1	DEBRA VALENTINE General Counsel	
2 3	JEFFERY A. KLURFELD Regional Director	
4 5 6 7	DAVID P. FRANKEL THEODORE H. HOPPOCK Federal Trade Commission 600 Pennsylvania Avenue, NW, Room S-4002 Washington, DC 20580 (202) 326-2812 (voice)	
8 9 10 11	(202) 326-3259 (fax) BARBARA CHUN CA Bar No. 186907 Federal Trade Commission 10877 Wilshire Boulevard, Suite 700 Los Angeles, CA 90024 (310) 824-4324 (voice) (310) 824-4380 (fax)	
12	ATTORNEYS FOR PLAINTIFF	
13 14	UNITED STATES DIST CENTRAL DISTRICT O	
15		
16	FEDERAL TRADE COMMISSION,	
17	Plaintiff,	Civil Number
18	V.	STIPULATED FINAL ORDER
19	STEVEN PATRICK GARVEY a/ka/ STEVE GARVEY, GARVEY MANAGEMENT GROUP,	AND SETTLEMENT OF CLAIMS FOR MONETARY
20	INC., LARK KENDALL a/k/a KENDALL CARSON, MARK LEVINE, individually and as an officer and director of MODERN	RELIEF AS TO DEFENDANT LARK KENDALL A/K/A KENDALL CARSON
21	INTERACTIVE TECHNOLOGY, INC., DAVID RICHMOND, individually and as an officer and	RENDALL CARSON
2223	director of MODERN INTERACTIVE TECHNOLOGY, INC., and MODERN	
24	INTERACTIVE TECHNOLOGY, INC.,	
25	Defendants.	
26		

Plaintiff, the Federal Trade Commission (the "Commission"), filed a complaint for a permanent injunction and other equitable relief against Steven Patrick Garvey a/k/a Steve Garvey, Garvey Management Group, Inc., Lark Kendall a/k/a Kendall Carson, Mark Levine, individually and as an officer and director of Modern Interactive Technology, Inc., and Modern Interactive Technology, Inc., and against relief defendant David Richmond, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), alleging violations of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52.

The Commission and defendant Lark Kendall a/k/a Kendall Carson, hereinafter referred to as "defendant" have stipulated to the entry of the following Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief as to Defendant Lark Kendall a/k/a Kendall Carson ("Order") in settlement of the Commission's complaint against her. The Court, being duly advised in the premises, finds:

FINDINGS

- 1. This Court has jurisdiction of the subject matter of this action and of the defendant. Venue in the Central District of California is proper.
- 2. The Complaint states a claim upon which relief can be granted, and the Commission has authority to seek the relief it has requested under Sections 5, 12 and 13(b) of the FTC Act, 15 U.S.C. §§ 45, 52, and 53(b).
- 3. The acts and practices of the defendant were or are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
- 4. Defendant waives all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order. Defendant also waives any claim that she 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 Order.
- 5. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law.
 - 6. Each party shall bear its own costs and attorneys' fees.

- 7. Defendant, without admitting or denying the allegations of wrongdoing set forth in the Commission's Complaint, stipulates and agrees to entry of this Order under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).
 - 8. Entry of this Order is in the public interest.

DEFINITIONS

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

- 1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
- 2. Unless otherwise specified, "defendant" shall mean Lark Kendall a/k/a Kendall Carson and her agents, servants, employees and attorneys, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise.
- 3. "Food," "drug," and "device" shall mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.
- 4. "Employment" shall mean any affiliation with any business, non-profit, or government entity, including the performance of services as an officer, owner, manager, supervisor, employee, consultant, or independent contractor, and "employer" shall mean any and all individuals or entities for whom defendant performs services as an employee, consultant, or independent contractor.
- 5. A requirement that any defendant "notify the Commission" or "file with the Commission" shall mean that the defendant shall send the necessary information via first class mail, costs prepaid, to the Associate Director for Advertising Practices, Federal Trade Commission, 600 Pennsylvania, Avenue, N.W., Washington, D.C. 20580. Attn: <u>FTC v. Steve</u> Garvey, et al., (C.D. Cal.).
 - 6. The term "including" in this Order shall mean "without limitation."

7. The terms "and" and "or" in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

CONDUCT PROHIBITIONS

I.

IT IS HEREBY ORDERED that defendant, directly or through any corporation, partnership or other device, and her agents, servants, employees and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the endorsing, advertising, promotion, offering for sale, sale or distribution of the Enforma System, Fat Trapper, Fat Trapper Plus, or Exercise In A Bottle, or any other product, service or program in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of the names "Fat Trapper," "Fat Trapper Plus," and "Exercise In A Bottle," that such product, service or program:

- A. Enables consumers to lose weight, avoid weight gain or maintain weight loss without the need for a restricted calorie diet or exercise;
- B. Prevents the absorption of fat in the human body;
- C. Increases metabolism, burns sugar or carbohydrates before they turn to fat, or burns off fat already in the human body; or
- D. Enables consumers to lose weight even if consumers eat foods high in fat, including fried chicken, pizza, cheeseburgers, butter, and sour cream,

unless at the time the representation is made, defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

IT IS FURTHER ORDERED that defendant, directly or through any corporation, partnership or other device, and her agents, servants, employees and attorneys, and all other

Π.

