

Complaint

116 F.T.C.

IN THE MATTER OF

UNITED REAL ESTATE BROKERS OF ROCKLAND, LTD.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3461. Complaint, Sept. 27, 1993--Decision, Sept. 27, 1993*

This consent order prohibits, among other things, the New York provider of real estate brokerage services from restricting exclusive-agency listings; restricting brokers from soliciting homeowners with current listings for future business; interfering with the cancellation of a listing; and excluding from membership brokers who do not operate a full-time office, or maintain an office in Rockland County, or who are not residents of New York state.

*Appearances*For the Commission: *Michael J. Bloom and Rhonda McLean.*For the respondent: *David Silverman, Granik, Silverman, Sandberg, Campbell & Nowicki, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent United Real Estate Brokers of Rockland, Ltd., a corporation and successor by merger with its former wholly-owned subsidiary Rockland County Multiple Listing Systems, Inc., has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent United Real Estate Brokers of Rockland, Ltd. (hereafter "Rockland MLS") is a corporation organized, existing, and doing business under and by virtue of the laws of

the State of New York, with its office and principal place of business located at 255 South Middletown Road, Nanuet, New York.

PAR. 2. Rockland MLS is and has been at all times relevant to this complaint a corporation organized for its own profit or for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 3. In the course and conduct of their businesses, Rockland MLS and its members maintain and have maintained a substantial course of business, including the acts and practices as hereinafter set forth, and through the policies, acts, and practices described below, Rockland MLS and its members are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Rockland MLS is, and for some time has been, a privately-held corporation licensed as a real estate broker by the State of New York. Rockland MLS characterizes itself as a "real estate directory service," providing a multiple listing service to subscribing member real estate brokers, many of whom are also shareholders in the corporation.

PAR. 5. Only subscribing members may participate in the multiple listing service. The member brokers provide, for a commission, the service of bringing together buyers and sellers of residential real estate, as well as other services designed to facilitate sales of such properties. Each member agrees to submit all "exclusive agency listings" and "exclusive right to sell listings" pertaining to resales of 1-4 family residential real estate located within Rockland County for publication to the entire membership of the multiple listing service, and to share commissions with those member brokers that successfully locate purchasers for properties listed. An "exclusive agency listing" is a listing under which the property owner agrees to pay the broker an agreed commission if the property is sold through any real estate broker, but reserves the right to sell the property personally to a direct buyer (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the broker. An "exclusive right to sell listing" is a listing under which a property owner agrees to pay the broker an agreed commission if the property

is sold, whether the purchaser is located by the broker or any other person, including the owner.

PAR. 6. Pursuant to Rockland MLS's Constitution and By-laws, no subscribing member serves as an agent of another with respect to the sale of any property listed with the MLS; rather, all member brokers are equally responsible in the effort to procure buyers for properties listed with Rockland MLS. By the terms of Rockland MLS's listing form, which is signed by the property owner and the broker procuring the listing (the "listing broker"), the owner engages the entire MLS membership in the effort to sell the property.

PAR. 7. Rockland MLS maintains a computerized database of the residential real estate listings submitted to it by its subscribing members. It distributes the listing information to its members primarily through the publication of listing cards and a listing book which is updated on a weekly basis. A substantial number of respondent's members also receive listing information through on-line computer terminals. Rockland MLS charges a fee to members for publishing and servicing listings on its real estate directory service only if the property is sold before the listing's expiration date; the fee is based on a percentage of the brokerage commission on the sale of the property.

PAR. 8. Property owners and their brokers generally consider publication of listings on Rockland MLS to be the fastest and most effective means of obtaining the broadest market exposure for residential property in Rockland County.

PAR. 9. Membership in Rockland MLS provides valuable competitive advantages in the brokering of residential real estate sales in Rockland County. Membership significantly increases the opportunities of brokerage firms to enter into listing agreements with residential property owners, and significantly reduces the costs of obtaining up-to-date and comprehensive information on listings and sales.

PAR. 10. Sales of Rockland County real estate listings published on Rockland MLS have totaled over \$250 million for each year since 1984. For the period January 1988 through October 1988, about 1500 residential listings (including condominiums and

cooperatives) have been sold through Rockland MLS, valued between \$300 million and \$350 million. Rockland MLS currently has about 200 subscribing member brokers. Its membership represents over 98% of the active, residential real estate brokerage firms in Rockland County. For each year since 1984, over 90% of the total dollar sales volume of residential resales through brokers in Rockland County involved listings published with Rockland MLS.

PAR. 11. Except to the extent that competition has been restrained as described herein, Rockland MLS members are and have been in competition among themselves in the provision of residential real estate brokerage services within Rockland County.

PAR. 12. In adopting the policies and engaging in the practices described in paragraphs thirteen through twenty below, Rockland MLS has been and is acting as a combination of its members, or in conspiracy with some of its members, to restrain trade in the provision of residential real estate brokerage services within Rockland County.

PAR. 13. Prior to April 1984, Rockland MLS accepted exclusive agency listings under which owners were free to advertise their properties independently, although they could not advertise below the listed prices during the period of the listings. In 1984, Rockland MLS modified Article IV, Section 1.8 of its Operating Procedure and the terms of its listing forms to refuse exclusive agency listings that permitted any manner of homeowner advertising.

PAR. 14. Rockland MLS, pursuant to Article I, Section 18.3 of its Operating Procedure, has been and is now prohibiting its member brokers from entering into "blue star arrangements" with property owners desiring an exclusive agency listing. A "blue star arrangement" is any listing that is submitted to Rockland MLS in which, pursuant to the property owner's request, all appointments to show the property are made through the listing broker's office.

PAR. 15. Rockland MLS, pursuant to Article I, Section 10.1 of its Operating Procedure and an Addendum to said Procedure, requires that member brokers taking an exclusive agency listing

receive no more than 20% of the commission if another member broker sells the property, whereas member brokers taking an exclusive right to sell listing may receive up to 35% of the commission if another member broker sells the property. Rockland MLS has further disadvantaged and discouraged exclusive agency listings relative to exclusive right to sell listings by publishing these listings through its weekly listing book without the description or photograph that normally accompanies exclusive right to sell listings.

PAR. 16. Rockland MLS, pursuant to Article I, Section 22 of its Operating Procedure, has been and is now prohibiting any member other than the listing broker from directly or indirectly soliciting the listing of any property, the listing of which is filed with the multiple listing service, until after midnight of the expiration date of the filed listing.

PAR. 17. Rockland MLS, pursuant to Article II, Section 3 of its Operating Procedure, has been and is now requiring that members responding to a property owner's request for release from the listing agreement obtain a signed release from the owner stating that in the event the owner sells his property during the balance of the period of the listing, the owner will be liable to the listing member for a commission.

PAR. 18. Rockland MLS, pursuant to Article IV, Section 3 of its Constitution and By-Laws and the Preamble of its Operating Procedure, has been and is now requiring as a condition of membership in Rockland MLS that each member broker or applicant for membership operate a full-time real estate brokerage office.

PAR. 19. Rockland MLS, pursuant to Article IV, Section 3 of its Constitution and By-Laws, has been and is now requiring that each member broker or applicant for membership maintain a real estate brokerage office in Rockland County.

PAR. 20. Rockland MLS, pursuant to Article IV, Section 3 of its Constitution and By-Laws, has been and is now requiring that each member broker or applicant for membership be a domiciled resident of the State of New York. Although Rockland MLS may nevertheless sometimes admit to membership out-of-state brokers,

it requires that such out-of-state brokers pay an initiation fee that is substantially higher than the fee charged to New York State residents.

PAR. 21. The purposes, capacities, tendencies, or effects of the policies, acts, or practices of Rockland MLS and its members as described in paragraphs thirteen through twenty above have been and are unreasonably to restrain competition among brokers, and to injure consumers by, *inter alia*:

(1) Restraining brokers from competing with respect to the commissions they charge for their real estate brokerage services;

(2) Unreasonably discriminating against exclusive agency listings relative to exclusive right to sell listings, thereby inhibiting brokers from competing based on their willingness to accept exclusive agency listings and restricting consumers' choices with respect to the way they sell their property;

(3) Substantially limiting the ability of residential property owners to compete with real estate brokers in locating purchasers;

(4) Restricting brokers from competing with the listing broker and with each other to obtain renewal of listings of properties, thereby depriving property owners of information and the advantage of price and service competition that brokers would otherwise offer;

(5) Unreasonably restraining the entry of new brokerage firms in competition with Rockland MLS's multiple listing service;

(6) Substantially limiting consumers' abilities to choose among a variety of brokerage firms competing on the basis of price, contract terms, and services; and

(7) Depriving consumers of information pertinent to selecting a brokerage firm, and of the benefits of competition among brokers.

PAR. 22. The policies, acts, practices, and combinations or conspiracies described in paragraphs thirteen through twenty above constitute unfair methods of competition in or affecting interstate commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent United Real Estate Brokers of Rockland, Ltd. (a corporation and successor by merger with its former wholly-owned subsidiary, Rockland County Multiple Listing Systems, Inc.) and the respondent named in the caption hereof having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission would charge respondent with violation of the Federal Trade Commission Act; and

The respondent (sometimes hereafter referred to as "Rockland MLS"), its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, making the following jurisdictional findings, and enters the following order:

(1) Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York,

with its office and principal place of business located at 255 South Middletown Road, Nanuet, New York.

(2) The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

The following definitions shall apply to this order:

(1) “*Multiple listing service*” shall mean a clearinghouse through which member real estate brokerage firms regularly exchange information on listings of real estate properties and share commissions with other members.

(2) “*Applicant*” shall mean any owner or co-owner of a real estate brokerage firm who is duly licensed as a real estate broker within the State of New York and who has applied on behalf of his or her firm for membership in respondent's multiple listing service.

(3) “*Member*” shall mean any real estate broker or brokerage firm represented by a broker that is entitled to participate in the multiple listing service offered by Rockland MLS.

(4) “*Listing agreement*” shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

(5) “*Listing broker*” shall mean any broker who lists a real estate property with a multiple listing service pursuant to a listing agreement with the property owner.

(6) “*Selling broker*” shall mean any broker, other than the listing broker, who procures the purchaser for a listed property.

(7) “*Exclusive agency listing*” shall mean any listing under which the property owner agrees to pay the broker an agreed commission if the property is sold through any real estate broker, but reserves the right to sell the property personally to a direct buyer (one not procured in any way through the efforts of any broker) at

an agreed reduction in the commission or with no commission owed to the broker.

(8) “*Exclusive right to sell listing*” shall mean any listing under which a property owner agrees to pay the broker an agreed commission if the property is sold, whether the purchaser is procured by the broker or any other person, including the owner.

(9) “*Blue star arrangement*” shall mean any listing that is submitted to Rockland MLS in which, pursuant to the property owner's request, all appointments to show the property are made through the listing broker's office.

I.

It is ordered, That respondent Rockland MLS, its successors and assigns, and its directors, officers, committees, agents, representatives, and employees, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the operation of a multiple listing service in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, shall forthwith cease and desist from adopting or maintaining any rule or policy or taking any other action that has the purpose, capacity, tendency, or effect of:

(A) Restricting or interfering with the acceptance or publication of exclusive agency listings by any means, including:

(1) Preventing or discouraging its member brokers from accepting exclusive agency listings in which property owners are free to advertise in newspapers or any other media the sale of their property;

(2) Preventing or discouraging its member brokers from accepting exclusive agency listings accompanied by a blue star arrangement;

(3) Requiring that the listing broker receive a lesser portion of the commission for exclusive agency listings than for exclusive right to sell listings when another member broker sells the property; or

(4) Adopting or enforcing any policy or practice that treats exclusive agency listings in a less advantageous manner than exclusive right to sell listings with respect to the acceptance and publication of photographs and descriptions of the listed property disseminated to its member brokers;

Provided, however, that nothing contained in this subpart shall preclude respondent from (a) prohibiting homeowners with exclusive agency listings from placing their own “for sale” sign on their property or from advertising below the listed price during the term of the listing; (b) requiring designation of the listing as one granting an exclusive agency; (c) charging a reasonable and nondiscriminatory fee based on costs for any service it provides; or (d) imposing terms applicable to all listings accepted for publication by Rockland MLS.

(B) Restricting or interfering with the solicitation of a listing agreement for any property, *provided, however,* that nothing contained in this subpart shall prohibit respondent from adopting or enforcing any reasonable and nondiscriminatory policy that prohibits any member from using information provided to it by Rockland MLS that pertains to a specific listed property in the solicitation of a listing agreement for that property. Such reasonable and nondiscriminatory policy may include adoption of a rebuttable presumption that any member soliciting sellers for listings then listed with Rockland MLS by another member used information provided to it by Rockland MLS in the solicitation, as long as the soliciting member may fully rebut the presumption by providing a declaration under oath or other evidence that the solicitation was based upon information obtained from sources other than Rockland MLS.

(C) Restricting or interfering with any member and property owner cancelling a listing before the listing’s expiration date, *provided, however,* that nothing contained in this subpart shall prohibit respondent from: (1) requiring notice of the cancellation, including a copy of the cancellation agreement; and (2) charging a reasonable and nondiscriminatory fee for any service it provides if

the property subject to the cancelled listing is sold before the original expiration date of the listing and said fee is not otherwise owed to respondent by another member; and (3) charging a reasonable and nondiscriminatory fee based on costs of any service it provides.

(D) Requiring, urging, recommending, or suggesting that any applicant for membership or member:

- (1) Operate an office full-time or engage in real estate brokerage full-time;
- (2) Maintain an office in Rockland County;
- (3) Be a domiciled resident of the State of New York; or
- (4) Pay any additional initiation fees or any other fees based upon the member's or applicant's status as an out-of-state resident;

Provided, however, that nothing in this subpart shall prohibit respondent from adopting, maintaining, or enforcing any reasonable and nondiscriminatory policy to assure that its members are actively engaged in real estate brokerage and that listings published on respondent's multiple listing service are adequately serviced.

II.

It is further ordered, That respondent Rockland MLS shall:

(A) Within thirty (30) days after this order becomes final, furnish an announcement in the form shown in Appendix A to each member of Rockland MLS.

(B) Within sixty (60) days after this order becomes final, amend its constitution and by-laws, operating procedure, rules, regulations, policies or procedures, and all other of its materials to conform to the provisions of this order and provide each member with a copy of the amended by-laws, rules and regulations, and other amended materials.

(C) For a period of three (3) years after this order becomes final, furnish an announcement in the form shown in Appendix A to each

new member of Rockland MLS within thirty (30) days of the new member's admission.

III.

It is further ordered, That respondent Rockland MLS shall:

(A) Within ninety (90) days after this order becomes final, submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which Rockland MLS has complied and is complying with this order.

(B) In addition to the report required by paragraph III(A), annually for a period of three (3) years on or before the anniversary date on which this order becomes final, and at any such other times as the Federal Trade Commission or its staff may by written notice to Rockland MLS require, file a verified written report with the Federal Trade Commission setting forth in detail the manner and form in which Rockland MLS has complied and is complying with this order.

(C) For a period of five (5) years after this order becomes final, maintain and make available to the Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which Rockland MLS has complied with this order.

(D) Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Rockland MLS, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in Rockland MLS that may affect compliance obligations arising out of this order.

APPENDIX A

As you may be aware, the Federal Trade Commission has entered into consent decrees with several multiple listing services in order to halt certain multiple listing service practices that have

been alleged to be unlawful restraints of trade. To avoid litigation, respondent United Real Estate Brokers of Rockland, Ltd., as successor by merger with Rockland County Multiple Listing Systems, Inc. has entered into such a consent agreement. The agreement is not an admission that respondent ("Rockland MLS") or any of its members has violated the law. For your information, Rockland MLS is prohibited from adopting or maintaining any rule or policy or taking any other action that has the purpose, capacity, tendency, or effect of:

(A) Restricting or interfering with the acceptance or publication of exclusive agency listings by any means, including:

(1) Preventing or discouraging its member brokers from accepting exclusive agency listings in which property owners are free to advertise in newspapers or any other media the sale of their property;

(2) Preventing or discouraging its member brokers from accepting exclusive agency listings accompanied by a blue star arrangement;

(3) Requiring that the listing broker receive a lesser portion of the commission for exclusive agency listings than for exclusive right to sell listings when another member broker sells the property; or

(4) Adopting or enforcing any policy or practice that treats exclusive agency listings in a less advantageous manner than exclusive right to sell listings with respect to the acceptance and publication of photographs and descriptions of the listed property disseminated to its member brokers;

Provided, however, that nothing contained in this subpart shall preclude respondent from (a) prohibiting homeowners with exclusive agency listings from placing their own "for sale" sign on their property or from advertising below the listed price during the term of the listing; (b) requiring designation of the listing as one granting an exclusive agency; (c) charging a reasonable and nondiscriminatory fee based on costs for any service it provides; or (d) imposing

terms applicable to all listings accepted for publication by Rockland MLS.

(B) Restricting or interfering with the solicitation of a listing agreement for any property, *provided, however*, that nothing contained in this subpart shall prohibit respondent from adopting or enforcing any reasonable and nondiscriminatory policy that prohibits any member from using information provided to it by Rockland MLS that pertains to a specific listed property in the solicitation of a listing agreement for that property. Such reasonable and nondiscriminatory policy may include adoption of a rebuttable presumption that any member soliciting sellers for listings then listed with Rockland MLS by another member used information provided to it by Rockland MLS in the solicitation, as long as the soliciting member may fully rebut the presumption by providing a declaration under oath or other evidence that the solicitation was based upon information obtained from sources other than Rockland MLS.

(C) Restricting or interfering with any member and property owner cancelling a listing before the listing's expiration date, *provided, however*, that nothing contained in this subpart shall prohibit respondent from: (1) requiring notice of the cancellation, including a copy of the cancellation agreement; and (2) charging a reasonable and nondiscriminatory fee for any service it provides if the property subject to the cancelled listing is sold before the original expiration date of the listing and said fee is not otherwise owed to respondent by another member; and (3) charging a reasonable and nondiscriminatory fee based on costs of any service it provides.

