED.
2. A CURRENT SERVICE LIST OR REPRESENTATION STATEMENT WITH TELEPHONE AND FAX NUMBERS IS ATTACHED (SEE 9TH CIR. RULE 3-2).
3. A COPY OF THIS CIVIL APPEALS DOCKETING STATEMENT WAS SERVED IN COMPLIANCE WITH FRAP 25.
4. I UNDERSTAND THAT FAILURE TO COMPLY WITH THESE FILING REQUIREMENTS MAY RESULT IN SANCTIONS, INCLUDING DISMISSAL OF THIS APPEAL.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**COUNSEL WHO COMPLETED THIS FORM**

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× THIS DOCUMENT SHOULD BE FILED IN THE DISTRICT COURT WITH THE NOTICE OF APPEAL×  
× IF FILED LATE, IT SHOULD BE FILED DIRECTLY WITH THE U.S. COURT OF APPEALS×