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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ENFORMA NATURAL PRODUCTS,
INC. and ANDREW GREY,

Defendants,

and

TWENTY-FOUR SEVEN, LLC,
MICHAEL EHRMAN and DONNA
DiFERDINANDO,

Respondents.

CV 00-04376-SVW (CWx)

[Signature]
[proposed]
**ORDER GRANTING
PERMANENT
INJUNCTION AGAINST
RESPONDENT DONNA
DiFERDINANDO**

INTRODUCTION AND PROCEDURAL HISTORY

On May 11, 2000, the Court entered a Stipulated Final Order and Settlement of Claims for Monetary Relief as to Defendants Enforma Natural Products, Inc. ("Enforma") and Andrew Grey ("Grey") (the "Stipulated Final Order") in this case. Paragraph XVI of that Stipulated Final Order specifically retains this Court's "jurisdiction of this matter for purposes of construction, modification, and enforcement"

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1 On January 4, 2002, Plaintiff, the Federal Trade Commission
2 ("Commission") filed its first of two applications for an Order to Show Cause,
3 seeking a finding of civil contempt against Defendants Enforma and Grey, and
4 Respondent Michael Ehrman ("Ehrman") in connection with the post-Stipulated
5 Final Order marketing of Fat Trapper, Fat Trapper Plus and Exercise In A Bottle.

6 On July 23, 2002, the Commission filed its second application for an Order
7 to Show Cause, seeking a temporary restraining order, a preliminary injunction
8 and a finding of civil contempt against Defendants Enforma and Grey and
9 Respondents Twenty-Four Seven, LLC ("Twenty-Four Seven" or "24/7") and
10 Donna DiFerdinando ("DiFerdinando") in connection with the post-Stipulated
11 Final Order marketing of Acceleron and Chitozyme.

12 The Commission and Respondent DiFerdinando, hereinafter referred to as
13 "Respondent," have stipulated to the entry of the following Stipulated Final Order
14 for Permanent Injunction as to Respondent Donna DiFerdinando ("Order") in
15 settlement of the Commission's second applications for an Order to Show Cause
16 against her. The Court, being duly advised in the premises, finds:

17
18 **FINDINGS**

19 1. This Court has jurisdiction over the subject matter of this case and it
20 has jurisdiction over all parties hereto.

21 2. Venue lies properly with this Court.

22 3. The July 23, 2002 civil contempt application states a claim upon
23 which relief can be granted, and the Commission has the authority to seek the
24 relief which is stipulated to in this Order.

25 4. The acts and practices of Respondent were and are in or affecting
26 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

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1 5. Respondent waives all rights to seek judicial review of, or otherwise
 2 to challenge or contest the validity of, this Order. Respondent also waives any
 3 claim that she may have held under the Equal Access to Justice Act, 28 U.S.C. §
 4 2412, concerning the prosecution of this action to the date of this Order. The
 5 Plaintiff waives its right to pursue any de novo action based on Respondent's acts
 6 and practices to the date of this Order.

7 6. Each party shall bear its own costs and attorneys' fees.

8 7. Entry of this Order is in the public interest.

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

13 9. Respondent expressly denies any wrongdoing or liability for any of
 14 the matters alleged in the civil contempt application. There have been no findings
 15 or admissions of wrongdoing or liability by the Respondent.

16 10. Nothing in this Order obviates Respondent's obligation to comply
 17 with Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52.

18 11. This Order was drafted jointly by Plaintiff and Respondent and
 19 reflects the negotiated agreement between the parties.

DEFINITIONS

22 For the purpose of this permanent injunction Order, the following
 23 definitions shall apply:

- 24 A. "Respondent" means Donna DiFerdinando.
- 25 B. "Advertising" means any written or verbal statement, illustration or
 26 depiction that is designed to effect a sale or create interest in the
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1 purchasing of goods or services, whether it appears in a brochure,
2 newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert,
3 free standing insert, letter, catalogue, poster, chart, billboard, public
4 transit card, point of purchase display, packaging, package insert,
5 label, film, slide, radio, television or cable television, audio program
6 transmitted over a telephone system, program-length commercial
7 (“infomercial”), Internet or in any other medium.