(D) Requiring, urging, recommending, or suggesting that any applicant for membership or member:

- (1) Operate an office full-time or engage in real estate brokerage full-time;
- (2) Maintain an office in Rockland County;
- (3) Be a domiciled resident of the State of New York; or

(4) Pay any additional initiation fees or any other fees based upon the member's or applicant's status as an out-of-state resident;

Provided, however, that nothing in this subpart shall prohibit respondent from adopting, maintaining or enforcing any reasonable and nondiscriminatory policy to assure that its members are actively engaged in real estate brokerage and that listings published on respondent's multiple listing service are adequately serviced.

SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA
CONCURRING IN PART AND DISSENTING IN PART

I have voted to accept the consent order. In general, the order is consistent with previous Commission orders in cases involving multiple listing services. I write separately to note my dissent from paragraphs I.A.3 and I.B of the order.

Paragraph I.A.3 of the order provides that Rockland must cease requiring that the listing broker receive a lesser share of the commission for exclusive agency listings, as defined in the order, than for exclusive right to sell listings, as defined, when another broker makes the sale. On its face, the provision appears to require only that Rockland cease discriminating against exclusive agency listings. What is not apparent from the face of the order is that paragraph I.A.3 applies to Rockland's multiple listing service rule that fixes the commission split between listing and selling brokers. To the extent that the order applies only to the discriminatory aspect of the split and not to the fact that the split is fixed, the provision may implicitly approve the fixed split, which appears to be inconsistent with Commission precedent.

In *Multiple Listing Service Mid County, Inc.*, 110 FTC 482 (1988), the Commission's complaint alleges that a multiple listing service rule fixing maximum commission splits for listing brokers "deprive[s] consumers of the advantages of competition among . . . [brokers] to list and to sell residential real estate," *id.* at 485, and the order bars the MLS from "[f]ixing . . . any rate, range or amount of any division or split of commission or other fees between" selling

and listing brokers. *Id.* at 489. Indeed, in two other multiple listing service cases, Puget Sound¹ and Bellingham-Whatcom,² the Commission even prohibited so-called “default” split rules that specified how the commission should be split in the apparently rare situations in which the listing broker failed to specify the split.³ There is no apparent reason to distinguish between the rule implicitly sanctioned in Rockland and the rule prohibited in Mid County, and Rockland's rule mandating the split for all listings appears more likely than the default split rules prohibited in Puget Sound and Bellingham-Whatcom to have anticompetitive effects.

Paragraph I.B of the order requires Rockland to eliminate its restrictions on broker solicitation of listings while a listing agreement with another broker is in effect. This provision of the order is consistent with precedent. As our learning about multiple listing services has increased, however, the efficiency justification for anti-solicitation rules (to prevent brokers from exploiting the efforts of the listing broker) has become more clear and more credible. Because the rule now appears to be justifiable, and in the absence of evidence of anticompetitive effects, I no longer can find reason to believe sufficient to challenge the rule under Section 5 of the Federal Trade Commission Act.

¹ Puget Sound Multiple Listing Service, Docket C-3300 (Aug. 2, 1990).

² Bellingham-Whatcom County Multiple Listing Service, Docket C-3299 (Aug. 2, 1990).

³ I dissented from these prohibitions, on the grounds that the rules did not affect the level of commissions, did not mandate the division of commissions and applied only when the listing broker failed to specify a split. *See* Separate Statement of Commissioner Mary L. Azcuenaga, Concurring in Part and Dissenting in Part in Puget Sound and Bellingham-Whatcom.

IN THE MATTER OF

DETROIT AUTO DEALERS ASSOCIATION, INC., ET AL.

Docket 9189. Interlocutory Order Sept. 28, 1993

ORDER

Counsel for the Ford Motor and Volkswagen respondents have moved that the complaint against three respondents be dismissed and their names be removed from the order of February 22, 1989. The assets of Sterling Motors, Inc. were sold, and the dealership franchise was terminated. The sale was to an unrelated buyer, and the sellers retained no interest in the dealership or assets. One individual respondent, William Hickey, is deceased. McAlister Motors, Inc. operated a Volkswagen and Toyota dealership. The Volkswagen franchise was abandoned and terminated. The Toyota assets and Toyota franchise, however, were sold to Audette Toyota. Complaint counsel do not oppose the motion.

The Commission has considered the motion and determined to grant it as to Mr. Hickey and Sterling Motors, Inc. Accordingly,

It is ordered, That the complaint against Mr. Hickey and Sterling Motors, Inc. be and hereby is dismissed.

It is further ordered, That the order of February 22, 1989, of the Commission be and hereby is modified to delete their names.

It is further ordered, That respondent McAlister Motors, Inc. be and hereby is directed to file further information concerning whether Audette Toyota is a successor or assign within the meaning of the definition of a "Dealership and Individual Respondent" in the order of February 22, 1989.

IN THE MATTER OF
SYNCHRONAL CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
POSTAL REORGANIZATION ACT AND SECS. 5 AND 12 OF
THE FEDERAL TRADE COMMISSION ACT

Docket 9251. Complaint, Oct. 28, 1991--Decision, Oct. 1, 1993

This consent order prohibits, among other things, a New York-based infomercial company, two of its former officers, and several other respondents from making any unsubstantiated claims for a number of different types of products; from disseminating the two infomercials for a purported baldness cure and a cellulite treatment; and from misrepresenting the results of any tests or studies used for marketing any product or service. In addition, the consent order requires Synchronal to pay \$3.5 million into a consumer redress fund, and requires Ira Smolev, a former officer, to maintain a \$500,000 escrow account before advertising various consumer products.

Appearances

For the Commission: *Richard Cleland, Michael J. Bloom and Lesley Fair.*

For the respondents: *William Wachtel*, in-house counsel for Synchronal Corporation, New York, N.Y. *Michael Lasky, Davis & Gilbert*, New York, N.Y. and *Helene Jaffe, Weil, Gotshal & Manges*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation, corporations; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; Richard E. Kaylor, individually and as an officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and

Omexin Corporation; Thomas L. Fenton, individually and as an officer and director of Synchronal Corporation and Synchronal Group, Inc.; and Ana Blau a/k/a Anushka, and Steven Victor, M.D., individually, hereinafter sometimes referred to as respondents, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Synchronal Corporation is a Delaware corporation, with its offices and principal place of business at 1515 Broadway, New York, New York. Synchronal produces, distributes, and provides various services for numerous program-length television advertisements, or “infomercials,” on its own behalf or for third-party sellers of products and services. These infomercials include “Cellulite Free: Straight Talk with Erin Gray” for the Anushka Bio-Response Body Contouring Program (“the Anushka products”), a purported cellulite treatment; and “Can You Beat Baldness?” for Omexin, a purported treatment for hair loss. Synchronal has also sold various products through telephone solicitations, including Chae Basics, a purported skin treatment.

Respondent Synchronal Group, Inc. (“Synchronal Group”), is a Delaware corporation, with its offices and principal place of business at 1515 Broadway, New York, New York. Synchronal Group is the holding company for Synchronal Corporation.

Respondent Smoothline Corporation is a Delaware corporation, with its offices and principal place of business at 171 Mariner Drive, Southampton, New York. It has advertised, offered for sale, and sold the Anushka products.

Respondent Omexin Corporation is a Delaware corporation, with its offices and principal place of business at 171 Mariner Drive, Southampton, New York. It has advertised, offered for sale, and sold Omexin.

Respondent Ira Smolev (“Smolev”) is or was at relevant times herein an officer and director of Synchronal Corporation and Synchronal Group. Individually or in concert with others, he has formulated, directed, and controlled the acts and practices of

Synchronal Corporation and Synchronal Group. His home address is 120 Meadow Lane, Southampton, New York.

Respondent Richard E. Kaylor (“Kaylor”) is or was at relevant times herein an officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation. Individually or in concert with others, he has formulated, directed, and controlled the acts and practices of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation. His business address is 1515 Broadway, New York, New York.

Respondent Thomas L. Fenton (“Fenton”) is or was at relevant times herein an officer and director of Synchronal Corporation and Synchronal Group. Individually or in concert with others, he has formulated, directed, and controlled the acts and practices of Synchronal Corporation and Synchronal Group. His business address is 1515 Broadway, New York, New York.

Respondent Ana Blau a/k/a Anushka (“Blau”) is or was at relevant times herein the founder and co-owner of the Anushka Institute. Blau’s business address is 241 East 60th Street, New York, New York. Blau aided in the promotion of the Anushka products by providing an expert endorsement of the product on the “Cellulite Free: Straight Talk with Erin Gray” infomercial. In return for her role in marketing the Anushka products, Blau has received remuneration from the manufacturer and/or distributor of the product.

Respondent Steven Victor, M.D. (“Victor”) is or was at relevant times herein a medical doctor licensed to practice by the State of New York, with a specialty in dermatology. Victor’s business address is 30 East 76th Street, New York, New York. Victor aided in the promotion of Omexin by providing an expert endorsement of the product on the “Can You Beat Baldness?” infomercial. In return for his role in marketing Omexin, Victor has received remuneration from the manufacturer and/or distributor of the product.

The aforementioned respondents cooperated and acted together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents have manufactured, advertised, offered for sale, sold, and distributed the Anushka products, Omexin, and Chae Basics. These products are foods, cosmetics, and/or drugs, as the terms “food,” “cosmetic” and “drug” are defined in Sections 5, 12 and 15 of the Federal Trade Commission Act .

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

THE ANUSHKA PRODUCTS

PAR. 4. Respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, Kaylor, and Fenton have disseminated or have caused to be disseminated advertisements and promotional materials for the Anushka products, including but not necessarily limited to the attached Exhibit A, a transcription of the infomercial entitled “Cellulite Free: Straight Talk with Erin Gray.” The aforesaid advertisement contains the following statements:

1. Narrator: “The skin is massaged with our body contouring gel which has ingredients like our specially processed French seaweed formula with its unique beneficial properties that really penetrates the skin into the cellulite layer. You can actually feel the gel working as it penetrates into the cellulite. And in days our clients are on their way to being cellulite-free, even after years of living with cellulite.” (Exhibit A, p. 8]

2. Vicki: “After the first treatment I was hooked. I really saw a difference immediately. So I did exactly what Anushka told me to do and the cellulite came off rapidly. Each week my hips and thighs looked better. Within six weeks it was all gone. You know, I should also mention that I lost nine pounds and a couple of inches off my hips and thighs.” [Exhibit A, p. 10]

3. Gray: “Many doctors and others in the medical profession are enthusiastic about the Anushka program. . .” [Exhibit A, p. 13]

4. Woman: “Within four weeks I lost inches off my thighs and my thighs looked smoother and firmer. Within six weeks the cellulite was gone.” [Exhibit A, p. 30]

5. Woman: “Well, within three months I had not only lost all of my cellulite but I also lost about four inches from my hips and thighs. I lost fifteen pounds and a full dress size.” (Exhibit A, p. 29]

6. Announcer: "Now, here's how you can order the really proven way to get rid of cellulite. Just pick up your phone, dial this number and order Anushka's five-and-a-half-minute bio-response body contouring program right now. Imagine opening your package from Anushka and realizing you are on your way to ridding your body of ugly cellulite. In only minutes a day a few days a week . . . After the first treatment you'll begin to see a difference. You'll be well on your way to a cellulite-free body." [Exhibit A, pp. 18-19, 30-31]

Announcer: "Step one, you massage the unique body contour and seaweed gel which penetrates the open pores of the skin to start attacking those ugly cellulite pockets from the very first treatment. In minutes you'll feel the seaweed at work. The second step is to take cellulase enzymes to help your body metabolize carbohydrates and help you with your body contouring program. The third step is to apply your Anushka body firming lotion to firm the skin with its deep penetrating action. . . . Call now so you can start the Anushka body contouring program working for you. Get rid of those ugly cellulite pockets once and for all." [Exhibit A, pp. 19-20, 31-32]

7. Marie: "I was very impressed by Anushka's clients because they verified the claims. Also the extensive client charts that showed the proof with numbers, with statistics. And the experts, medical and otherwise that backed up what she was saying. And one thing that is very surprising and I was very, very impressed by it is that one of the key ingredients in her treatment is something as simple as seaweed."

Gray: "Well, tell us, Anushka, is this ordinary seaweed?"

Anushka: "Absolutely not. We use a very special seaweed. And one of the people we turned to for this seaweed is a leading researcher in marine biology. And he is here with us today to help explain how seaweed works to help get rid of cellulite. . . ."

Gray: "Now tell us, how is it that seaweed effects cellulite?"

Fryda: "Well, I think this diagram will help make it clear. These are cellulite cells with their trapped toxins surrounded by tough connective tissue. Now with cellulite cells the hardened connective tissue won't let these nutrients get to the cells so the trapped toxins cannot be neutralized and taken away There are other effective ingredients in Anushka's anti-cellulite gel. But seaweed is a key to its success. It's one reason why it's the most powerful anti-cellulite program ever developed." [Exhibit A, pp. 25-27]

8. Anushka: "Well, let me tell you that in the course of my research I finally found the combination which worked to make my cellulite disappear. And I was the happiest woman on earth. Needless to say. So that is what made me decide to start with the Anushka Institute so other women could benefit from our discovery." [Exhibit A, p. 6]

9. Anushka: "Many of our clients wanted to share the treatments with friends who lived outside New York They urged us to develop a program that

could be used at home. We insisted it be both easy to use and at the same time completely effective so their friends could get the same results." [Exhibit A, p. 9]

10. Anushka: "I am so certain that my anti-cellulite program will work for you as well as it has for thousands of my clients that I will return to you every penny you spend for the program if you're not completely satisfied." [Exhibit A, pp. 21, 32-33]

11. Anushka: "And remember you did not do anything to make cellulite appear, but now you can make it disappear." [Exhibit A, p. 21]

PAR. 5. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, Kaylor, and Fenton have represented, directly or by implication, that:

A. The Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets contain ingredients that substantially reduce or eliminate cellulite from the body.

B. Users of the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream and Cellulean tablets will achieve a visible reduction in cellulite after a single or a few treatments.

C. Use of the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream and Cellulean tablets will cause a substantial reduction in the size of the hips and thighs.

D. Use of the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream and Cellulean tablets will cause the loss of a substantial amount of weight.

E. For thousands of women, the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets have substantially reduced or eliminated cellulite from the body.

PAR. 6. In truth and in fact:

A. The Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets do not contain ingredients that substantially reduce or eliminate cellulite from the body.

B. Users of the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream and Cellulean tablets will not achieve a visible reduction in cellulite after a single or a few treatments.

C. Use of the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream and Cellulean tablets will not cause a substantial reduction in the size of the hips and thighs.

D. Use of the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream and Cellulean tablets will not cause the loss of a substantial amount of weight.

E. For thousands of women, Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets have not substantially reduced or eliminated cellulite from the body.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, Kaylor, and Fenton have represented, directly or by implication, that at the time they made the representations set forth in paragraph five, they possessed and relied upon a reasonable basis for such representations.

PAR. 8. In truth and in fact, at the time they made the representations set forth in paragraph five, respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, Kaylor, and Fenton did not possess and rely upon a reasonable basis for such representations. Therefore, respondents' representation as set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Respondent Blau has made statements as an expert endorser in advertisements and promotional materials for the Anushka products, including but not necessarily limited to the attached Exhibit A. These statements include the following:

1. Anushka: "Well, let me tell you that in the course of my research I finally found the combination which worked to make my cellulite disappear. And I was the happiest woman on earth. Needless to say. So that is what made me decide to start with the Anushka Institute so other women could benefit from our discovery." [Exhibit A, p. 6]

2. Anushka: "Many of our clients wanted to share the treatments with friends who lived outside New York They urged us to develop a program that could be used at home. We insisted it be both easy to use and at the same time completely effective so their friends could get the same results." [Exhibit A, p. 9]

3. Anushka: "I am so certain that my anti-cellulite program will work for you as well as it has for thousands of my clients that I will return to you every penny you spend for the program if you're not completely satisfied." [Exhibit A, pp. 21, 32-33]

4. Anushka: "And remember you did not do anything to make cellulite appear, but now you can make it disappear." [Exhibit A, p. 21]

5. Anushka: "We use a very special seaweed. And one of the people we turned to for this seaweed is a leading researcher in marine biology. And he is here with us today to help explain how seaweed works to help get rid of cellulite." [Exhibit A, p. 26]

6. Anushka: "Remember, it's not your fault you have cellulite. Just say to yourself, I don't have to put up with it anymore because now I know what to do. I did it. You can do it too." [Exhibit A, p. 34]

PAR. 10. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph nine, including but not necessarily limited to the advertisement attached as Exhibit A, respondent Blau has represented, directly or by implication, that:

A. The Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets contain ingredients that substantially reduce or eliminate cellulite from the body.

B. For thousands of women, the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets have substantially reduced or eliminated cellulite from the body.

PAR. 11. In truth and in fact:

A. The Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets do not contain ingredients that substantially reduce or eliminate cellulite from the body.

B. For thousands of women, the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets have not substantially reduced or eliminated cellulite from the body.

Therefore, the representations set forth in paragraph ten were, and are, false and misleading, and respondent Blau knew or should have known that said representations were, and are, false and misleading.

PAR. 12. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph nine, including but not necessarily limited to the advertisement attached as Exhibit A, respondent Blau has represented, directly or by implication, that at the time she made the representations set forth in paragraph ten, she possessed and relied upon a reasonable basis for such representations, consisting of an actual exercise of her represented expertise in cellulite reduction, in the form of an examination or testing of the Anushka products at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the endorsement.

PAR. 13. In truth and in fact, at the time she made the representations set forth in paragraph ten, respondent Blau did not possess and rely upon a reasonable basis for such representations. Therefore, respondent Blau's representation as set forth in paragraph twelve was, and is, false and misleading.