1 | po 2 | O 3 | o 4 | E 5 | m 6 | sh 7 | do

9

8

10

11 | part | 12 | part | 13 | pers | 14 | Ord | 15 | offe | 16 | Exe

18 19

17

20

22

21

2324

2526

27

28

persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the endorsing, advertising, promotion, offering for sale, sale or distribution of the Enforma System, Fat Trapper, Fat Trapper Plus, or Exercise In A Bottle, or any other product, service, or program, in or affecting commerce, shall not make any representation in any manner, directly or by implication, that she is a nutritionist or that she has any other professional title or expertise unless, at the time the representation is made, defendant possesses the level of education, experience and/or training that members of that profession generally recognize as sufficient to qualify as a member of that profession.

Ш.

IT IS FURTHER ORDERED that defendant, directly or through any corporation, partnership or other device, and her agents, servants, employees and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the endorsing, advertising, promotion, offering for sale, sale or distribution of the Enforma System, Fat Trapper, Fat Trapper Plus, or Exercise In A Bottle, or any other product, service, or program, in or affecting commerce, shall not misrepresent her profession, expertise, training, education, experience or qualifications.

IV.

IT IS FURTHER ORDERED that defendant, directly or through any corporation, partnership, subsidiary, division, or other device, and her agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the endorsing, advertising, promotion, offering for sale, sale, or distribution of the Enforma System, Fat Trapper, Fat Trapper Plus, or Exercise In A Bottle; or any other food, dietary supplement, drug, or device; or weight loss product, service, or program; in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the health or weight loss benefits, performance, safety, or efficacy of such product, service or program, unless, at the time the

representation is made, defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Provided, that it shall be a defense hereunder that defendant neither knew nor had reason to know of the inadequacy of the substantiation for the representation.

V.

IT IS FURTHER ORDERED that defendant, directly or through any corporation, partnership, subsidiary, division, or other device, and her agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the endorsing, advertising, promotion, offering for sale, sale, or distribution of any product, service or program, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

VI.

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

ASSIGNMENT

VII.

IT IS FURTHER ORDERED that within five (5) business days from the date of entry of this Order, defendant shall execute a written assignment to the Commission in a form substantially similar to the form attached to this Order as Appendix B.

RECORD KEEPING

VIII.

IT IS FURTHER ORDERED that defendant, for a period of five (5) years after the last date of dissemination of any representation covered by this Order, shall maintain and upon request make available to the Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession, custody, or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental entities or consumer protection organizations.

MONITORING

IX.

IT IS FURTHER ORDERED that defendant, within five (5) business days of entry of this Order, shall notify the Commission of (1) her residence address and mailing address; (2) the name. address, and telephone number of her employer(s); (3) if applicable, the names of her supervisors, and (4) a description of her employer's activities, and her duties and responsibilities.

28

IT IS FURTHER ORDERED that defendant, for a period of five (5) years after the date of entry of this Order, shall notify the Commission of any changes in her residence or mailing address or employment status. Notice of changes in employment status shall include: (1) the new employer's name, address and telephone number; (2) if applicable, the full names of her supervisors and the people to whom she reports; and, (3) a description of the employer's activities, and defendant's duties and responsibilities.

XI.

IT IS FURTHER ORDERED that defendant shall, within sixty (60) calendar days after the date of entry of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which she has complied with this Order.

XII.

IT IS FURTHER ORDERED that the Commission is authorized to monitor the compliance of defendant with this Order by all lawful means, including but not limited to the following means:

- A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including but not limited to the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating the compliance of defendant with this Order.
- B. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether defendant has violated any provision of this Order or Sections 5 or 12 of the FTC Act, 15 U.S.C. §§ 45, 55.

RETENTION OF JURISDICTION

1	X	III.
2	IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for	
3	purposes of construction, modification, and enforcement of this Order.	
4		
5	SO STIPULATED:	
6		
7	DAVID P. FRANKEL THEODORE H. HOPPOCK	LARK KENDALL a/k/a KENDALL CARSON
8	Federal Trade Commission	CARSON
9	600 Pennsylvania Ave., N.W., Rm. S-4002 Washington, D.C. 20580 (202) 326-2812, -3087 (voice)	
10	(202) 326-3259 (facsimile)	EDWARD F. GLYNN, JR. GARY D. HAILEY
11	Attorneys for Plaintiff FEDERAL TRADE COMMISSION	Venable, Baetjer, Howard & Civiletti, LLP
12	TEDERAL TRADE COMMISSION	1201 New York Avenue, N.W. Suite 1000
13		Washington, D.C. 20005-8300 (202) 962-4800 (voice)
14		(202) 962-8300 (facsimile)
15		Attorneys for Defendant LARK KENDALL a/k/a
16		KENDALL CARSON
17	SO ORDERED	
18		
19	DATED:	UNITED STATES DISTRICT JUDGE
20		CIVILD STITLS DISTRICT VCDCL
21		
22		
23		
24		
25		
26		
27		
28		
	Page 9	9 of 12