8 C. “Weight loss product” means any product, service or program
9 manufactured, labeled, packaged, distributed, advertised, promoted,
10 offered for sale, or sold for the express or implied purpose of causing
11 weight loss, maintaining weight loss, maintaining weight, or
12 otherwise affecting weight gain or loss, whether individually or in
13 any combination. For the purposes of this Order only, “weight loss
14 product” does not mean or include an exercise program or exercise
15 equipment.

16 D. “Food,” “drug,” and “device” shall mean as defined in Section 15 of
17 the FTC Act, 15 U.S.C. § 55. For purposes of this Order only,
18 “device” does not mean or include exercise equipment.

19 E. “Video advertisement” means any advertisement intended for
20 dissemination through television broadcast, cablecast, home video,
21 theatrical release, or via interactive media such as the Internet or an
22 online service.

23 F. “Clearly and prominently” means as follows:

- 24 (1) In an advertisement communicated through an electronic
25 medium, the disclosure shall be presented simultaneously in
26 both the audio and video portions of the advertisement.

Provided, however, that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the advertisement is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

(2) In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

(3) On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in all of the languages that are present in the advertisement. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

H. "Competent and reliable scientific evidence" means tests, analyses, research, studies, or other evidence based on the expertise of

1 professionals in the relevant area, that have been conducted and
2 evaluated in an objective manner by persons qualified to do so, using
3 procedures generally accepted in the profession to yield accurate and
4 reliable results.

5 I. "Endorsement" shall mean as defined in 16 C.F.R. § 255.0.

7 PROHIBITED BUSINESS ACTIVITIES

8 I.

9 **IT IS HEREBY ORDERED** that Respondent, directly or through any
10 corporation, partnership, subsidiary, division, trade name, or other device, and
11 their officers, agents, servants, employees and attorneys, and all other persons or
12 entities in active concert or participation with them who receive actual notice of
13 this Order, by personal service or otherwise, is hereby permanently restrained and
14 enjoined from the manufacturing, labeling, packaging, advertising, promotion,
15 offering for sale, sale or distribution of any weight loss product.

17 II.

18 **IT IS FURTHER ORDERED** that Respondent, directly or through any
19 corporation, partnership, subsidiary, division, trade name, or other device, and
20 their officers, agents, servants, employees, and attorneys, and all persons or
21 entities in active concert or participation with them who receive actual notice of
22 this Order, by personal service or otherwise, in connection with the manufacturing,
23 labeling, advertising, promotion, offering for sale, sale, or distribution of any
24 dietary supplement, food, drug, or device, in or affecting commerce, is hereby
25 permanently restrained and enjoined from making or assisting others in making,
26 expressly or by implication, including through the use of endorsements or product

1 names, any representation about the benefits, performance, or efficacy of any such
2 dietary supplement, food, drug, or device product unless, at the time the
3 representation is made, Respondent possesses and relies upon competent and
4 reliable scientific evidence that substantiates the representation.

5 6 **PROHIBITION ON MISREPRESENTING TESTS OR STUDIES**

7 **III.**

8 **IT IS FURTHER ORDERED** that Respondent, directly or through any
9 corporation, partnership, subsidiary, division, or other device, and their officers,
10 agents, servants, employees, and attorneys, and all other persons or entities in
11 active concert or participation with them who receive actual notice of this Order,
12 by personal service or otherwise, in connection with the manufacturing, labeling,
13 packaging, advertising, promotion, offering for sale, sale, or distribution of any
14 product, service or program, in or affecting commerce, shall not misrepresent, in
15 any manner, expressly or by implication, the existence, contents, validity, results,
16 conclusions or interpretations of any test, study, or research.