OMEXIN

PAR. 14. Respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, Kaylor, and Fenton have disseminated or have caused to be disseminated advertisements and promotional materials for Omexin, including but not necessarily limited to the attached Exhibit B, a transcription of the infomercial entitled "Can You Beat Baldness?". The aforesaid advertisement contains the following statements and depictions:

1. Announcer: "The following program will give you news of a product unlike anything else available anywhere for stopping hair loss and actually reversing balding by growing new hair." [Exhibit B, p. 2]

2. John Hylan: "Well, our research is still going on, but, it has gone far enough to show that Omexin works. We know that Omexin really does stop hair loss and does grow hair back." [Exhibit B, P. 7]

3. Announcer: "Omexin has been scrupulously tested by dermatologists, and clinicians, and by thousands of grateful individuals. The test results and the personal stories speak for themselves." [Exhibit B, p. 14]

4. Announcer: "The answer couldn't have been simpler. The Omexin System is based on the Omexin Active Treatment, a fine white cream which you simply massage into the affected areas daily." [Exhibit B, p. 15]

5. Announcer: "Omexin works for the vast majority of people." [Exhibit B, p. 16]

6. Campanella: "It reportedly has stopped the balding process in a high percentage of test subjects and even re-grown healthy new hair for a large number of men and women of all ages." [Exhibit B, p. 17]

7. Campanella: "What are your initial impressions of Omexin?"

Dr. Victor: "[In] Omexin, we have for men and women a new safe product that they can apply that will stop the hair from falling out, and in a fair number of patients, probably up to 70%, will start growing some new hair." [Exhibit B, p. 9]

8. Campanella: "Dr. Wexler, what about your research?"

Dr. Wexler: "We have patients in both a double-blind study and using what we consider to be a very active ingredient, and what we've seen is that patients are ceasing to lose their hair very quickly within starting Omexin and then within a short time after, they start seeing new hair appear. It's not just a fuzz, we're seeing actual pigmented terminal hair, which is very exciting for the patient as well as the doctor." [Exhibit B, p. 10]

9. Hylan: "Now, we don't know if that's the reason Omexin grows hair, but we sure do know that it does."

Campanella: "And can you prove that?"

Hylan: "Absolutely! To prove that Omexin works, we've done thorough, extensive testing using medically sound methods and applying the highest scientific standards." [Exhibit B, p. 7]

PAR. 15. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph fourteen, including but not necessarily limited to the advertisement attached as Exhibit B, respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, Kaylor, and Fenton have represented, directly or by implication, that:

A. Omexin contains an ingredient that curtails hair loss for a large majority of balding men and women.

B. Omexin contains an ingredient that promotes the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of balding men and women.

C. Omexin contains an ingredient that has been scientifically proven to curtail hair loss for a large majority of balding men and women.

D. Omexin contains an ingredient that has been scientifically proven to promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of balding men and women.

E. Omexin has successfully curtailed hair loss and promoted new hair growth for thousands of balding men and women.

PAR. 16. In truth and in fact:

A. Omexin does not contain an ingredient that curtails hair loss for a large majority of balding men and women.

B. Omexin does not contain an ingredient that promotes the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of balding men and women.

C. Omexin does not contain an ingredient that has been scientifically proven to curtail hair loss for a large majority of balding men and women.

D. Omexin does not contain an ingredient that has been scientifically proven to promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost.

E. Omexin has not successfully curtailed hair loss and promoted new hair growth for thousands of balding men and women.

Therefore, the representations set forth in paragraph fifteen were, and are, false and misleading.

PAR. 17. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph fourteen, including but not necessarily limited to the advertisement attached as Exhibit B, respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, Kaylor, and Fenton have represented directly or by implication, that at the time they made the representations set forth in paragraph fifteen, they possessed and relied upon a reasonable basis for such representations.

PAR. 18. In truth and in fact, at the time they made the representations set forth in paragraph fifteen, respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, Kaylor, and Fenton did not possess and rely upon a reasonable basis for such representations. Therefore, respondents' representation as set forth in paragraph seventeen was, and is, false and misleading.

PAR. 19. Respondent Victor has made statements as an expert endorser in advertisements and promotional materials for Omexin, including but not necessarily limited to the attached Exhibit B. These statements include the following:

1. Dr. Victor: "Then, on the other side of the coin, we have very controlled scientific studies. We have 2 groups. We actually take the men who are bald. We tattoo their scalp and we have them apply the Omexin in the balding area every day, twice a day. Now, every month they come back and we count the number of hairs that grow in the area where we tattooed their scalp. . . So far the studies have shown that these men are growing new hair." [Exhibit B, pp. 8-9]

2. Dr. Victor: “. . . basically, the majority of patients get a good result within 3 weeks.” [Exhibit B, p. 11]

3. Dr. Victor: “Now, Omexin is a product that can stop hair loss and grow hair for a vast majority of people.” [Exhibit B, p. 19]

4. Dr. Victor: “What is particularly good about Omexin, for a man or a woman in their 30’s or 20’s, with just beginning to thin. If they start using the product religiously, they can stop the hair from falling out. And they can retain the hair they have and remain that way for the rest of their lives.” [Exhibit B, p. 20]

5. Dr. Victor: “I think in Omexin, we have for men and women, a new safe product they can apply that will stop the hair from falling out, and in a fair number of patients, probably up to 70%, will start growing some new hair.” [Exhibit B, p. 20]

PAR. 20. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph nineteen, including but not necessarily limited to the advertisement attached as Exhibit B, respondent Victor has represented, directly or by implication, that:

A. Omexin contains an ingredient that curtails hair loss for a large majority of balding men and women.

B. Omexin contains an ingredient that promotes the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of balding men and women.

C. Omexin contains an ingredient that has been scientifically proven to curtail hair loss for a large majority of balding men and women.

D. Omexin contains an ingredient that has been scientifically proven to promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost in a large majority of balding men and women.

PAR. 21. In truth and in fact:

A. Omexin does not contain an ingredient that curtails hair loss for a large majority of balding men and women.

B. Omexin does not contain an ingredient that promotes the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of balding men and women.

C. Omexin does not contain an ingredient that has been scientifically proven to curtail hair loss for a large majority of balding men and women.

D. Omexin does not contain an ingredient that has been scientifically proven to promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of balding men and women.

Therefore, the representations set forth in paragraph twenty were, and are, false and misleading, and respondent Victor knew or should have known that said representations were, and are, false and misleading.

PAR. 22. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph nineteen, including but not necessarily limited to the advertisement attached as Exhibit B, respondent Victor has represented, directly or by implication, that at the time he made the representations set forth in paragraph twenty, he possessed and relied upon a reasonable basis for such representations, consisting of an actual exercise of his represented expertise in the treatment of hair loss, in the form of an examination or testing of Omexin at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the endorsement.

PAR. 23. In truth and in fact, at the time he made the representations set forth in paragraph twenty, respondent Victor did not possess and rely upon a reasonable basis for such representations. Therefore, respondent Victor's representation as set forth in paragraph twenty-two was, and is, false and misleading.

DECEPTIVE FORMAT

PAR. 24. Through the advertising and dissemination of "Cellulite Free: Straight Talk with Erin Gray," respondents Syn-

chronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, Kaylor, and Fenton have represented, directly or by implication, that “Cellulite Free: Straight Talk with Erin Gray” is an independent television program and is not paid commercial advertising.

PAR. 25. In truth and in fact, “Cellulite Free: Straight Talk with Erin Gray” is not an independent television program and is paid commercial advertising. Therefore, the representation set forth in paragraph twenty-four was, and is, false and misleading.

PAR. 26. Through the advertising and dissemination of “Can You Beat Baldness?” respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, Kaylor, and Fenton have represented, directly or by implication, that “Can You Beat Baldness?” is an independent television program and is not paid commercial advertising.

PAR. 27. In truth and in fact, “Can You Beat Baldness?” is not an independent television program and is paid commercial advertising. Therefore, the representation set forth in paragraph twenty-six was, and is, false and misleading.

CONSUMER TESTIMONIALS

PAR. 28. Through the advertising and dissemination of “Cellulite Free: Straight Talk with Erin Gray,” respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, Kaylor, and Fenton, in numerous instances have represented, directly or by implication, that testimonials from consumers appearing in advertisements for the Anushka products reflect the typical or ordinary experience of members of the public who have used the products.

PAR. 29. In truth and in fact, in numerous instances, testimonials from consumers appearing in advertisements for the Anushka products do not reflect the typical or ordinary experience of members of the public who have used the products. Therefore, the representation set forth in paragraph twenty-eight was, and is, false and misleading.

PAR. 30. Through the advertising and dissemination of "Can You Beat Baldness?" respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, Kaylor, and Fenton, in numerous instances have represented, directly or by implication, that testimonials from consumers appearing in advertisements for Omexin reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 31. In truth and in fact, in numerous instances, testimonials from consumers appearing in advertisements for Omexin do not reflect the typical or ordinary experience of members of the public who have used the product. Therefore, the representation set forth in paragraph thirty was, and is, false and misleading.

AUTOMATIC SHIPMENT AND UNORDERED MERCHANDISE

PAR. 32. In the advertising and sale of the Anushka products, respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, Kaylor, and Fenton have in numerous instances shipped without consumers' express consent additional supplies of these products to consumers who ordered an initial supply, and have billed consumers' credit card accounts for these additional shipments without the consumers' knowledge and authorization. Respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, Kaylor, and Fenton did not adequately disclose to those consumers prior to their initial purchase that additional products would be shipped to them and that the consumers would be billed for them. Respondents' practices as set forth herein have caused substantial injury to consumers that is not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers, and constitute unfair and deceptive acts and practices.

PAR. 33. By and through the acts and practices alleged in paragraph thirty-two, respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, Kaylor, and Fenton have mailed or caused to be mailed supplies of the Anushka products to consumers without the expressed request or consent of

the recipient without having attached to the products a clear and conspicuous statement that the recipient may treat the products as a gift and has the right to retain, use, discard, or dispose of them in any manner the recipient sees fit without any obligation to the respondent. Respondents' practices as set forth herein have caused substantial injury to consumers that is not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers, and constitute unfair and deceptive acts or practices.

PAR. 34. In the advertising and sale of Omexin, respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, Kaylor, and Fenton have in numerous instances shipped without consumers' express consent additional supplies of these products to consumers who ordered an initial supply, and have billed consumers' credit card accounts for these additional shipments without the consumers' knowledge and authorization. Respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, Kaylor, and Fenton did not adequately disclose to those consumers prior to their initial purchase that additional products would be shipped to them and that the consumers would be billed for them. Respondents' practices as set forth herein have caused substantial injury to consumers that is not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers, and constitute unfair and deceptive acts and practices.

PAR. 35. By and through the acts and practices alleged in paragraph thirty-four, respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, Kaylor, and Fenton have mailed or caused to be mailed supplies of Omexin to consumers without the expressed request or consent of the recipient without having attached to the products a clear and conspicuous statement that the recipient may treat the products as a gift and has the right to retain, use, discard, or dispose of them in any manner the recipient sees fit without any obligation to the respondent. Respondents' practices as set forth herein have caused substantial injury to consumers that is not outweighed by any countervailing

benefits to consumers or competition and is not reasonably avoidable by consumers, and constitute unfair and deceptive acts or practices.

PAR. 36. Respondents Synchronal Corporation, Synchronal Group, Smolev, Kaylor, and Fenton have promoted, offered for sale, and sold Chae Basics through telephone solicitations of consumers identified from their purchases of other products sold through advertisements produced or disseminated by Synchronal Corporation or Synchronal Group. In numerous instances in the course of these telephone solicitations, respondents' agents have represented, directly or by implication, that consumers would be sent a free supply of Chae Basics.

PAR. 37. In truth and in fact, in numerous instances the supply of Chae Basics sent to consumers as described in paragraph thirty-six was not free, in that consumers' credit card accounts were billed a charge for the product. Therefore, the representations set forth in paragraph thirty-six were, and are, false and misleading.

PAR. 38. In the solicitation of orders by telephone of Chae Basics, respondents Synchronal Corporation, Synchronal Group, Smolev, Kaylor, and Fenton have in numerous instances billed the credit card accounts of consumers who agreed to the receipt of a supply of the product that was represented as free, have automatically shipped additional supplies of the product to consumers without their express consent, and have automatically billed consumers' credit card accounts for these latter shipments without the consumers' express knowledge and authorization. Respondents Synchronal Corporation, Synchronal Group, Smolev, Kaylor, and Fenton did not adequately disclose to those consumers prior to their initial purchase that additional products would be shipped to them and that the consumers would be billed for them. The practices of respondents Synchronal Corporation, Synchronal Group, Smolev, Kaylor, and Fenton as set forth herein have caused substantial injury to consumers that is not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers, and constitute unfair and deceptive acts or practices.

PAR. 39. By and through the acts and practices alleged in paragraph thirty-eight, respondents Synchronal Corporation, Synchronal Group, Smolev, Kaylor, and Fenton have mailed or caused to be mailed supplies of Chae Basics to consumers without the expressed request or consent of the recipient without having attached to the products a clear and conspicuous statement that the recipient may treat the products as a gift and has the right to retain, use, discard, or dispose of them in any manner the recipient sees fit without any obligation to the respondent. Respondents' practices as set forth herein have caused substantial injury to consumers that is not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers, and constitute unfair and deceptive acts or practices.

PAR. 40. By and through the acts and practices alleged in this complaint, respondents have violated Sections 5(a) and 12 of the Federal Trade Commission Act and the provisions of the Postal Reorganization Act, 39 U.S.C. 3009, by directly or indirectly engaging in unfair or deceptive acts or practices, by disseminating false advertisements in or affecting commerce, and by acting in concert with others, or knowingly and substantially assisting others to employ the violations set forth above by providing the means and instrumentalities for the commission of such unfair or deceptive acts or practices.

EXHIBIT A

Media Transcripts, Inc.
41 West 83rd Street, New York, N.Y. 10024.
(212) 362-1481
FAX 799-3482

FOR: SYNCHRONAL
1515 Broadway
NYC 10036

PROGRAM: INTERNATIONAL PROJECT STATION
ANUSKA: Free From Cellulite

DATE: CITY

WOMAN: This woman has conquered a hidden problem that nine out of ten women suffer from. The problem is Cellulite. Stay with us as we share the secrets, answer the questions and shed new light on this fat condition that distorts the hips and tights of millions of woman across America.

In the next thirty minutes we're going to explore the cellulite controversy. You'll visit a leading cellulite treatment center in New York, the Anuska Institute. And you'll hear from doctors, authors, experts and people who have successfully conquered their cellulite. Now, Straight Talk with Erin Grey.

(MUSIC)

(APPLAUSE)

ERIN GREY: Hi, I'm Erin Grey and welcome to Straight Talk. Before we hear about the Anuska Institute's discovery. And before we hear doctors and experts talking about the Anuska Institute's anti-cellulite program, before we meet Anuska herself, I want to share with you the part that interests me the most. The real inside stories of women who claim to know the secret of how to have cellulite-free bodies.

(APPLAUSE)

WOMAN: I tried anything and everything I could to get rid of my cellulite and nothing every worked. I mean, I thought it was absolutely hopeless. Then I happened to see an article in GLAMOUR about cellulite. It mentioned Anuska's institute. And since I live here in New York I thought I would try it. The first time I did the program I didn't notice anything except the way it made me feel. So I tried it a couple more times. And by the fourth day I really saw a difference in the mirror. My tights looked shaplier and firmer and my skin was much smoother. I feel even better about Anuska's program. But I feel even better about the way I feel about myself and the way I look.

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Complaint

(APPLAUSE)

WOMAN: When I discovered I was pregnant I got worried. Because my mother had always told me that she developed cellulite after I was born. And sure enough, after I was born. And sure enough, after my baby was born I saw my first signs of cellulite. One day I noticed an article on cellulite in a magazine. I read it. And it mentioned Anuska's. I made an appointment and after about a month by cellulite was gone.

(APPLAUSE)

GREY: And now I'd like you to meet the woman who wouldn't take no for an answer where people told her that there was no way to get rid of cellulite. Anuska.

(APPLAUSE)

ANUSKA: Thank you. Thank you. Thank you very much.

GREY: All right already. They certainly seem to love you. Now it makes me curious to find out why. So tell me, how did you get started discovering or get started on your way to discovering or get started on your way to discovering your anti-cellulite program?

ANUSKA: Really, I did it for myself. In my early twenties I developed cellulite. On my buttocks, on the back of my legs and on my thighs. I was devastated.

GREY: Oh, I know.

ANUSKA: No matter how much I dieted. I starved myself. And exercised until I had no more strength. It would not go away.

GREY: Oh, I know. I've been there.

(LAUGHS)

ANUSKA: So you know what I'm saying.

GREY: Yeah, I do.

ANUSKA: I even went to doctors who told me there was no such a thing as cellulite.

GREY: You're kidding.

ANUSKA: Would you imagine? When I pointed to that stuff on my body they said they couldn't do anything about it.

GREY: Uh-huh.

ANUSKA: And I could vividly remember one patted me in the back and said, but darling, you are so cute and you have such a wonderful husband. And why should you worry about it? This made me so angry.

GREY: Oh, good.

ANUSKA: So furious. And determined to find the answer to get rid of it.

GREY: Oh, great. Thank goodness for the doctor. So what did you do?

ANUSKA: Well, let me tell you that in the course of my research I finally found the combination which worked to make my cellulite disappear. And I was the happiest woman on earth. Needless to say So that is what made ... made me

decide to start with the Anuska Institute. So other women could benefit from our discovery.

GREY: Oh, yes. Now, tell me honestly. Does . . . does that mean that you don't have any cellulite?

ANUSKA: Now? Not anymore.

GREY: Honest?

ANUSKA: Honest.

GREY: Just between us.

ANUSKA: Between the two of us. No more cellulite. That's great. Isn't that wonderful?

(APPLAUSE)

Well, I think this would be the perfect time to take a look at that video that you prepared for us.

NARRATOR: First, Anuska discusses a client's figure flaws and goals and shows them how the treatment works, being careful to explain every step and assure them all the products they will be using are safe and natural. And Anuska explains how here clients receive an initial four-week supply. And how after that they'll receive a sixty day supply automatically every other month unless they notify us to stop. There are several key elements to the program. But now let's focus in on the important contouring gel and message. The skin is massaged with our body contouring gel which has ingredients like our specially processed French seaweed formula with its unique beneficial properties that really penetrates the skin into the cellulite layer. You can actually feel the gel working as it penetrates into the cellulite. And in days our clients are on their way to being cellulite free, even after years of living with cellulite.

(APPLAUSE)

GREY: Wow. Well, tell me about the Anuska anti-cellulite program that you can use at home. I mean how can you accomplish at home what you do at the institute?

ANUSKA: Well, they are virtually the same. In the institute we apply the treatment. At home you do it yourself. Which is less expensive because you don't have to help us pay the high New York rent.

GREY: Right.

ANUSKA: Many of our clients wanted to share the treatments with friends who lived outside New York.