APPENDIX A 1 2 UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA 3 4 FEDERAL TRADE COMMISSION. 5 Plaintiff. Civil Number 6 v. 7 STEVEN PATRICK GARVEY a/ka/ STEVE GARVEY, GARVEY MANAGEMENT GROUP, 8 INC., LARK KENDALL a/k/a KENDALL CARSON, MARK LEVINE, individually and as 9 an officer and director of MODERN INTERACTIVE TECHNOLOGY, INC., DAVID 10 RICHMOND, individually and as an officer and director of MODERN INTERACTIVE 11 TECHNOLOGY, INC., and MODERN INTERACTIVE TECHNOLOGY, INC., 12 Defendants. 13 14 15 AFFIDAVIT OF LARK KENDALL 16 Lark Kendall a/k/a Kendall Carson, being duly sworn, hereby states and affirms: 17 My name is Lark Kendall and I am also know as Kendall Carson. I am a citizen of 1. 18 the United States and am over the age of eighteen. I have personal knowledge of the matters 19 discussed in this declaration, and if called as a witness, I could and would competently testify as 20 to the matters stated herein. I am a defendant in the above-captioned action. 21 My current address is _____ 2. 22 23 On (date) ______, 2000, I received a copy of the Stipulated Final 3. 24 Order and Settlement of Claims for Monetary Relief as to Defendant Lark Kendall a/k/a Kendall 25 Carson, which was signed by the Honorable , United States District Court Judge 26 for the Central District of California. A true and correct copy of the Order that I received is 27 appended to this Affidavit. 28

1	I hereby declare under penalty of perjury under the laws of the United States of America
2	that the foregoing is true and correct. Executed on (date), at (city,
3	state)
4	
5	
6	Lark Kendall a/k/a Kendall Carson
7	STATE OF CALIFORNIA
8	COUNTY OF
9	BEFORE ME this day personally appeared Lark Kendall a/k/a Kendall Carson, who being
10	first duly sworn, deposes and says that she has read and understands the foregoing statement and
11	that she has executed the same for the purposes contained therein.
12	SUBSCRIBED AND SWORN TO before me thisday of,
13	2000, by Lark Kendall a/k/a Kendall Carson. She is personally known to me or has presented
14	(state identification) as identification.
15	
16	
17	Print Name
18	NOTARY PUBLIC
19	STATE OF CALIFORNIA
20	Commission Number Affix Seal
21	
22	
23	
24	
25	
26	A DDENINIV D
2728	APPENDIX B
40	Assignment
	Page 11 of 12

1	
2	This assignment is hereby made by Lark Kendall a/k/a Kendall Carson ("Kendall"), of 257 North Almont Drive, Beverly Hills, California 90211. The Federal Trade Commission ("FTC") is the assignee of this assignment.
3	Kendall, in consideration of the FTC's agreement to enter into a Stipulated Final Order for
4	Permanent Injunction and Settlement of Claims for Monetary Relief as to Defendant Lark Kendall
5	a/k/a Kendall Carson, in <u>FTC v. Steven Patrick Garvey a/k/a Steve Garvey, et al.</u> , (C.D. Cal.), and of other good, valuable, and sufficient considerations, the receipt of which is acknowledged, sells,
6	assigns, transfers, sets over and delivers to the FTC, its successors and assigns, any and all claims, demands, and cause or causes of action of whatsoever kind and nature Kendall may have to
7	payment or collection of any judgments, monies, fees, commissions, salary, due to Kendall from Ronnell Raganas or Christian Alexander Models in connection with Kendall's appearance in or
8	work with respect to any advertisements or infomercials for the Enforma System, Fat Trapper, Fat Trapper Plus, or Exercise In A Bottle.
9	Kendall constitutes and appoints the FTC, and the FTC's successors and assigns, its true
10	and lawful attorney-in-fact and attorneys-in-fact, irrevocably, with full power of substitution and revocation, for Kendall and in Kendall's name, or otherwise, but for the sole use and benefit of the FTC, the FTC's successors and assigns, to ask, demand, sue for, collect, receive, compound, and
11	give acquittances for such claim or claims, or any part of such claim or claims.
12	In witness whereof, Kendall has executed this assignment at, California on, 2000.
13	
14	
15	Lark Kendall a/k/a Kendall Carson
16	
17	Notary Public
18	My Commission Expires:
19	
20	
21	
21 22	
22	
22 23	
222324	
22232425	
2223242526	
222324252627	Page 12 of 12