17 18 **PAID ADVERTISEMENTS AND DISCLOSURES**

19 **IV.**

20 **IT IS FURTHER ORDERED** that Respondent, directly or through any
21 corporation, subsidiary, division, or other device, in connection with the labeling,
22 advertising, promotion, offering for sale, sale, or distribution of any product or
23 program in or affecting commerce, shall not create, produce, sell, or disseminate:

24 A. Any advertisement that misrepresents, directly or by implication, that
25 it is not a paid advertisement;

26 B. Any television commercial or other video advertisement fifteen (15)
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1 minutes in length or longer or intended to fill a broadcasting or cablecasting time
2 slot of fifteen (15) minutes in length or longer that does not display visually,
3 clearly and prominently, and for a length of time sufficient for an ordinary
4 consumer to read, within the first thirty (30) seconds of the advertisement and
5 immediately before each presentation of ordering instructions for the product or
6 service, the following disclosure:

7 "THE PROGRAM YOU ARE WATCHING IS A PAID
8 ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

9 Provided that, for the purposes of this provision, the oral or visual
10 presentation of a telephone number, e-mail address or mailing address for viewers
11 to contact for further information or to place an order for the product or service
12 shall be deemed a presentation of ordering instructions so as to require the display
13 of the disclosure provided herein; or

14 C. Any radio commercial or other radio advertisement five (5) minutes
15 in length or longer that does not broadcast, clearly and audibly, within the first
16 thirty (30) seconds of the advertisement and immediately before each presentation
17 of ordering instructions for the product or service, the following disclosure:

18 "THE PROGRAM YOU ARE LISTENING TO IS A PAID
19 ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

20 Provided that, for the purposes of this provision, the presentation of a telephone
21 number, e-mail address or mailing address for listeners to contact for further
22 information or to place an order for the product or service shall be deemed a
23 presentation of ordering instructions so as to require the announcement of the
24 disclosure provided herein.

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1 **COMPLIANCE MONITORING**

2 **V.**

3 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and
4 investigating compliance with any provision of this Order,

5 A. Within ten (10) days of receipt of written notice from a representative
6 of the Commission, Respondent shall submit additional written reports, sworn to
7 under penalty of perjury; produce documents for inspection and copying; appear
8 for deposition; and/or provide entry during normal business hours to any business
9 location that Respondent controls to inspect the business operation;

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

- 12 1. obtaining discovery from any person, without further leave of
13 court, using the procedures prescribed by Fed. R. Civ. P. 30,
14 31, 33, 34, 36, and 45;
- 15 2. posing as consumers and suppliers to Respondent, her
16 employees, or any other entity managed or controlled in whole
17 or in part by Respondent, without the necessity of identification
18 or prior notice;

19 *Provided* that nothing in this Order shall limit the Commission's lawful use of
20 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C.
21 §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or
22 information relevant to unfair or deceptive acts or practices in or affecting
23 commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

24 C. Respondent shall permit representatives of the Commission to
25 interview any consultant, independent contractor, representative, agent, or
26 employee who has agreed to such an interview, relating in any way to any conduct
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1 subject to this Order for any business she controls. The person interviewed may
2 have counsel present.

3
4 **COMPLIANCE REPORTING BY RESPONDENT**

5 **VI.**

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

8 A. For a period of five (5) years from the date of entry of this Order,
9 Respondent shall notify the Commission of any changes in corporate structure of
10 any business entity that Respondent directly or indirectly controls, or has an
11 ownership interest in, whose business is within the subject matter of this Order,
12 including Paragraphs I - IV, including but not limited to a dissolution, assignment,
13 sale, merger, or other action that would result in the emergence of a successor
14 corporation; the creation or dissolution of a subsidiary, parent, or affiliate that
15 engages in any acts or practices subject to this Order; the filing of a bankruptcy
16 petition; or a change in the corporate name or address, at least thirty (30) days
17 prior to such change, *provided* that, with respect to any proposed change in the
18 corporation about which the Respondent learns less than thirty (30) days prior to
19 the date such action is to take place, Respondent shall notify the Commission as
20 soon as is practicable after obtaining such knowledge.