GREY: Mmm-hmm.

ANUSKA: They urged us to develop a program that could be used at home. We insisted it be both easy to use and at the same time completely effective. So their friends could get the same results.

GREY: Now, we have a woman in the audience who said she used the Anuska home anti-cellulite program. Vicki, could you please stand up and tell us your story?

(APPLAUSE)

VICKI: After the first treatment I was hooked. I really saw a difference immediately. So I did exactly what Anuska told me to do and the cellulite came off rapidly. Each week my hips and thighs looked better. Within six weeks it was all gone. And I knew I was looking good because I do a of work at my church and one of the women there came up to me and said, Vicki, you look great. What are you doing? I told her about Anuska's anti-cellulite program because I was really proud of myself for doing something to get back in shape. You know, I should also mention that I lost nine pounds and a couple of inches off my hips and thighs. And I feel great. And if I can judge by my friends I'm not looking bad either.

(APPLAUSE)

ANUSKA: Now, let me show you my new an exciting home video that brings seventeen years of Anuska's secrets into the privacy of your own home. So you can pamper yourself at your leisure. The videotape explains our massage technique and includes great tips on exercise and nutrition.

NARRATOR: First you prepare the skin and the target areas by stimulating it while the skin is dry. You can use a washcloth or a Lufa or a massage brush. You rub the contouring gel into the target areas you've selected with the same circular motions you use to stimulate the Skin. You will immediately begin feeling the gel working. After the skin is stimulated you apply the firming lotion.

And immediately afterwards the multi-revitalizing cream. The third part of the Anuska bio-response body contouring program is the easiest of all. You simply take two celluline tablets after the two main meals of your day.

(APPLAUSE)

GREY: I know many of you must be wondering whether plastic surgery is a solution to the cellulite problem. After all, liposuction is now the number one procedure performed by plastic surgeons. And liposuction deals specifically with fat. Now, let's meet Dr. Robert Schwager, a prominent plastic surgeon we interviewed here at his Fifth Avenue office in New York. He had some very interesting comments on liposuction.

DR.. SCHWAGER: The liposuction can remove the deep layer of fat. But what we have to avoid doing is getting too close to the skin. Otherwise, rather than make the cellulite appear and the skin look better it can actually look worse. After liposuction I needed a place that would be suitable to apply the deep massage necessary to smooth out the superficial fat or cellulite, as you've described. I spoke to colleagues who recommended the Anuska Institute. And since then I've had the opportunity to send many patients there, all of whom have had excellent things to say. As you can see, with this photograph I have some patients that had an opportunity to undergo my liposuction followed by the Anuska program. And you can see from the picture on the left that there's certainly a significant difference in this patient before surgery or pre-operatively, as you can see afterwards. I think the combination of my liposuction and the Anuska Institute's program has certainly produced results superior to those by liposuction alone.

GREY: Many doctors and others in the medical community are enthusiastic about the Anuska program. So we went to the office of Dr. Robert Sasoon, a leading obstetrician.

DR. SASOON: As an obstetrician I see women with a variety of problems. And I can honestly say that cellulite is not probably one of the more serious problems I see on a day to day basis. But I have . . . do have some patients who are models and actresses who can't afford to have a cellulite problem. As a result of pregnancy often, women will have cellulite. And they're very concerned about this.

GREY: As Dr. Sasoon noted, models are people who can't afford to have cellulite. Most women only have to face a mirror. Models have to face the unforgiving eye of the camera. Dr. Sasoon thought you'd like to meet a model who has used the Anuska program. So it's a pleasure to introduce to you a former Miss Kentucky who is now a New York model, Lyda Lewis.

(APPLAUSE)

GREY: Welcome, welcome. My dear, you are so thin and young that you couldn't possibly have cellulite lumps.

LEWIS: I don't anymore.

GREY: Ah.

LEWIS: But it doesn't matter how thin you are. It's a problem that affects almost every women I know. You'd be surprised how many models are hiding a cellulite problem under their high fashion clothes.

GREY: Really? Now tell me, when did you begin to have a problem?

LEWIS: Well, when I won the Miss Kentucky title I was in great shape. And afterwards I continued dancing to stay that way. I thought cellulite was something that only happened to you when you got a lot older. But years before I expected it to happen, I got it. Fortunately one of the models I knew had had the same problem. She told me there was only one way to handle it. Get over to the Anuska Institute as fast as I could. That's on nice thing about being a model. We share our secrets with each other.

GREY: Ah. that's nice. So you did the program at the Institute.

LEWIS: Well, the day I was supposed to start the program at the institute I got an assignment out of town. Anuska told me that I could take her anti-cellulite program with me. I was concerned about whether I would get the same results as my friend if I did it myself. But here I am, living proof that you don't have to go to the Anuska Institute to use Anuska's anti-cellulite program. It's so easy. It worked for me in a hotel room.

GREY: Well, that's great. Well, thank you very much, Lyda, for sharing that with us. And it's reassuring to find out that even beauty contest winners have struggled with the same beauty problems that we all have. I mean, we're certainly not all fashion models. In fact, most of us are busy juggling career and home responsibilities. So why don't we speak to Linda Marshall who is from the heart of the midwest. Linda?

(APPLAUSE)

LINDA: I'm from Madison, Wisconsin. And I've always felt it was important to take care of your . . . body and the way you looked. And it isn't easy when you have small children and family and PTA and cub scouts. But it's easy compared to what happens to us after we hit our forties. My search for a cellulite program goes back a million years. In fact, I'll never forget one day when my sons were very little and we were walking down the beach and my young son came up behind me and he said, what's this cellulite behind you? The horror of that moment. I then began looking for everything on the market and I've tried everything on the market trying to find something that would, in fact, make a difference. Nothing worked. Then one day I day I Andruska (sic) on the Regis Philbin Show and I thought why not try it? So I called and ordered the at-home anti-cellulite program and I started using the products. I was so excited one day when I looked in the mirror and I could actually see a difference. It was one of the greatest moments in my life. I think it's absolutely terrific.

(APPLAUSE)

GREY: Please stay with us to find out what leading beauty experts think about getting rid of cellulite. And find out how one author investigated Anuska.

ANNOUNCER: Now, here's how you can order the really proven way to get rid of you (sic) cellulite. Just pick up your phone, dial this number and order Anuska's five and a half minute bio-response body contouring program right now. Imagine opening your package from Anuska and realizing you are on your way to ridding you (sic) body of ugly cellulite. In only minutes a day a few days a week. You know this is something you've owed yourself for years. Anuska's unique body contouring program works from the inside and from the outside to guarantee you maximum results every day.

After the first treatment you will begin to see a difference. You'll be well on your way to a cellulite-free body. So don't wait another moment. Call and say hello, Anuska. Goodbye cellulite. It's so easy to use and feels so good.

Step one, you massage the unique body contour and seaweed gel which penetrates the open pores of the skin to start attacking those ugly cellulite pockets from the very first treatment. In minutes you'll feel the seaweed at work. The second step is to take the celluline (sic) enzymes to help your body metabolize carbohydrates and help you with your body contouring program. The third step is to apply your Anuska body firming lotion to firm the skin with its deep penetrating action. And after that you apply the multi-revitalizing cream. Your skin will feel smoother, suppler and well on the way to regaining the elasticity it's lost.

The Anuska body contouring program is only available directly from the Anuska Institute through this TV show. Call now so you can start the Anuska body contouring program working for you. Get rid of those ugly cellulite pockets once and for all. Take charge of your life. Take control of your cellulite.

And if you call right now during our one-time introductory offer you will receive this free gift. This special body-contouring massaging brush. It's our gift to you just for ordering now. Plus as a very special added bonus you'll receive this exciting home video that brings you seventeen years of Anuska's massage, nutrition and exercise secrets. It's yours free. But you must order now.

ANUSKA: I am so certain that my anti-cellulite program will work for you as well as it has for thousands of my clients that I will return to you every penny you spend for the program if you're not completely satisfied. You risk absolutely nothing. And remember, you did not do anything to make cellulite appear. But now you can make it disappear.

ANNOUNCER: For the fastest delivery of your Anuska body contouring program use your credit card. Simply dial 1-800-421-6400 and order now. Your Anuska program is only 39.95 plus four dollars shipping and handling. So call 1-800-421-6400 right now. Or send check or money order to the address on your screen. Call 1-800-421-6400 right now. Sorry, no C.O.D.'s.

(APPLAUSE)

GREY: Welcome back to Straight Talk. If you're just joining us I'm Erin Grey. We are talking today about what appears to be an extraordinary anti-cellulite advance made by the Anuska Institute in New York City. Their anti-cellulite problems of thousands of women. Now, if you're still skeptical about whether the Anuska anti-cellulite program can really get rid of cellulite when so many other ways have failed to do so, the author of the BEAUTIFUL BODY BOOK from Bantam was even more skeptical. Now, we caught up with the Zia Wesley Hosford, beauty expert and busy author of five books on the west coast. So now, let's go to San Francisco and Zia will tell us how she tested the Anuska anti-cellulite program.

ZIA: When I first began doing research for my new book on body care I knew that I had to include a chapter on cellulite. And my previous . . . investigation into the subject had been very discouraging. I found that all of the treatments and products offered were nothing more than hype. Then I began hearing about the Anuska salon. And the reports that I got initially were very encouraging. People were quite happy with the results of the treatment. But I was still very suspicious and decided to conduct a test of my own. So I chose someone who had a cellulite problem who is not in this business and who is unknown by the Anuska Institute. You can see she had a serious cellulite problem on her thighs, upper legs and buttocks. And here she is after treatment. No bumps. No orange peel skin. She definitely has a shaplier body contour. And her elasticity and skin tone has also been improved.

(APPLAUSE)

GREY: And now let's go to the Anuska Institute to meet Zia's test case, Sarah Peller, the woman in the before and after photographs. A woman who successfully got rid of her cellulite.

SARAH: Well, after the first week there was really a noticeable difference. And after about three weeks it was really apparent. So much so that a woman that I barely knew at my health club came up and asked me about it. It just kept getting better and better and finally it was gone. It really helped me to feel good about myself.

GREY: Isn't that great? Many of you many (sic) have already read about the Anuska Institute in leading magazines. She's been written about in Elle, Glamour, Mademoiselle, People, New York Times, Cosmopolitan, Vogue, Harper's Bazaar and you name it.

Our next guest might look very familiar to some of you. She has her own TV show about women. Welcome beauty editor and newscaster Marie Rodriguez Ichaso.

(APPLAUSE)

GREY: So tell us, how did you discover Anuska?

MARIE: Well, I discovered Anuska when I was researching a TV show about cellulite. As a reporter and magazine editor I was skeptical really about the amazing stories I was hearing regarding Anuska's anti-cellulite treatment: To tell you the truth, I had checked out many companies that claimed to have effective cellulite treatments and they just didn't work. I was very impressed by Anuska's clients because they verified the claims. Also the extensive client charts that showed the proof with numbers, with statistics. And the experts, medical and otherwise that backed up what she was saying. So these turned me into a believer also. And one thing that is very surprising and I was really very, very impressed by it is that one of the key ingredients in her treatment is something as simple as seaweed.

GREY: Well, tell us, Anuska, is this ordinary seaweed?

ANUSKA: Absolutely now (sic). We use a very special seaweed. And one of the people we turned to for this seaweed is leading researcher in marine biology. And he is here with us today to help explain how seaweed works to help get rid of cellulite.

GREY: Oh, great Well, then let's welcome Dan Frieda.

(APPLAUSE)

GREY: That's Frieda, right?

FRIEDA: Yes.

GREY: Okay. Now tells us, how is it that seaweed affects cellulite?

FRIEDA: Well, I think this diagram will help make it clear. These are cellulite cells with their trapped toxins surrounded by tough connective tissue. Now with cellulite cells the hardened connective tissue won't let these nutrients get to the cells so the trapped toxins cannot be neutralized and taken away. Now let's go for a moment this diagram of seaweed growing in the nutrient-rich ocean.

The seaweed absorbs magnesium, potassium, calcium and even rare trace elements like zinc and selenium directly from the sea water. There are other effective ingredients in Anuska's anti-cellulite gel. But seaweed is a key to its success. It's one reason why it's the most powerful anti-cellulite program ever developed.

GREY: Wow. That was a wonderful explanation. Just terrific. Thank you very much for joining us. Dan. And Marie, thank you very much.

MARIE: Thank you.

GREY: I really appreciate it.

MARIE: Thank you very much.

(APPLAUSE)

GREY: Now, let's talk to women who have actually benefitted from all of this.

WOMAN: A while ago I was in a department store looking for bathing suits. I took a few into the dressing room and I tried them on, I turned around and I saw myself in that three-way-mirror with all of those lights and I realize I had cellulite. I went a little berserk. I went home, I called a friend of mine. I was telling her about this and she told me about Anuska. So I called Anuska and I bought the at-home anti-cellulite kit. I tried it for few weeks and I found a lot of success. Well, last weekend I was in Los Angeles to celebrate my fortieth birthday without the cellulite thank you to Anuska.

(APPLAUSE)

WOMAN: I've always tried to take good care of myself. I exercise regularly. But when you're facing the prospect of turning forty you want all the help you can get. So when I heard that there was supposed to be a new treatment to get rid of cellulite I went right to try it. Well, within three months I had not only lost all of my cellulite but I also lost about four inches from my thighs and hips. I lost fifteen pounds and full dress size. Anuska's program is everything she says it (sic) and for me it was even more.

(APPLAUSE)

WOMAN: When I was younger I was very athletic and I developed muscular thighs. As I got older I exercised less and my thighs began to develop cellulite. Then one day I saw an article about Anuska's anti-cellulite program in a magazine. . . I set up an appointment. I wasn't sure that it would work. But I thought it was worth a try. Within four weeks I lost inches off my thighs and my thighs looked smoother and firmer. Within six weeks the cellulite was gone. I can wear a bathing suit now, feel very proud of myself using Anuska's anti-cellulite program at home. I never want cellulite again.

(APPLAUSE)

GREY: Stay tuned for some final words of advice.

ANNOUNCER: Now here's how you can order the really proven way to get rid of you (sic) cellulite. Just pick up your phone, dial this number and order Anuska's five and half minute bio response body contouring program right now. Imagine opening your package from Anuska and realizing you are on your way to ridding your body of ugly cellulite in only minutes a day a few days a week. You know this is something you've owed yourself for years. Anuskas' a unique body contouring program works from the inside and from the outside to guarantee you maximum results every day. After the first treatment you will begin to see a

difference. You'll be well on your way to a cellulite-free body. So don't wait another moment. Call and say hello, Anuska. Goodbye cellulite. It's so easy to use and feels so good.

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And if you call right now during our one-time introductory offer you will receive this free gift. This special body contouring massaging brush. It's our gift to you just for ordering now. Plus as a very special added bonus you'll receive this exciting home video that brings you seventeen years of Anuska's massage, nutrition and exercise secrets. It's yours free but you must order now.

ANUSKA: I am so certain that my anti-cellulite program will work for you as well as it has for thousands of my clients that I will return to you every penny you spend for the program if you're not completely satisfied. And your risk, absolutely nothing.

And remember, you did not do anything to make cellulite appear. But now you can make it it (sic) disappear.

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ERIN GREY: Well, I want to thank Anuska and our other guests for being with us here today and for helping you understand that you are not stuck with cellulite for life, that you can do something about it and that you can have the body you want. Anuska, do you have any final words of advice for us?

ANUSKA: Yes, I do.

GREY: Great.

ANUSKA: I'd like to say to everyone, don't be your own worst critic. Remember, it's not your fault you have cellulite. Just say to yourself I don't have to put up with it anymore because now I know what to do. I did it. You can do it, too.

(APPLAUSE)

(MUSIC)

END ANUSKA: FREE FROM CELLULITE

EXHIBIT B

CAN YOU BEAT BALDNESS? LOOKING CLOSER

As Recorded 7/7/88

(OVER SHOTS OF BALD MEN IN STREET)

Roberta Morgan (VO): To just be told your hair is falling out, and there's nothing wrong with you, and there's nothing we can do about it, is about the most distressing news you could receive.

(OVER SHOTS OF BALD MEN IN STREET)

Brian Cristiano (VO): You say, Oh my God, is that going to happen to me too? My brother went bald; my father is completely bald.

Cut to Brian (OC)

So you kind of know what's happening, but you don't want it to happen.

(IMAGE FREEZES) SUPER - IT DOESN'T HAVE TO HAPPEN!

Announcer (VO): Maybe it doesn't have to happen.

Joe Baldwin (SOT): Since I started using the Omexin, it stopped falling out and started growing back.

Alex Jimenez (SOT): This used to be a bald spot back here and it's almost completely covered up now.

Jonathan Avner (SOT): With the Omexin, it started growing hairs below my hairline. In effect, starting to drop the hairline.

Roberta Morgan (SOT): I had a tremendous amount of loss through here and in here. I do feel I'm well on the road to recovery now, thanks to the Omexin.

(IMAGE FREEZES)

(DISSOLVE TO 20 SEC. TEASER SPOT)

(ANNOUNCER VO; SUPER CRAWL OF HIS WORDS)

ANNCR (VO): The following program will give you news of a product unlike anything else available anywhere for stopping hair loss and actually reversing balding by growing new hair. How is this product different? It works, while the others don't! This program presents the facts. We are repeating this broadcast in response to viewer demand.

(SPLIT SCREENS OF USERS; MUSIC START)

(OVER SPLIT SCREENS - SUPER: CAN YOU BEAT BALDNESS?)

989

Complaint

Joe Campanella (VO): Can anything really stop hair loss and grow hair back? Is Omexin as effective as people are saying it is? We'll discover the facts about beating baldness.

(PROGRAM LOGO ANIMATES)
(DISSOLVE TO HOST IN STUDIO)

Joe Campanella: Welcome to "Looking Closer." I'm Joseph Campanella. Our show will be exploring some of the innovations, ideas and trends in the news and on our minds. One thing that's very much on our minds and very dear to our hearts is our hair. One-half of all men can expect substantial baldness or hair thinning as they grow older, and many will start losing their hair while still young -- as early as their teenage years. Even though it's called male pattern baldness, many women will lose much of their hair as well. The good news is that you may not have to be resigned to the inevitable any more. In early 1987, news of the discovery of a substance that reportedly would stop hair loss and grow hair back on balding heads with unprecedented success emerged from the laboratories of an innovative young medical firm. Wall Street insiders were among the first to get wind of this scientific breakthrough. The company went public, and wall Street responded! News of this now product began to filter through to the press. That product is called Omexin. and it's the subject of our show today. Is Omexin the breakthrough it's being heralded to be? Does it really work? We're going to look for solid proof of the answers to those questions. To help us, we've assembled a distinguished panel of highly qualified experts on hair loss, all of whom are familiar with this new product.

(CU DR. VICTOR ON LARGE SCREEN ON WALL OPPOSITE HOST)

First, Dr. Steven Victor is a dermatologist and hair loss specialist in New York who has been testing Omexin.

(CU DR. WEIMER ON LARGE SCREEN. DR. VICTOR IS
SEEN ON ONE OF THE SMALL SCREENS)

Dr. Patricia Wexler, a board-certified specialist in internal medicine as well as dermatology, has also been conducting a controlled study and clinical trials of Omexin.

Joe Campanella: Doctors, thank you for being here. I'll have questions for you shortly. And please feel free to jump into the conversation at any time. The definitive book on baldness and its cure is aptly named "The Bald Book." The author is Walter Klenhard, and he rounds out our panel of experts.

(CU WALTER KLENHARD ON LARGE SCREEN;
REST OF PANEL ON SMALL SCREENS)

Walter, why did you write "The Bald Book"?

Walter: Well, I think the answer to that question should be obvious. I wanted to put some hair on my head.

Joe Campanella: You present a lot of facts in your book. Where do those facts come from?

Walter: Well, I was interested in the subject like I think all bald people are, and I spent 4 years researching the subject to write the book, "The Bald Book." I went across the country. I talked to everybody involved in the hair industry, from people selling treatments to research scientists busy in the laboratories trying to find a cure for baldness, people selling hairpieces to doctors who do transplants and the result of that research was the book, "The Bald Book."

Joe Campanella: Thank you, Walter.

And finally, we invited John Hylan, the President of the Omexin Research Center, to join us. While hardly impartial -- he does, after all, represent the manufacturer -- he's here as well to answer our questions.

(CU JOHN HYLAN ON LARGE SCREEN;
REST OF PANEL ON SMALL SCREENS)

So that's our distinguished panel: I'll be seeking answers from them to some tough questions about baldness and Omexin shortly. But first, let's take a brief look at the problem.

It hurts to lose your hair at a young age.

Cristiano (SOT): I started losing my hair when I was eighteen. Which was ... it's kind of scary, you know? Losing your hair is bad enough, but at a young age it's even worse.

Weissberg (SOT): I'm not sick, I have no health problems, I have no reason to feel I'm an old man. But then when I look in the mirror, I'm under 40, why should I feel I'm ... I look over 40, when I'm under 35?

Maldonado (SOT): Embarrassed, to say the least. I felt very embarrassed about it. Very embarrassed. I think it's one of the worst things for a man to have to happen to him, is to lose his hair.

Joe Baldwin (SOT): When my hair started thinning in high school, I started wondering. Am I going to look like my father when he graduated high school in the fifties? Because he was already bald by then.

Walter (SOT): Our image of male attractiveness always is a man with hair. The movie star that gets the girl has hair, the guy without hair gets to play Mr. Whipple.

Avner (SOT): It is devastating to you, whether you're a man or a woman, it is devastating.

Roberta Morgan (SOT): When I would come and see Dr. Wexler, I would probably spend a good half of every visit crying. I would swear I wasn't going to but my eyes would just start to fill up and...it's just very deep pain to me.

Joe Campanella: Now, we're not saying that baldness is necessarily bad or something to be ashamed of, but it certainly seems that given the choice, most balding people would prefer to keep the hair they've got and would be delighted to get back the hair they've lost.

The research for a cure is as old as history. In ancient Egypt, they laid pigeon droppings on their scalps. Even Hippocrates, the father of medicine, had his own recipe for a cure. And ever since, there's been a steady stream of treatments, potions and contraptions swearing they'll invigorate the scalp, prevent baldness and make what's gone today, hair tomorrow.

Baldness is still a growth industry. They're busy trying to beat it all over the globe. But the sad truth is that virtually everything being sold for baldness, even today just doesn't seem to work.

Walter Klenhard, let's get right to the bottom line. Is there anything out there that really works?

Walter: Up until Minoxidil, you cannot say there was anything out there that could grow hair on a bald head. I just didn't find anything that convinced me that it would work and I wanted to find something. I mean, I looked at everything out there and I looked at it objectively. Nothing I could find really offered a viable treatment for people suffering from male pattern hair loss.

Joe Campanella: Are you saying there's...thing else legitimate on the market?

Walter: Now there's another product called Omexin. I've spoken to some doctors who are conducting the first trials for this right now and they said the results they're getting are very promising.

Campanella: What does "promising" mean? Is Omexin really breakthrough?

Walter: If the results that the doctors are seeing now, the ones I've spoken to, conducting these studies, hold true (and there's no reason to think that they won't), then I think you could safely say that Omexin will be the next breakthrough after Minoxidil.

Joe Campanella: John Hylan. I think I first heard about Omexin in the Wall Street Journal quite some time ago. And I've also seen it mentioned in articles in Playboy and Omni. Why hasn't Omexin been available?

(SUPER: JOHN HYLAN, PRESIDENT,
OMEXIN RESEARCH CENTER)

Hylan: Well, Mr. Campanella ...

Joe Campanella: Please ... it's Joe.

Hylan: Ok ... Joe... We wanted to research Omexin's effectiveness thoroughly first -- it takes time to do valid research, you know.

Campanella: And now?

Hylan: Well our research is still going on -- but ... it has gone far enough to show that Omexin works. We know now that Omexin really does stop hair loss

and does grow hair back, so we decided not to wait any longer, and we are now making Omexin available to the public.

Campanella: What's the hurry?

Hylan: If you were losing your hair, Joe, you wouldn't ask that question!

Campanella: We're going to take a closer look at your research and see just what it does show in a minute. But first, John, tell us -- how does Omexin work?

Hylan: There's a widely-held theory that loss of blood supply to the affected hair follicles is a factor in male-pattern baldness. Now we discovered and patented a safe, natural formula -- Omexin, that in laboratory tests, actually increased the blood supply in fertile chicken eggs. So we got the idea to test it for baldness, and it worked! Now, we don't know if that's the reason Omexin grows hair, but we sure do know that it does.

Campanella: And you can prove that?

Hylan: Absolutely To prove that, Omexin really works, we've done thorough, extensive testing using medically sound methods and applying the highest scientific standards.

Campanella: Excuse me, John, give us an example.

Hylan: Omexin's now being tested in a double-blind study being conducted by a major university Medical Center Hair Clinic, which is, in fact, the same clinic that conducted the testing on Mynoxydil.

Campanella: What do you mean by "double-blind" study?

Hylan: It's a particularly stringent kind of scientifically valid controlled test.

Campanella: Dr. Victor, what kind of testing are you now conducting with Omexin?

Dr. Victor: We have several tests on Omexin. We have what we call an open study where we have about 450 men and women who range in age from 18 actually up to 83, who apply the product regularly. Now what we see in that group is that 90 percent of our patients will tell us they stopped losing hair, some within a week, some within a month.

(NURSE AND PATIENT IN EXAMINING ROOM)

Dr. Victor (VO): Then, on the other side of the coin, we have very controlled scientific studies. We have 2 groups. We actually take the men who are bald. We tattoo their scalp and we have them apply the Omexin in the balding area every day, twice a day. Now, every month they come back and we count the numbers of hairs that grow in the area where we tattooed their scalp.

Nurse: I already see an increase in the hairs.

Patient: Substantial?... Or...

Nurse: Well, it seems to be. The hair seems to be a lot thicker now.

(DR. VICTOR JOINS NURSE AND PATIENT)

Dr. Victor (VO): We can actually see if there's an increase in hair growth, hair falling out, new hair, vellous hair, new thick hair, terminal hairs.

Dr. Victor (OC): So far, the studies have shown that these men are growing new hair.

Campanella: What are your initial impressions of Omexin?

Victor: I think in Omexin, we have for men and women a new safe product that they can apply that will stop the hair from falling out, and in a fair number of patients, probably up to 70%, will start growing some new hair.

Campanella: I must say, the test volunteers we've spoken with seem to agree.

Jim Conte: I started using the Omexin and I started to notice results right away. The results I've seen is that I have grown hair and that I have stopped losing hair.

Joe Baldwin: Omexin stopped my hair from falling out, and it started it to growing back the to the way it used to be.

Tony Maldonado: I'm going to tell you something. I'm very excited about it. If I can have this much hair grow back, I'm very excited. Because there was nothing there. Literally nothing there.

Weissberg's Barber: This entire part of Steven's hair had been bald. Since I've been taking care of him for a long period of time, within the period of 6 months, this entire section grew in. I have never seen this in my experience and I've been in this business an awful long time.

Campanella: Dr. Wexler what about your research?

Dr. Wexler: We have patients in both a double-blind study and using what we consider to be a very active ingredient, and what we've seen in that patients are ceasing to lose their hair very quickly within starting Omexin and then within a short time after, they start seeing new hair appear. It's not just a fuzz, we're seeing actual pigmented terminal hair, which is very exciting for the patient as well as the doctor.

Campanella: Really.

Dr. Wexler: They are really excited. These are people who had given up on growing back hair or stopping their lose. And patients on Omexin are excited about the prgoram (sic) they've made.

Campanella: Give us an example.

Dr. Wexler: Okay. I have a patient, Roberta, who came to the office 6 months ago with a dramatic thinning of her hair. You could see her scalp through her dark hair and she was very devastated by it.

(CUT TO DR.WEXLER, EXAMING ROBERTA)

Roberta: ... hairline was receding...

Dr. Wexler (SOT): Okay, we're going to do what we usually do, which is just try to pull on a few of the hairs to see how many are coming out.

Roberta: It feels much healthier; the hair feels much better.

Dr. Wexler: I'm not getting any, which is a very good sign.

Roberta: That's wonderful. I think we got about 10 in the beginning.

Dr. Wexler: We used to get a clump every time we pulled. And within 2 months of being on Omexin, her hair stopped falling out and now that she's been on it for 6 months, she has her entire head of hair back and she's really happy and very confident about herself now.

Campanella: And what are your initial impressions of Omexin?

Wexler: I'd say 9 out of 10 patients that I've put on the active ingredient stopped losing hair and that alone is an exciting statement. I think that Omexin is going to be a wonderful treatment for people who are starting to lose hair, who are seeing changes in their hair and who start to use it early, and they can prevent further loss as well as possibly gain new hair. I think it's going to be a great benefit to both men and women with thinning hair.

Campanella: You know, I'm getting the point here: Omexin really does grow hair. Dr. Victor, how quickly does Omexin work?

Dr. Victor: In Omexin, we've seen results as far as hair stop falling out as early as a week but we've seen that basically, the majority of patients get a good result within 3 weeks.

Campanella: Wow! Dr. Wexler, what about your patients?

Dr. Wexler: Typically, the patients who I've given Omexin to, who are responding are responding quickly -- and within 1 month there is a change in their hair pattern. It's either less loss or new growth or both but it's quick response.

Campanella: Thank you, Doctors, You've been very helpful ... and very convincing. It sure sounds like proof to me.

Hylan: Actually, Joe, what you've heard is a group of truly expert doctors reporting on their own extensive observations of their patients. That, by itself, doesn't constitute scientific proof. But from our double-blind study, we have that proof, as well. Our study proves that Omexin stops hair loss and grows hair.

Campanella: Our experts and I will be back, after this.

Maldonado: It took 2 months for this to grow back. And I can honestly say there was nothing there to begin with. But now I have hair from using the product. And I am very, very happy and very pleased with it.

Cristiano: Look at all the hair I grew right here. The crown area -- this was so thin and it grew back. It's so much better. Even my girlfriend -- who's a hair stylist -- said that it's like so much healthier hair, that's it's unbelievable. I'm very happy with it.

Weissberg: I've been using Omexin for about 8 or 9 months and I saw results after the first 2 weeks but I really started to see results after 4 weeks. I literally saw new hairs growing where there was a bald spot.

Roberta: I just wanted to say that I think the Omexin is a blessing I mean, for people like me, it was a godsend and I haven't used anything but that. And it alone, on its own, has brought back my hair and that has brought back a great deal of happiness to me, to my life, and I'm, thrilled with it.

LOOKING CLOSER LOGO

VIDEO: Stark B+W title:
(pop on)
The Question:
(pop on)
What Can You Do About Thinning
Hair?

AUDIO:
The question: What Can You Do
About Thinning Hair?

VIDEO: Stark B+W title:
The Answer:
(Answers Pop On, Then ...Fade Out)
A Hairpiece??

AUDIO:
A Hairpiece?

VIDEO: Stark B+W title:
Hair Transplants??

AUDIO:
Hair Transplants?

VIDEO: Stark B+W title:
Drugs??

AUDIO:
Drugs?

No, these answers aren't practical for
most men - they're expensive, and can
be painful or aesthetically unpleasant.

VIDEO: Stark B+W title:
The Answer:
(Answer Pops On, Then Fades Out)
Over-The-Counter Preparations?

AUDIO:
What about...over-the-counter prepara-
tions? The sad fact is, they just don't
work!

But now ... there's a new answer!

VIDEO: Stark B+W title:
(snap on) OMEXIN

The answer is Omexin... newly dis-
covered at the cutting edge of science,
completely safe, yet powerfully effec-
tive...

VIDEO: Dissolve through to....
Omexin product.

VIDEO: Dissolve to....Multi-image
screen of testifiers, research shots, and
graphics from the show.

Omexin has been scrupulously tested
by dermatologists, and clinicians, and
by thousands of grateful individuals.
The test results and the personal
stories speak for themselves.

Complaint

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| | |
|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| VIDEO: Cut back to... Omexin product. | The bottom line may be them most powerful statement in the history of thinning hair - it's just two words: |
| VIDEO: Wipe on bold title- OMEXIN WORKS! | Omexin Works! |
| VIDEO: Pull out from Omexin product to the three-part system | The Answer couldn't have been simpler. The Omexin System is based on the Omexin Active Treatment, a fine white cream which you simply massage into the affected areas daily. You'll also use the carefully formulated, gently Omexin Shampoo and Omexin conditioner. The total System helps care for your hair, insuring maximum benefits from the treatment and keeping your hair looking better than ever before. |
| VIDEO: Dissolve on 800# | To start using Omexin couldn't be a simpler decision to make, because Omexin is backed with an absolutely unconditional 30-day money-back guarantee. <u>Omexin works</u> for the vast majority of people, but if you're not satisfied with your results, for any reason, you get your money back. No questions asked. <u>It's that simple.</u> |
| VIDEO: Fade on Super: Unconditional 30-Day Money-Back Guarantee. | And getting the Omexin System couldn't be simpler, either. Just dial the toll free number now on your screen. |
| VIDEO: Hold on 800# . Dissolve on Info Panel. | Your first 30-day supply of Omexin, the revolutionary, scientific solution to the hair-loss problem is just \$49.95. complete! Call now: 1-800-777-7777. Please have your credit card number ready. Sorry, no COD's. |

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Complaint

VIDEO: Or, send Check or Money Order for
Omexin just \$49.95 plus \$4.00 for shipping
P.O. Box 9010 and handling to this address. Call
Southampton, N.Y. 11968 now: 1-800-777-7777.

VIDEO: Back to Omexin product. Omexin. The Answer. It Works.
Super: It Works.

Campanella: Welcome back. I'm Joseph Campanella and if you've just joined us today on "Looking Closer," we are talking about a new product called Omexin, which has just been made available for sale to the public. It reportedly has stopped the balding process in a high percentage of test subjects and even re-grown healthy new hair for a large number of men and women of all ages. But is that news? What about all the other products on TV that are claiming to grow hair? Is Omexin any different or any better? I'm going to ask all four of our experts to respond... Polysorbate products like Helsinki Formula, for instance, have gotten a lot of attention lately. Walter Klenhard, do they grow hair?

Walter: Well, polysorbate products have had a great deal of popularity in recent years. I spent a lot of time investigating them. and I could really find no evidence to support their claims as being an effective treatment for male pattern hair loss. There's a number of names: there's the Helsinki Formula, Pantron I: there's New Generation and others. I couldn't find anybody who had grown a decent head of hair using this stuff. And, in fact, some of the studies that have been done -- one at the University of California -- concluded that it was not an effective treatment for male pattern hair loss.

Dr. Wexler: They talk about penetration of the hair shaft and the hair follicle. But really, what they're doing, is they're adding a coating to the hair that makes the hair look thicker, but it's not growing hair. And it's not preventing hair loss. There's no data to support that.

Dr. Victor: We found that over the years, all the patients who try them for months or for years -- that I've seen in the practice -- did not have any hair loss that stopped. Didn't grow any new hair. And actually were disappointed in the products.

Walter: None of the doctors I've talked to either say that there's anything in the product that would help prevent hair loss.

Hylan: They simply don't work. And the sad part is that people are spending hard-earned money for these products.

Campanella: What about their theory that baldness is cured by an oily scalp, which clogs the hair follicles?

Walter: The theory that male pattern baldness is caused by clogged hair follicles, really doesn't hold any water. That suggests that oil and pollution and general dirt and grime combine together to clog up the follicles on your scalp, and the hair can't grow. All you have to do is go down to any downtown area of any

major city, and take a look at all the bums and winos down there who probably shampoo their hair once a year, if that, and they're not bald. They've got full heads of hair. These follicles aren't clogged -- why would these become clogged? The fact that a hair transplant is effective, that you can take a follicle from here and put it on the top it will grow. It doesn't become clogged again. So, clogged follicles and dirt and dust and stuff on the scalp really isn't a cause for hair loss.

Campanella: Thank you, Walter, and thank you, doctors. Well, if Omexin does truly stop hair loss and start hair growing again, and if it's true, as our experts say, that the other advertised products don't really work, I'd say it looks like we may have some real news here. John Hylan, where can our viewers find Omexin?

Hylan: They don't have to find it; they just call our toll-free number [ALT: We'll send them an initial 30-day supply. Thereafter, we'll send a fresh 60-day supply automatically, every other month. They'll never have to worry about running out of the product. And of course, they can cancel anytime.]