21 B. For a period of five (5) years from the date of entry of this Order,
22 Respondent shall notify the Commission of the following:

- 23 1. Any changes in her residence, mailing addresses, and telephone
24 numbers, within ten (10) days of the date of such change;
25 2. Any changes in employment status (including self-
26 employment), and any changes in the ownership in any
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1 business entity within ten (10) days of the date of such change.
2 Such notice shall include the name and address of each
3 business that Respondent is affiliated with, employed by,
4 creates or forms, or performs services for; a statement of the
5 nature of the business; and a statement of Respondent's duties
6 and responsibilities in connection with the business;

7 3. Any changes in their name or use of any aliases or fictitious
8 names.

9 C. Ninety (90) days after the date of entry of this Order, Respondent
10 shall provide a written report to the FTC, sworn to under penalty of perjury,
11 setting forth in detail the manner and form in which she has complied and is
12 complying with this Order. This report shall include, but not be limited to:

- 13 1. Her then-current residence address, mailing addresses, and telephone
14 numbers;
- 15 2. Her then-current employment and business addresses and telephone
16 numbers, a description of the business activities of each such
17 employer or business, and the title and responsibilities of Respondent,
18 for each such employer or business;
- 19 3. Any other changes required to be reported under subparagraphs A and
20 B of this Part.
- 21 4. A copy of each acknowledgment of receipt of this Order, obtained
22 pursuant to Part VIII; and
- 23 5. Copies of all then current advertisements, promotional materials,
24 sales scripts, training materials, or other marketing materials utilized
25 by Respondent in the advertising, marketing, promotion, offering for
26 sale, distribution or sale of any dietary supplement, food, drug, or
27

1 device in the United States.

2 D. For the purposes of this Order, Respondent shall, unless otherwise
3 directed by the Commission's authorized representatives, mail all written
4 notifications to the Commission to:

5 Associate Director for Advertising Practices
6 Federal Trade Commission
7 600 Pennsylvania Avenue, N.W.
8 Washington, D.C. 20580
9 Re: FTC v. Enforma Natural Products, Inc., et al., Case No. 00-
04376 SVW (CWx) (C.D. Cal.).

9 E. For purposes of the compliance reporting and monitoring required by
10 this Order, Respondent shall provide the Commission with her counsel's name and
11 address for the purpose of communications regarding this Order and shall notify
12 the Commission of any change in her counsel for the purpose of this Order.

13 **RECORD KEEPING PROVISIONS**

14 **VII.**

15 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the
16 date of entry of this Order, Respondent, in connection with each business in which
17 she, jointly or severally, is the majority owner or an officer or director of the
18 business, or directly or indirectly manages or controls the business and the
19 business conducted is within the subject matter of this Order, including Paragraphs
20 I - IV, and their agents, employees, officers, corporations, successors, and assigns,
21 and those persons in active concert or participation with them who receive actual
22 notice of this Order by personal service or otherwise, are hereby restrained and
23 enjoined from failing to create and retain the following records in connection with
24 that business:
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26 A. Accounting records that reflect the cost of goods or services sold,
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1 revenues generated, and the disbursement of such revenues;

- 2 B. Personnel records accurately reflecting: the name, address, and
- 3 telephone number of each person employed in any capacity by such
- 4 business, including as an independent contractor; that person's job
- 5 title or position; the date upon which the person commenced work;
- 6 and the date and reason for the person's termination, if applicable; and
- 7 C. Copies of all sales scripts, training materials, advertisements, or other
- 8 marketing materials.