Campanella: What if Omexin doesn't work for someone?

Hylan: Joe, that's an important point and I'm really glad you asked that question. We haven't forgotten that the flip side of "Omexin works for the vast majority of people" is that it doesn't work for a few. But we don't want consumers to risk anything: we assume that risk. So, Omexin is backed by an unconditional 30-day money-back guarantee. Our customers have to be completely satisfied -- and they can define satisfaction any way they want. If they're not satisfied, they simply call our toll-free number and get their money back. It's absolutely risk-free.

Campanella: One final concern: Just how safe is Omexin?

Hylan: Extensive safety testing has been done, much of it by Eli Lilly & Company, a giant pharmaceutical firm. And the tests have established that Omexin has no side effects. There are no adverse reactions. It's a proven fact. Omexin is safe.

Campanella: I'd like to ask each of the experts for their final comments about Omexin.

Dr. Victor: Up until now, all over the counter products and all the products sold on TV haven't really worked. Now, Omexin is a product that can stop hair loss and grow hair for a vast majority of people.

Dr. Wexler: Omexin is the first product that I can say with enthusiasm can stop hair loss and promote growth.

Dr. Victor: What is particularly good about Omexin, for a man or a woman in their early 30's or 20's, with just beginning to thin. If they start using the product religiously, they can stop the hair from falling out. And they can retain the hair they have and remain that way for the rest of their lives.

Walter: Well, anytime a treatment like Omexin comes along, where legitimate doctors and scientists are conducting trials: they're using it, they're reporting positive results -- this is very good news. It's very exciting news.

Hylan: This is certain. For the vast majority of people, Omexin stops hair loss. And the most of them are going to grow their hair back.

Wexler: As a doctor, being able to give Omexin means that I can now tell patients who were going to go bald, that they no longer have to do that, and that they can now use a product that can stop their hair loss.

Dr. Victor: I think in Omexin we have, for men and women, a new safe product they can apply that will stop the hair from falling out and in a fair number of patients, probably up to 70%. will start growing some new hair. When I say new hair, my concept of new hair is hair you can look in the mirror and actually see. If you can't see it, it's not new hair to me.

Campanella: Is Omexin the baldness breakthrough that will enable you to beat fate and overcome your genes? We've heard and seen a lot of solid evidence in this program. It has come from highly qualified doctors and experts, and from serious, thoughtful people who had a problem and got some real help. There are hundreds of test subjects who are growing hair today where there was none before. And that's a fact. The experts we heard from today have convinced me that Omexin really does work, and may just be the best thing currently available to maintain the head of hair you already have, and bring back the hair you've lost. Omexin just might be worth trying; with that money-back guarantee, you've got nothing to lose, I guess. -- Except your hair, of course, if you prefer to just let nature have its way. And if that's your choice, well, it's not what's on your head, it's what's in it. I'm Joseph Campanella. Thanks for looking closer with me.

Cheryl Yellin: I noticed a tremendous change in his self-confidence. That was the first thing.

Hairdresser: He developed a lot more hair all back here, you know, in the front rather than in the back, you can see that still, all this hair is new growth as well.

Weissberg: Within the first two weeks of using Omexin, my hair stopped falling out.

Avner: I have experienced some real hair growth with Omexin.

Roberta Morgan: since using the Omexin, it's not only fuller, it's prettier. It's shinier, it's bouncier. It feels a lot better.

Tony Maldonado: You see something growing, something is happening, it really is. I can honestly say I'm very happy about it, and I know all my hair's going to grow back. All of it.

PROGRAM LOGO

VIDEO: Stark B+W title:
(pop on)
The Question:
(pop on)
What Can You Do About Thinning
Hair?

AUDIO:
The question: What Can You Do
About Thinning Hair?

Complaint

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VIDEO: Stark B+W title:
The Answer:
(Answers Pop On, Then...Fade Out)
A Hairpiece??

AUDIO:
A Hairpiece?

VIDEO: Stark B+W title:
Hair Transplants??

AUDIO:
Hair Transplants?

VIDEO: Stark B+W title:
Drugs??

AUDIO:
Drugs?...
No, these answers aren't practical for most men - they're expensive, and can be painful or aesthetically unpleasant.

VIDEO: Stark B+W title:
The Answer:
(Answer Pops On, Then Fades Out)
Over-The-Counter Preparations?

AUDIO:
What about... over-the-counter preparations? The sad fact is, they just don't work! But now...there's a new answer!

VIDEO: Stark B+W title:
(snap on) OMEXIN

The Answer is Omexin... newly discovered at the cutting edge of science, completely safe, yet powerfully effective...

VIDEO: Dissolve through to ...
Omexin product.

VIDEO: Dissolve to ... Multi-image screen of testifiers, research shots, and graphics from the show.

Omexin has been scrupulously tested by dermatologists, and clinicians, and by thousands of grateful individuals, The test results and the personal stories speak for themselves.

VIDEO: Cut back to ... Omexin product.

The bottom line may be the most powerful statement in the history of thinning hair - it's just two words:

VIDEO: Wipe on bold title -
OMEXIN WORKS!

Omexin Works!

VIDEO: Pull out from Omexin product to the three-part system

The Answer couldn't have been simpler. The Omexin System is based on the Omexin Active Treatment, a fine white cream which you simply mas-

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Complaint

sage into the affected areas daily. You'll also use the carefully formulated, gentle Omexin Shampoo and Omexin Conditioner. The total System helps care for your hair, insuring maximum benefits from the treatment and keeping your hair looking better than ever before.

VIDEO: Dissolve on 800#

To start using Omexin couldn't be a simpler decision to make, because Omexin is backed with an absolutely unconditional 30-day money-back guarantee. Omexin works for the vast majority of people, but if you're not satisfied with your results, for any reason, you get your money back. No questions asked. It's that simple.

VIDEO: Fade on Super:
Unconditional 30-Day Money-Back Guarantee.

VIDEO: Hold on 800# Dissolve
on Info Panel.

And getting the Omexin System couldn't be simpler, either. Just dial the toll free number now on your screen. Your first 30-day supply of Omexin, the revolutionary, scientific solution to the hair-loss problem is just \$49.95. complete! Call now: 1-800-777-7777. Please have your credit card number ready. Sorry no COD's.

VIDEO:
Omexin
P.O. Box 9010
Southampton, N.Y. 11968

Or, send Check or Money Order for just \$49.95 plus \$4.00 for shipping and handling to this address. Call now: 1-800-777-7777.

VIDEO: Back to Omexin product.
Super: it Works.

Omexin. The Answer. It Works.

(REPRISE TESTIMONIES UNDER CREDIT CRAWL)

Weissberg's Barber: This entire part of Steven's hair had been bald. Since I've been taking care of him for a long period of time, within the period of 6 months this entire section grew in. I have never seen this in my experience and I've been in this business an awful long time.

Avner: With the Omexin, it started growing hairs below my hairline. In effect, starting to drop the hairline.

Maldonado: It took 2 months for this to grow back. And I can honestly say there was nothing there to begin with. But now I have hair from using the product. And I am very, very happy and very pleased with it.

Joe Baldwin: Omexin stopped my hair from falling out, and it started it to growing back to the way it used to be.

Cristiano: Look at all the hair I grew right here. The crown area-- this was so thin and it grew back. It's so much better. Even my girlfriend -- who's a hair stylist -- said that it's like so much healthier hair.

Roberta: The Omexin is a blessing. I mean, for people like me, it was a godsend and I haven't used anything but that. And it alone, on its own, has brought back my hair and that has brought back a great deal of happiness to me, to my life, and I'm thrilled with it.

-END -

DECISION AND ORDER

The Commission having heretofore issued its complaint charging respondents named in the caption hereof with violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and the Postal Reorganization Act, and respondents having been served with a copy of that complaint, together with a notice of contemplated relief,

Respondents Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, Omexin Corporation, Ira Smolev, Richard E. Kaylor, Ana Blau a/k/a Anushka, and Steven Victor, M.D., their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with Section 3.25(c) of its Rules with regard to respondents Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, Omexin Corporation, Ira Smolev, Richard E. Kaylor, Ana Blau a/k/a Anushka, and Steven Victor, M.D.; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed said agreement on the public record for a period of sixty (60) days, and having duly considered a comment filed thereafter by an interested party pursuant to Section 3.25 of its Rules, now in further conformity with the procedure described in Section 3.25 of its Rules, the Commission enters the following order:

ORDER

For the purposes of this order:

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 has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

2. “*Shipping*” shall mean sending, or causing to be sent, any product or products by mail, by carrier, or by any other means.

3. “*Continuity program*” shall mean any plan, arrangement, or system by which a consumer is periodically shipped a product or products, and is charged by credit card or otherwise billed for each shipment.

4. “*Expressed consent*” shall mean the affirmative agreement of the consumer to the terms and conditions of a continuity program obtained only after a description of the material conditions and terms of the continuity program, and the material duties and obligations of a subscriber thereto, have been clearly and prominently provided to the subscriber, and shall not be construed to allow the interpretation of a consumer’s silence as affirmative agreement to the material terms and conditions of any continuity program.

5. “*Subscriber*” shall mean any person who has given his or her expressed consent to receive the benefits of and assume the obligations entailed in any continuity program.

6. “*Video advertisement*” shall mean any advertisement intended for dissemination through television broadcast, cablecast, home video, or theatrical release.

I.

It is ordered, That respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers;

Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; Ana Blau a/k/a Anushka and Steven Victor, M.D., individually; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting or otherwise disseminating, or assisting others to sell, broadcast or otherwise disseminate, in part or in whole:

A. The program-length television advertisement for the Anushka Bio-Response Body Contouring Program described and identified in the complaint as "Cellulite Free: Straight Talk with Erin Gray;" or

B. The program-length television advertisement for Omexin described and identified in the complaint as "Can You Beat Baldness?"

II.

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, and Smoothline Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of the Anushka Bio-Response Body Contouring Program or any other substantially similar cellulite treatment product or service in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, that:

1. Such product or service contains any ingredient that can or will substantially reduce or eliminate cellulite from the body;
2. Users of such product or service can or will achieve a visible reduction in cellulite after a single or a few treatments;
3. Use of such product or service can or will cause a substantial reduction in the size of the hips and thighs;
4. The use of such product or service can or will cause the loss of a substantial amount of weight; or
5. For thousands of women, such product or service has substantially reduced or eliminated cellulite from the body.

For purposes of this order a “substantially similar cellulite treatment product or service” shall be defined as any product or service that is advertised to treat, reduce, or eliminate cellulite from the body through the application of ingredients to the skin and that contains or purportedly contains seaweed or any extract thereof as an ingredient.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product or service in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, that:

1. The use of such product or service can or will reduce or eliminate cellulite from the body;
2. The use of such product or service can or will cause a reduction in the size of the hips or thighs;
3. The use of such product or service can or will enable users to lose weight; or

4. The use of such product or service can or will achieve any reduction of cellulite, reduction in the size of the hips or thighs, or any loss of weight within or for a specific period of time or after a specific number of treatments, unless such representation is true and unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondent Ana Blau a/k/a Anushka and her agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the endorsing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of the Anushka Bio-Response Body Contouring Program or any other substantially similar cellulite treatment product or service, as that term is defined in part II.A herein, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, that:

1. Such product or service contains any ingredient that can or will substantially reduce or eliminate cellulite from the body; or
2. For thousands of women, such product or service has substantially reduced or eliminated cellulite from the body.

B. Representing, directly or by implication, in connection with the endorsing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any other product or service in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, that:

1. The use of the product or service can or will reduce or eliminate cellulite from the body;

2. The use of the product or service can or will cause a reduction in the size of the hips or thighs;
3. The use of the product or service can or will enable users to lose weight; or
4. The use of the product or service can or will achieve any reduction of cellulite, reduction in the size of the hips or thighs, or any loss of weight within or for a specific period of time or after a specific number of treatments,

unless such representation is true and unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. *Provided that*, for any representation made as an expert endorser, respondent must possess and rely upon competent and reliable scientific evidence, and an actual exercise of her represented expertise, in the form of an examination or testing of the products or services at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the representation.

IV.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

- A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Omexin or any other substantially similar hair

loss treatment product or service in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, that:

1. Such product or service contains an ingredient that can or will curtail hair loss for a large majority of balding men and women;
2. Such product or service contains an ingredient that can or will promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of men and women;
3. Such product or service contains an ingredient that has been scientifically proven to curtail hair loss for a large majority of men and women;
4. Such product or service contains an ingredient that has been scientifically proven to promote the growth of new, pigmented terminal hairs where hair has previously been lost for a large majority of men and women; or
5. Such product or service has successfully curtailed hair loss and promoted new hair growth for thousands of balding men and women.

For purposes of this order a “substantially similar hair loss treatment product or service” shall be defined as any product or service that is advertised or intended for sale over-the-counter to treat, cure or curtail hair loss and which contains omentum or any extract thereof.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product or service in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, that:

1. The use of the product or service can or will prevent, cure, relieve, reverse, or reduce hair loss;
2. The use of the product or service can or will promote the growth of hair where hair has already been lost;

3. The product or service is an effective remedy for hair loss in a substantial number of cases; or

4. Any test or study establishes that the product or service relieves, cures, prevents or reverses hair loss, unless such representation is true and unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

C. Advertising, packaging, labeling, promoting, offering for sale, selling, or distributing any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*, *provided that*, this subpart shall not limit the requirements of part IV.A and B herein.

V.

It is further ordered, That respondent Steven Victor, M.D., and respondent's agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the endorsing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Omexin or any other substantially similar hair loss treatment product or service, as that term is defined in part IV.A herein, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

1. Such product or service contains an ingredient that can or will curtail hair loss for a large majority of balding men and women;

2. Such product or service contains an ingredient that can or will promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a significant number of balding men and women;

3. Such product or service contains an ingredient that has been scientifically proven to curtail hair loss for a large majority of men and women;

4. Such product or service contains an ingredient that has been scientifically proven to promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of men and women; or

5. Such product or service has successfully curtailed hair loss and promoted hair growth for thousands of balding men and women.

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

1. The use of the product or service can or will prevent, cure, relieve, reverse or reduce hair loss;

2. The use of the product or service can or will promote the growth of hair where hair has already been lost;

3. The product or service is an effective remedy for hair loss in a substantial number of cases; or

4. Any test or study establishes that the product or service relieves, cures, prevents, or reverses hair loss, unless such representation is true and unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. *Provided that*, for any representation made as an expert endorser, respondent must possess and rely upon competent and reliable scientific evidence, and an actual exercise of his represented expertise, in the form of an examination or testing of the products or services at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the representation.

C. Endorsing, advertising, packaging, labeling, promoting, offering for sale, selling, or distributing any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21U.S.C. 301 *et seq.*, *provided that*, this subpart shall not limit the requirements of Part V.A and B herein.

VI.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

VII.

It is further ordered, That respondents Ana Blau a/k/a Anushka and Steven Victor, M.D., and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the endorsing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade

Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

VIII.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any food, drug or device, as those terms are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

B. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any product or service (other than a product or service covered under part VIII.A herein), unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence that substantiates the representation.

IX.

It is further ordered, That respondents Ana Blau a/k/a Anushka and Steven Victor, M.D., and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the endorsing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any food, drug or device, as those terms are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55, unless at the time of making such representation respondents possess and rely upon competent and reliable evidence that substantiates the representation. *Provided that,* for any representation made as an expert endorser, respondents Blau and Victor must possess and rely upon competent and reliable scientific evidence, and an actual exercise of his or her represented expertise, in the form of an examination or testing of the products or services at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the representation.

B. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any product or service (other than a product or service covered under part IX.A herein), unless at the time of making such representation respondents possess and rely upon a reasonable basis consisting of competent and reliable evidence that substantiates the representation. *Provided that,* for any representation made as an expert endorser, respondents Blau and Victor must possess and rely upon competent and reliable evidence, and an actual exercise of his or her represented expertise, in the form of an examination or testing of the products or services at least as extensive as an expert in that field

would normally conduct in order to support the conclusions presented in the representation.

X.

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling, or disseminating:

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

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

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

Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein.

XI.

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service through a continuity program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Selling or distributing or causing to be sold or distributed any product by means of a continuity program without first obtaining the expressed consent of the consumer. Prior to obtaining the consumer's expressed consent, respondents shall convey to the consumer, in the manner set forth in Part XI.B herein all material terms and conditions of the program, including but not limited to:

1. The fact that periodic shipments of the product will be made without further action by the consumer;
2. A description of each product included in each shipment;
3. The approximate interval between each shipment;

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

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

6. A description of the terms and conditions under which and the procedures by which a subscriber may cancel further shipments, as set forth in part XI.D herein.

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

1. For any solicitation initiated or completed by telephone, the terms and conditions set forth in part XI.A.1-6 herein shall be disclosed during that conversation in clear and understandable language;

2. For any solicitation by a print advertisement or direct mail, the terms and conditions set forth in part XI.A.1-6 herein shall be disclosed in a clear and prominent manner in close proximity to the ordering instructions, provided that, if the advertisement or mailing contains an order form or coupon on a separate page or document from the advertising material, the disclosure shall be made both in the advertising materials and on the order form or coupon;

3. For any solicitation by a video advertisement, the following information shall be disclosed in a clear and prominent superscript with a simultaneous voice-over recitation of the superscript, during the presentation of ordering instructions for the product:

a. That the products must be purchased through a continuity program and that periodic shipments of the product will be made without further action by the consumer, if such is the case; and

b. The minimum number of purchases required under the continuity program, if any.

C. Once the subscriber has been sent an initial shipment of the product pursuant to a continuity program, failing to send to the

subscriber, at least fourteen (14) days prior to the mailing date of the next shipment a written statement of the material conditions and terms of the continuity program, and the material duties and obligations of a subscriber thereto, including but not limited to those described in parts XI.A.1-6 herein. The statement shall be sent by first class mail to each subscriber and disclose clearly and prominently the date, which in any event, shall not be less than 14 days from the date the statement was sent to the subscriber, by which the subscriber must cancel in order to avoid being billed for the next shipment. For purposes of part XI.E., if cancellation is by mail, respondents shall be deemed to be notified on the date the subscriber mails the postage-paid mailing or other communication cancelling further shipments.

D. Failing to provide in conjunction with each shipment made pursuant to any continuity program a clear and prominent description of the terms and conditions under which and the procedures by which the subscriber may cancel further shipments. Such description shall include either a toll-free "800" telephone number the subscriber may call or a postage-paid mailing the subscriber may return to notify respondents of the subscriber's cancellation of further shipments. *Provided that*, the requirements of this subpart shall not apply to those shipments coming within a minimum purchase requirement to which the subscriber has given expressed consent, except that this subpart shall apply to the last shipment of any minimum purchase requirement.

E. Shipping any product or products to, mailing any bill or dunning communication to, or billing the credit card of any subscriber who, having once subscribed to a continuity program and having fulfilled any minimum purchase requirement to which the subscriber has given expressed consent, notifies respondents by the means described in part XI.D herein, or by any other reasonable means, of the subscriber's cancellation of further shipments.

F. Shipping any products to any consumer who receives the Anushka Bio-Response Body Contouring Program pursuant to the terms of any continuity program, without first informing the consumer in writing that respondents have entered into a consent

order with the Federal Trade Commission, and setting forth the specific provisions that relate to the Anushka Bio-Response Body Contouring Program and providing an opportunity to cancel further shipments.

G. Shipping any products to any consumer who receives the Omexin System for Hair pursuant to the terms of any continuity program, without first informing the consumer in writing that respondents have entered into a consent order with the Federal Trade Commission, and setting forth the specific provisions that relate to the Omexin System for Hair and providing an opportunity to cancel further shipments.

XII.

It is further ordered. That respondents, Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Shipping products or causing products to be shipped without the expressed, informed request of the recipient unless such merchandise shall have attached to it a clear and conspicuous statement that the recipient may treat the merchandise as a gift and that the consumer has the right to retain, use, discard, or dispose of it in any manner that he or she sees fit without any obligation whatsoever to the sender.

B. Representing that any person can or will receive a “free sample,” “free trial,” or other receipt of product at no cost, unless such is the fact.

XIII.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents’ agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that a consumer may avoid charges or not be billed if a product is returned within a specified time period unless:

A. At the time of making the representation, the representation is true; and

B. If respondents represent directly or by implication that the product is free for a period of time,

1. Respondents disclose clearly and prominently through written notice contained within the product shipment that consumers can return the product by calling respondents’ designated “800” telephone number, and that the cost of the return will be paid by respondents; and

2. Respondents maintain such “800” telephone lines as are necessary to process requests for return of the product; and

3. Upon request, respondents pay the cost of return of the product in the manner designated by the consumer, or advise the consumer that the consumer can keep the product with no return required and no further obligations.

C. The date for returning the product in order to avoid charges or not be billed is computed from the date the consumer receives the product, and, for purposes of determining whether the product has been returned within the specified time period, the date the consumer mails or causes the product to be shipped to the respondents is considered the date the product was returned; and

D. Complete instructions for returning the product, including, but not limited to, the address to which the product may be returned and, if applicable, directions for shipping, or in the event that it is not necessary to return the product to avoid the charge, instructions for avoiding the charge, are clearly and prominently disclosed to the consumer at the time the consumer receives the product.

Provided that, a consumer's credit card shall be deemed "billed" if the charge appears on the consumer's credit card statement whether or not a credit is subsequently issued.

XIV.

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the

Federal Trade Commission Act, do forthwith cease and desist from failing to comply with the requirements of Section 166 of the Truth in Lending Act, 15 U.S.C. 1666e and 12 CFR 226 .12 (e)(1).

XV.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of the product or service represents the typical or ordinary experience of members of the public who use the product or service, unless such is the fact.

XVI.

It is further ordered, That respondents Synchronal Corporation and Synchronal Group, corporations, their successors and assigns are jointly and severally liable for consumer redress in the amount of three million five hundred thousand dollars (\$3,500,000.00) and shall:

A. No later than the date that this order becomes final, deposit into an escrow account, to be established by the Commission for the purpose of receiving payments due under the provisions of this order

(“escrow account”), the sum of one million three hundred thousand dollars (\$1,300,000.00);

B. Within ninety (90) days of the date that this order becomes final, deposit into said escrow account the sum necessary to bring the total sum of the deposits to one million six hundred sixty-six thousand six hundred sixty-six dollars and sixty-six cents (\$1,666,666.66), exclusive of any interest that may have accrued;

C. Within one hundred eighty (180) days of the date that this order becomes final, deposit into said escrow account the sum necessary to bring the total sum of the deposits to two million thirty-three thousand three hundred thirty-three dollars and thirty-two cents (\$2,033,333.32), exclusive of any interest that may have accrued;

D. Within two hundred seventy (270) days of the date that this order becomes final, deposit into said escrow account the sum necessary to bring the total sum of the deposits to two million three hundred ninety-nine thousand nine hundred ninety-nine dollars and ninety-eight cents (\$2,399,999.98), exclusive of any interest that may have accrued;

E. Within three hundred sixty-five (365) days of the date that this order becomes final, deposit into said escrow account the sum necessary to bring the total sum of the deposits to two million seven hundred sixty-six thousand six hundred sixty-six dollars and sixty-four cents (\$2,766,666.64), exclusive of any interest that may have accrued;

F. Within four hundred fifty-five (455) days of the date that this order becomes final, deposit into said escrow account the sum necessary to bring the total sum of the deposits to three million one hundred thirty-three thousand three hundred thirty-three dollars and thirty cents (\$3,133,333.30), exclusive of any interest that may have accrued; and

G. Within five hundred forty-five (545) days of the date that this order becomes final, deposit into said escrow account the sum necessary to bring the total sum of the deposits to three million five hundred thousand dollars (\$3,500,000.00), exclusive of any interest that may have accrued.

Notwithstanding the provisions of parts XVI.A-G herein, respondents Synchronal Corporation and Synchronal Group shall deposit into said escrow account the sum necessary to bring the total sum of the deposits to three million five hundred thousand dollars (\$3,500,000.00), exclusive of any interest that may have accrued, within five (5) business days of the receipt by Regal Communications Corporation or any person authorized or designated by Regal Communications Corporation of any proceeds in excess of two million two hundred thousand dollars (\$2,200,000.00) from the Offering of Convertible Subordinated Debentures pursuant to Registration Statement No. 33-61424 filed with the Securities and Exchange Commission on April 22, 1993, or any other securities offered by Regal Communications Corporation after April 22, 1993.

In the event of any default of an obligation to make a deposit pursuant to parts XVI.A-G herein, which default continues for ten (10) calendar days beyond the date the deposit is due, the entire unpaid amount, shall immediately become due and payable.

These funds, together with accrued interest, shall be used to provide redress to consumers injured by respondents in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. The final determination for, and amount of, refunds to be paid to consumers shall rest with the Commission; provided that, nothing contained herein shall be construed to require the payment by respondents of an amount in excess of three million five hundred thousand dollars (\$3,500,000.00) for consumer redress. If the Commission determines that direct payment of said funds to eligible consumers is wholly or partially impracticable, then, in lieu of making direct consumer redress, the Commission shall cause said funds to be paid to the United States Treasury.

At any time after this order becomes final, the Commission may direct the escrow agent to transfer funds from the escrow account, including accrued interest, to the Commission to be disbursed as herein provided. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment

as herein described shall be deemed a payment of any fine, penalty, or punitive assessment against respondents with respect to the acts and practices which are the subject matter of the complaint and which occurred prior to the date of issuance of the order. The Commission, or its representative, shall, in its sole discretion, select the escrow agent. Costs associated with the administration of the escrow account, if any, shall be paid from the accrued interest.

Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the amounts vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

XVII.

It is further ordered, That respondent Ira Smolev, and respondent Smolev's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, joint venture or other device, do forthwith cease and desist from advertising, promoting, offering for sale, selling, or distributing to the general public, the following:

A. Any health-related product or service, including but not limited to, any product or service purporting to treat, cure, or mitigate impotence;

B. Any weight loss product or service, including but not limited to, any product or service purporting to treat, cure, or eliminate cellulite or obesity;

C. Any hair care product or service, including but not limited to, any product or service purporting to grow new hair or prevent, cure, relieve, reverse, or reduce loss of hair;

D. Any personal improvement product or service, including but not limited to, any product or service purporting to enhance motivation or provide educational development;

- E. Any cosmetic product or service; or
- F. Any houseware item, including but not limited to, any cleaning product, cooking utensil, or appliance,

unless, prior to advertising, promoting, offering for sale, selling, or distributing to the general public any product or service set forth in subparts A through F above, respondent Smolev establishes and funds, pursuant to the terms set forth herein, an escrow account in the principal sum of five hundred thousand dollars (\$500,000) in cash, or such other assets of equivalent value, which the Commission, or its representative, in its sole discretion may approve, and maintains such amount in that account until at least five years after he last advertised, promoted, offered for sale, sold, or distributed such product or service described herein, provided, however, that until July 1, 1993, or the date the final decree is entered in *Ava Ross Smolev v. Ira Smolev*, Index No. 64795/91 (N.Y. Sup. Ct.), whichever shall occur first, respondent Smolev shall not be in violation of this provision so long as he maintains in the escrow account at least three hundred seventy-five thousand dollars (\$375,000) in cash, or other approved assets of equivalent value.

Respondent Smolev shall pay all costs associated with the creation, funding, operation, and administration of the escrow account. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

The escrow agreement shall be in substantially the form attached to this order as Exhibit A. The escrow agreement shall provide that the escrow agent, within thirty days following receipt of notice that a final judgment or an order of the Commission against respondent Smolev for consumer redress or disgorgement in an action brought under the provisions of the Federal Trade Commission Act has been entered, or, in the case of an order of the Commission, has become final, finding that he has violated the terms of the consent order in this proceeding or the provisions of the Federal Trade Commission Act, and determining the amount of consumer redress or disgorgement to be paid, shall pay to the Commission so much of the funds of the escrow account as does not exceed the amount of consumer

redress or disgorgement ordered, and which remains unsatisfied at the time notice is provided to the escrow agent, provided that, if respondent Smolev has agreed to the entry of a court order or an order of the Commission, a specific finding that Smolev has violated the terms of the consent order or the provisions of the Federal Trade Commission Act shall not be necessary. A copy of the notice provided for herein shall be mailed to respondent Smolev at his last known address.

Respondent Smolev may not disclose the existence of the escrow account to any consumer, or other purchaser or prospective purchaser, to whom a product or service is advertised, promoted, offered for sale, sold, or distributed, without also disclosing at the same time and in a like manner that the escrow account is required by order of the Federal Trade Commission in settlement of charges that respondent Smolev engaged in false and misleading representations.

XVIII.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and Ana Blau a/k/a Anushka and Dr. Steven Victor, individually, shall, for three (3) years after the date of the last dissemination to which they pertain, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon by respondent(s) in disseminating any representation covered by this order; and

B. All reports, tests, studies, surveys, demonstrations or other evidence in any respondent's possession or control that contradict, qualify, or call into question such representation, or the basis upon

which respondent relied upon for such representation, including complaints from consumers.

XIX.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation shall:

A. Within thirty (30) days after service of this order, provide a copy of this order to each of respondents' current principals, officers, directors and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order.

B. For a period of ten (10) years from the date of issuance of this order, provide a copy of this order to each of respondents' principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order who are associated with respondents or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her position.

XX.

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in their corporate structures, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this order.

XXI.

It is further ordered, That respondents Ira Smolev, Richard E. Kaylor, Ana Blau a/k/a Anushka and Steven Victor, M.D., shall, for a period of ten (10) years from the date of issuance of this order, notify the Commission within thirty (30) days of the discontinuance of his or her present business or employment and of his or her affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his or her duties and responsibilities. The expiration of the notice provision of this part XXI shall not affect any other obligation arising under this order.

XXII.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and Ana Blau a/k/a Anushka and Dr. Steven Victor, individually, shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

EXHIBIT A

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, made and entered into this _____ day of _____, 1993, by and between Ira Smolev (hereinafter called "Smolev"); and the Federal Trade Commission, an agency of the Government of the United States of America, by and through _____ (herein called "FTC"); and _____ (herein called "Escrow Agent");

WITNESSETH

Whereas, the FTC has issued an administrative complaint against Smolev, Docket No. 9251; and

Whereas, the FTC and Smolev have entered into an Agreement Containing Consent Order to Cease and Desist (herein called "Consent Order") in that matter, a copy of which is attached hereto and marked Exhibit A; and

Whereas, the Consent Order requires that Smolev cease and desist from advertising, promoting, offering for sale, selling, or distributing any product or service listed therein to the general public unless he first establishes and maintains an escrow account, under the terms and conditions specified in the Consent Order;

Now, wherefore, in accordance with the terms of the Consent Order, the terms of which are incorporated herein by reference, the parties covenant and agree as follows:

1. Smolev shall establish an escrow account at _____ to be styled Smolev Escrow Account, _____, Escrow Agent. Smolev shall deposit into the Escrow Account an initial sum of at least three hundred seventy-five thousand dollars (\$375,000) in cash, or other approved assets of equivalent value. On or before July 1, 1993, or the date the final decree is entered in *Ava Ross Smolev v. Ira Smolev*, Index No. 64795/91 (N.Y. Sup. Ct.), whichever occurs first, Smolev shall deposit an additional one hundred twenty-five thousand dollars (\$125,000) into the Escrow Account. Thereafter, Smolev shall deposit such additional amounts into the Escrow Account as are necessary to maintain the total amount in the Escrow Account at five hundred thousand dollars (\$500,000). Smolev shall pay the one hundred twenty-five thousand dollars (\$125,000) and such additional amounts as may be necessary by a certified or cashier's check or cash.

2. The Escrow Agent shall be the sole signatory on the Escrow Account and access to the funds held in that account shall be solely through the Escrow Agent. It is understood by the parties to this Escrow Agreement that upon the signing of this Agreement, Smolev relinquishes to the Escrow Agent, all legal title to the

escrow funds, except as to such amounts in the Escrow Account that are in excess of Five Hundred Thousand Dollars (\$500,000). Until and unless the Escrow Account is terminated as provided for herein, Smolev agrees to make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and, in the event of bankruptcy, Smolev acknowledges that the funds are not part of Smolev's estate, nor does the estate have any claim or interest therein.

3. The Escrow Agent and the parties hereto agree that the escrow funds shall be held only in accordance with the terms of the Consent Order and the Escrow Agreement. Smolev shall pay all costs associated with the creation, funding, operation, and administration of the Escrow Account as they become due. In the event that Smolev fails to pay such costs as they become due, the Escrow Agent shall pay the costs from the interest earned on the escrow funds.

4. The Escrow Agent, within thirty days following receipt of notice that a final judgment or an order of the Commission against Smolev for consumer redress or disgorgement in an action brought under the provisions of the Federal Trade Commission Act has been entered, or, in the case of an order of the Commission, has become final, finding that he has violated the terms of the Consent Order in this proceeding or the provisions of the Federal Trade Commission Act, and determining the amount of consumer redress or disgorgement to be paid, which notice shall also be mailed to Smolev at his last known address, shall pay to the Commission so much of the funds of the Escrow Account as does not exceed the amount of consumer redress or disgorgement ordered, and which remains unsatisfied at the time notice is provided to the Escrow Agent, provided that, if Smolev has agreed to the entry of a court order or an order of the Commission, a specific finding that Smolev has violated the terms of the Consent Order or the provisions of the Federal Trade Commission Act shall not be necessary. The Escrow Agent shall have the power to convert to cash so much of the Escrow Account assets as are necessary to satisfy the obligations of the judgment or order.

5. The Escrow Account shall continue until at least five years after Smolev last advertised, promoted, offered for sale, sold, or distributed any product or service specified in the Consent Order, at which time, if there are no pending FTC investigations, legal or administrative actions by the FTC against Smolev, or unsatisfied obligations pursuant to a judgment or order described in paragraph 4 herein, for which a claim could be made against the escrow funds under the terms of the Consent Order, the FTC shall, upon Smolev's request instruct the Escrow Agent to terminate the Escrow Account and return the balance of the Escrow Account to Smolev. At such time, the Escrow Agent shall be fully and completely released from its agency as herein described. The legal title to the escrow funds shall vest in Smolev at such time as the Escrow Agent, pursuant to instructions from the FTC, returns the funds to Smolev.

IN THE MATTER OF

LOMAS MORTGAGE U.S.A., INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3462. Complaint, Oct. 7, 1993--Decision, Oct. 7, 1993

This consent order prohibits, among other things, the Texas mortgage lender from misrepresenting the terms or the nature of lock-in agreements on loans it offers consumers in the future, and requires the respondent to pay \$300,000 in consumer redress, to the Commission, to be used for refunds of up to \$1,000 each to certain Lomas customers.

Appearances

For the Commission: *Arthur B. Levin.*

For the respondent: *Jim Moseley and Harriet E. Miers, Locke, Purnell, Rain & Harrell, Dallas, TX. C. Michael Buxton, Vinson & Elkins, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Lomas Mortgage U.S.A., Inc., a corporation ("Lomas Mortgage" "respondent"), formerly known as the Lomas & Nettleton Company, has violated the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45-58, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and alleges that:

PARAGRAPH 1. Lomas Mortgage is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 1600 Viceroy, in the City of Dallas, State of Texas.

PAR. 2. Respondent has been and is engaged in the mortgage lending business.

PAR. 3. The acts and practices of respondent, as alleged in this complaint, have been and are in or affecting commerce, as "commerce" is defined in the FTC Act.

PAR. 4. Respondent, through a combination of oral representations, the language and design of its loan application form (Exhibit I), the use of incomplete forms, and other means, has represented to applicants in many instances that respondent would unconditionally "lock-in" *i.e.*, agree to hold constant, the mortgage interest rate and number of discount points on Federal Housing Administration ("FHA") loans for a period of sixty days after the signing of the loan application form.

PAR. 5. In truth and in fact, respondent in numerous instances did not lock-in the mortgage interest rate or number of discount points on FHA loans for consumers to whom it had made such representations, imposing higher interest rates or more discount points for these loans within the sixty-day period. Therefore, respondent's representations as stated in paragraph four were, and are, false and misleading.

PAR. 6. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a). Respondent may again employ these acts or practices in the absence of the requested relief.