9
10 **DISTRIBUTION OF ORDER BY RESPONDENT**

11 **VIII.**

12 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the
13 date of entry of this Order,

- 14 A. Respondent shall deliver a copy of this Order to the principals,
- 15 officers, directors, and managers of any business in which she, jointly
- 16 or severally, controls, directly or indirectly, or in which she has a
- 17 majority ownership interest and the business conducted is within the
- 18 subject matter of this order, including Paragraphs I - IV. Respondent
- 19 must also deliver a copy of this Order to all employees, agents, and
- 20 representatives of that business who engage in conduct related to the
- 21 subject matter of this Order. For current personnel, delivery shall be
- 22 within (5) days of service of this Order Respondent. For new
- 23 personnel, delivery shall occur prior to them assuming their
- 24 responsibilities.
- 25
- 26 B. For any closely-held business where Respondent is not a controlling
- 27 person of the business but for which business Respondent engages in

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1 conduct related to Paragraphs I - IV of this Order, Respondent must
2 deliver a copy of this Order to all principals and managers of such
3 business before engaging in such conduct.

4 C. Respondent must secure a signed and dated statement acknowledging
5 receipt of the Order, within thirty (30) days of delivery, from all
6 persons receiving a copy of the Order pursuant to this Part.
7

8 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**
9 **BY RESPONDENT**

10 **IX.**

11
12 IT IS FURTHER ORDERED that Respondent, within five (5) business days
13 of receipt of this Order as entered by the Court, must submit to the Commission a
14 truthful sworn statement acknowledging receipt of this Order.
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ENFORMA NATURAL PRODUCTS,
INC. and ANDREW GREY,

Defendants,

and

TWENTY-FOUR SEVEN, LLC,
MICHAEL EHRMAN and DONNA
DiFERDINANDO,

Respondents.

CV 00-04376-SVW (CWx)

AFFIDAVIT OF
[RESPONDENT (FILL IN
NAME)]

[Name of respondent], being duly sworn, hereby states and affirms as follows:

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1 1. My name is _____. My current residence
2 address is _____. I
3 am a citizen of the United States and am over the age of eighteen. I have personal
4 knowledge of the facts set forth in this Affidavit.

5 2. I am a respondent in FTC v. Enforma Natural Products, Inc., et al.,
6 Case No. 00-04376 SVW (CWx) (C.D. Cal.).

7 3. On [date], I received a copy of the Order Granting Permanent
8 Injunction Against Respondent Donna DiFerdinando, which was signed by the
9 Honorable Stephen V. Wilson and entered by the Court on [date of entry of
10 Order]. A true and correct copy of the Order I received is appended to this
11 Affidavit.

12 I declare under penalty of perjury under the laws of the United States that
13 the foregoing is true and correct. Executed on [date], at [city and state].
14
15
16

17 _____
[Type full name of respondent beneath signature]

18
19 State of _____, City of _____
20

21 Subscribed and sworn to before me
22 this _____ day of _____, 2004.

23
24 _____
Notary Public
25 My Commission Expires:
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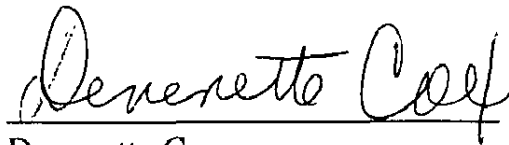
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 10, 2005, a true and correct copy of the foregoing [proposed] Order Granting Permanent Injunction Against Respondent Donna DiFerdinando was served via Federal Express on:

SCANNED

Eric L. Dobberteen, Esq.
Arnold & Porter
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
ATTORNEYS FOR DEFENDANTS AND RESPONDENTS TWENTY-
FOUR SEVEN LLC AND MICHAEL EHRMAN

Robert L. Corbin, Esq.
Corbin & Fitzgerald
601 West Fifth Street, Suite 1150
Los Angeles, CA 90071
ATTORNEYS FOR RESPONDENT DONNA DiFERDINANDO



Devenette Cox
Investigator
Division of Advertising Practices
Federal Trade Commission