EXHIBIT I



Lomas & Nettleton

Application for an FHA Mortgage (Except Section 235)

EXHIBIT I
C-3462
B146200

TO: The Lomas & Nettleton Company

RE: L&N Loan No. _____ Buyer(s): _____

Principal Amount(s) _____ Seller(s): _____

Interest Rate: _____ % Term: _____ Yrs. Property Address: _____

Date: _____

Expiration Date: _____

The undersigned hereby applies to The Lomas & Nettleton Company ("L&N") for a commitment to close the above Mortgage Loan (hereinafter called "the subject loan") in accordance with the terms and subject to the conditions appended hereto and/or set forth below:

- 1) The subject loan shall be evidenced, secured and closed by Loan Documents in form and of substance satisfactory to L&N.
- 2) The subject loan shall be an FHA Mortgage (except those loans subject to Section 235) and shall be in the principal amount stated in the related FHA Loan Approval.
- 3) At the closing of the subject loan, L&N will be paid the following charges, fees or assessments:
 - i) an amount equal to _____ % (the discount or points to be charged by L&N as a condition to making the subject loan) of the principal amount of the subject loan; and
 - ii) a warehousing or interest differential fee in the amount of \$ _____
 - iii) an origination fee equal to 1% of the principal amount of the subject loan; and
 - iv) All costs of the subject loan including title appraisal, credit reports, photographs, tax service contract, inspection fees and other similar charges, including closing costs, as may be permitted by applicable regulations; and
 - v) Any portion of the mortgage insurance premium which is not to be financed.
- 4) The undersigned represents to L&N that the undersigned, in making this application, is acting as agent for the Seller and on behalf of the Buyer; and the undersigned agrees that, within five days of L&N's acceptance hereof, the undersigned will advise the Buyer and Seller of the terms and conditions of the commitment evidenced by L&N's acceptance hereof including Paragraph 3 above.
- 5) The general terms and conditions on the reverse side hereof are incorporated herein by reference and made part hereof as fully as if set forth in full herein.
- 6) This application, when accepted and executed by an authorized officer of L&N, will become a valid commitment of L&N, binding on the parties hereto in accordance with the terms hereof. The commitment, when thus validated, will be for the exclusive benefit of the Buyer and may not be assigned or transferred to any other borrower.

If the foregoing meets with your approval, please evidence your acceptance by signing in the space provided below and return two copies hereof to the undersigned.

An applicant signing this document is hereby advised that no representative of L&N is authorized to vary the written terms of this document by oral representations or statements and that no applicant shall rely on any oral representation or statement. If such representation or statement varies from the written terms of this document, Therefore, please read carefully all of the terms of this document.

Firm Name (if applicable)

Authorized Signature

Address

City

Approved and Accepted
The Lomas & Nettleton Company

By _____
Authorized Signature

EXHIBIT I

Commitment of The Lomas & Lanning Company
General Terms and Conditions

EXHIBIT I
C-3462
B146200

- 1. Definitions
 - 1.01. Loan Documents means the loan documents, promissory notes and other instruments, including endorsements, which are required to be provided to the lender in order to fund the loan.
 - 1.02. The original Mortgage Note payable to the order of the Lomas & Lanning Company, L.L.C. ("L&L")
 - 1.03. A certificate of title insurable for an FHA commitment to insure
 - 1.04. Mortgage Note Insurance policy or bond
 - 1.05. An FHA Mortgage Note is a commitment of the Mortgage Note
 - 1.06. L&L and all other documents, instruments or certificates that L&L, in its discretion may determine to be necessary, appropriate or desirable to the effective closing of the subject loan and to be comply with applicable laws and regulations
 - 1.07. Mortgage Note means the note in the principal amount of the subject loan evidencing the purchase of the real estate covered by the cover named in the foregoing application, payable to the order of L&L or its nominee, and secured by a first mortgage or deed of trust on the real estate covered by the foregoing application.
 - 1.08. FHA Mortgage means a Mortgage Note secured by a mortgage covering real estate involved by a first-lien primary dwelling, payment of which is either partially or completely insured by the Federal Housing Administration ("FHA") under the National Housing Act (Except Section 225) or Title V of the Housing Act of 1949 or with respect to which there is a current binding and enforceable commitment for insurance issued by the FHA.
 - 1.09. VA Mortgage means a Mortgage Note secured by a mortgage covering real estate involved by a single-family dwelling, payment of which is either partially or completely guaranteed by the Veterans Administration ("VA") under the Servicemembers Readjustment Act of 1944 or Chapter 37 of Title 38 of the United States Code.
- 2. Interest Rate
 - 2.01. The interest rate on the loan to be evidenced by the Mortgage Note shall be the interest rate set forth in the section of the foregoing application. In no event will L&L be required to fund the subject loan if, in L&L's sole judgement, the prescribed interest rate would constitute usury under the laws of the state in which the security is located.
 - 2.02. The lock-in interest rate and discount points provided for the number of days indicated herein is available only if this loan for which application is made is actually closed within the number of days indicated. By signing this loan application, L&L is not representing, warranting or promising that this loan application will be approved and, if approved, closed within the number of days indicated. L&L's agents and employees are not authorized to represent, warrant or promise that this lock-in, if approved, will close within the number of days indicated and L&L hereby informs applicants that they should not rely upon any representations or statement which purports to so represent, warrant or promise. The actions of third parties such as the FHA/VA, pest control companies, credit bureaus, appraisers, title companies, writers of mortgages, deposits and employment, private mortgage insurance companies, and closing attorneys over whom L&L has no control may delay approval or closing of the loan. L&L will not be responsible for any such delays or for refund of fees paid. If the number of days indicated above passes because of any such delays, L&L will not have an obligation to provide the lock-in rate or discount points set forth in this application and after the expiration of the lock-in period this application will be handled as if the lock-in option had not been chosen.
- 3. L&L's Option to Terminate Commitment
 - 3.01. The maximum rate of interest permitted to be charged on a VA Mortgage is fixed from time to time by the VA, an agency of the United States government. In the event of a change, between the date of the foregoing application and the date of closing, in such maximum rate permitted to be charged on a VA Mortgage, the commitment evidenced by L&L's acceptance of the foregoing application, as L&L's option, shall be null and void, effective on the date of such change.
- 4. General Provisions
 - 4.01. Regulatory Compliance: The subject loan, if funded by L&L, will be closed in a manner consistent with all applicable laws and in accordance with all applicable rules and regulations of the FHA and other governmental agencies.
 - 4.02. Expiration: The commitment evidenced by L&L's acceptance of the foregoing application shall expire and be of no further force or effect unless the subject loan is closed and funded in accordance with the terms hereof prior to the first to occur of:
 - (i) The commitment evidenced by L&L's acceptance of the foregoing application shall expire and be of no further force or effect on the Expiration Date first written unless the subject loan is closed in accordance with the terms hereof prior to such date or
 - (ii) the termination, for any reason, of the FHA's authority to conduct business or to issue commitments, or insurance certificates or
 - (iii) the termination, for any reason, of the Government National Mortgage Association's authority to guarantee securities backed by government insured or guaranteed mortgages or
 - (iv) L&L's election to terminate the commitment in response to a change in the maximum interest rate permitted to be charged on a VA mortgage.
 - 4.03. Proprietary Interest in Loan Documents Vested In L&L: The Buyer and the Seller and the Agent or Broker acting on their behalf, hereby acknowledge and agree that all documentation held by L&L in connection with the foregoing application is the exclusive property of L&L and is not transferable to any other lender or party without L&L's express written consent. Should L&L, in response to any written request by the Buyer, Seller and Agent or Broker, consent to a transfer of the foregoing application to any other party, then the requesting parties shall pay to L&L a transfer fee equal to 2% of the principal amount of the subject loan.
 - 4.04. Other:

Applicable to 90 day Commitments Only

I have read and accept the terms and conditions herein and I shall pay the non-refundable commitment fee of 1% of the proposed loan amount.

DATE: _____
BY: _____

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge the respondent with violations of the Federal Trade Commission Act, 15 U.S.C. 45 *et seq.*; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Lomas Mortgage U.S.A., Inc. is a corporation organized, existing and doing business by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 1600 Viceroy, in the City of Dallas, State of Texas.

2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the respondent, and the proceeding is in the public interest.

ORDER

For purposes of this order, the term "*mortgage loan*" shall mean a Federal Housing Administration ("FHA") consumer mortgage loan or conventional consumer mortgage loan.

For purposes of this order, the term "*lock-in*" shall mean any agreement, however designated, with an applicant for a mortgage loan, to hold for any specified period of time a certain interest rate and/or a certain number of discount points while the loan application is being processed, whether or not the agreement is subject to additional conditions, *provided, however*, that this term shall not include such agreements if made within ten (10) days of the scheduled closing on the loan.

I.

It is ordered, That respondent Lomas Mortgage U.S.A., Inc. ("respondent"), a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of any mortgage loan in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.*, shall cease and desist from representing orally or in writing to any mortgage applicant, directly or by implication, that any interest rate and/or number of points on a mortgage loan are subject to a lock-in, unless that interest rate and number of points are not subject to change during the period specified in the lock-in, except as provided under Section II.

II.

A. *It is further ordered*, That whenever the interest rate and/or number of points quoted to a mortgage loan applicant who has informed respondent of the decision to lock-in are subject to change during the lock-in period, respondent, its successors and assigns shall clearly and conspicuously disclose in writing at the time the

applicant applies for the commitment or lock-in that the interest rate and/or number of points quoted are subject to change during the lock-in period and shall also clearly and conspicuously disclose, in writing, the conditions under which the interest rate and/or number of points are subject to change, and shall require the applicant or applicant's agent to sign respondent's copy of the disclosure of said conditions. Said disclosure shall be contained on the front page of any form that contains or describes the terms of the lock-in agreement, shall be in bold face type at least as large as any other type used on the form, and shall be separated from the rest of the text so that it can be readily noticed.

B. *Provided, however*, that respondent will not be in violation of this order if, in the case of an application for an FHA mortgage loan with the interest rate and/or number of points, as well as other terms, conditioned upon no change occurring in the maximum rate of interest to be charged on a Veterans Administration guaranteed mortgage loan, the written disclosure states:

Your FHA mortgage loan interest rate and/or number of points may change and are NOT "LOCKED IN" to the extent that if the Veteran's Administration changes the maximum interest rate that can be charged on VA loans, [lender], at its option, may change the interest rates and or number of points being offered you.

In the event that an FHA loan is conditioned upon no changes occurring in an index rate other than the Veteran's Administration guaranteed mortgage loan rate, the written disclosure shall refer to the applicable index rate instead of the Veteran's Administration rate.

In the case of an application for a conventional mortgage loan with the interest rate and/or number of points, as well as other terms, conditioned upon no change occurring in the maximum rate of interest to be charged on a Veterans Administration guaranteed mortgage loan, the written disclosure shall state:

Your conventional mortgage loan interest rate and/or number of points may change and are NOT "LOCKED IN" to the extent that if the Veteran's Administration changes the maximum interest rate that can be charged on VA

loans, [lender], at its option, may change the interest rates and/or number of points being offered you.

In the event that a conventional loan is conditioned upon no changes occurring in an index rate other than the Veterans Administration guaranteed mortgage loan rate, the written disclosure shall refer to the applicable index rate instead of the Veteran's Administration rate.

III.

It is further ordered, That whenever respondent, its successors and assigns agree to a "lock-in" on an FHA or conventional mortgage loan and the subject loan closes during the period specified in the loan application, the loan shall be provided upon the terms stated in the application, unless the disclosures provided in Section II of this order have been made, and a change in the maximum interest rate charged by the Veteran's Administration, or any other applicable index rate, occurs prior to closing. This paragraph shall not be construed to impair the respondent's right to deny an application based on the failure of the applicant to meet respondent's credit granting, criteria or the failure of any applicant or other parties to provide information or services reasonably necessary for the loan to be approved or closed within the period specified in the applicant's lock-in.

IV.

It is further ordered, That respondent shall deliver, on or before the tenth day following the date this consent agreement is accepted by the Commission and placed on the public record, to the Federal Trade Commission, 6th Street and Pennsylvania Ave., N.W., Washington, D.C. a cashier's or certified check for \$300,000, made payable to the Federal Trade Commission, to be placed into an interest-bearing escrow account designated by the Commission, in

the name and under the control of the Commission's designated agent.

In the event of any default on any obligation to make any payment under this order, interest on the unpaid amount shall accrue, from the date of default to the date of payment, as provided by 28 U.S.C. 1961(a).

V.

It is further ordered, That the Commission may apply any or all funds received from respondent pursuant to this order, and any interest received thereon, to a consumer redress program for consumers who applied to respondent for FHA loan financing, from February 1 to May 1, 1987, and whose commitments or lock-ins were terminated by respondent in April or May 1987 on the basis of a purported right to terminate contained in respondent's loan application materials, and who did not close a loan with respondent or who closed a loan with respondent at terms less favorable than in the lock-in agreement between respondent and the consumer.

Any funds as shall be required to administer a program of consumer redress as described in Section V of this order shall be taken from the sum provided by respondent in Section IV above. Any funds not distributed by the Commission as redress or extended to administer the consumer redress program shall be paid to the United States Treasury.

The maximum award under this redress program shall be an equal share of the amount set out in Section IV, (less expenses to administer the program), not to exceed \$1,000.00 per applicant or group of joint applicants who made a single loan application. The Commission shall, consistent with the provisions otherwise set out herein, have full discretion to: (1) review and approve the procedures used to identify those consumers who meet the criteria for redress; (2) determine the application of the criteria for participation in any redress program and identify those consumers entitled to relief in any redress program implemented pursuant to this order; (3) determine the manner and timing of the sending to consumers of the

forms attached hereto as Exhibits A-C; and (4) delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations of its choice and to pay the fees, salaries and expenses incurred thereby from the payments made by respondent pursuant to Section IV of this order. On a bi-weekly basis, the Commission or its designated agent shall provide to Lomas Mortgage a copy of each claim form (Exhibit B) received from consumers requesting redress under the terms of this order. Respondent shall have the right to contest the validity of any claim submitted pursuant to the redress program and to provide information concerning the invalidity of the claim within thirty (30) days of receiving such claim form. The Commission shall decide the validity of any such claim based on the information and evidence provided and shall withhold payment of any challenged claim pending determination of its validity by the Commission. Upon payment of redress to any applicant, the Commission or its designated agent shall deliver to Lomas Mortgage the release (Exhibit C) signed by that applicant in connection with the redress program.

The following applicants shall not be eligible for any award under this redress program:

1. Any applicant who does not submit a signed claim form and release within ninety (90) days of receipt of said form and release;
2. Any applicant who has filed a claim pursuant to redress programs administered by the states of Pennsylvania and Texas;
3. Any applicant who has been involved in completed litigation with respondent concerning the termination of its loan commitments in April 1987;
4. Any applicant who otherwise has previously executed settlement agreements or a release with respondent in connection with the termination of its loan commitments in April 1987;
5. Any applicant who has, by refinancing, renegotiation, or otherwise, in the period April 15 through October 15, 1987, achieved or obtained an FHA, VA, or conventional mortgage loan

with the equivalent of the combination of interest rate and points that were locked in with respondent as of April 13, 1987.

VI.

It is further ordered, That, within sixty (60) days following the date of service of this order, Lomas Mortgage shall provide the Commission with a list of the name and last known address of each FHA loan applicant and co-applicant who had a pending loan application with a lock-in feature as of April 13, 1987, and a separate list of all customers whom respondent believes fit under the five criteria for ineligibility set out above in Section V. Respondent shall derive the list of FHA loan applicants from computerized loan applications records for loan applications which closed; and from loan records maintained by respondent and which it can locate for loan applications which did not close. In compiling this list of FHA loan applicants for loans which did not close, respondent shall make a good faith attempt to locate, in its file storage facilities in Dallas and any where else such files are stored, the application files for those applicants and shall provide the last known address and social security number of both the applicant and co-applicant contained in such application files and the address for which a loan was sought.

Within thirty (30) days of being provided such list, the Commission shall cause to be sent a notice by certified mail to the provided address for FHA loan applicants with a lock-in feature pending as of April 13, 1987. This notice shall consist of the forms attached hereto as Exhibits A-C. All notifications shall contain on the envelope the words "PLEASE FORWARD."

VII.

It is further ordered, That, for a period of ten (10) years from service of this order, respondent, its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission up-to-date copies of all mortgage forms in use at any of its offices.

VIII.

It is further ordered, That respondent shall distribute a copy of this order to all present and future loan officers and management officials having supervisory responsibilities for administration, sales, advertising or policy with respect to the subject matter of this order in each of its subsidiaries and operating divisions dealing with mortgage origination, and shall secure from each such individual a signed statement acknowledging receipt of this order.

IX.

It is further ordered, That respondent, its successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in respondent which may affect compliance obligations arising out of the order.

X.

It is further ordered, That respondent shall maintain and upon request make available to the Federal Trade Commission all records that will demonstrate compliance with the requirements of this order.

XI.

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, signed by the respondent and setting forth in detail the manner and form of its compliance with this order.

EXHIBIT A

FTC vs. Lomas Consumer Refund Program

TO: FORMER MORTGAGE APPLICANTS OF LOMAS

NOTICE OF LITIGATION SETTLEMENT AND REFUND

This notice is to inform you that Lomas Mortgage U.S.A., formerly known as The Lomas and Nettleton Company ("Lomas" or "L&N") has agreed to pay consumer redress to settle Federal Trade Commission charges that Lomas improperly canceled mortgage lock-ins and commitments in April 1987. In the spring of 1987, Lomas used a mortgage application form that contained the following paragraph on the back:

The maximum rate of interest permitted to be charged on a VA Mortgage is fixed from time to time by the VA, an agency of the United States government. In the event of a change, between the date of the forgoing application and the date of closing, in such maximum rate permitted to be charged on a VA Mortgage, the commitment evidenced by L&N's acceptance of the foregoing application, at L&N's option, shall be null and void, effective on the data of such change.

On April 13, 1987, after the Veterans Administration raised the maximum interest rate for VA loans, Lomas exercised the option described in the second sentence of the paragraph above and canceled its pending commitments for FHA loan applications. Your application was one which may have been subject to a lock-in or commitment that was canceled.

Lomas has since learned that several individuals whose lock-ins or commitments were canceled felt that Lomas did not fully explain to them that their original application could be canceled as provided above, or felt misled about or misunderstood the effect of the cancellation clause. Lomas values its reputation and looks forward to a satisfactory resolution of any questions or complaints you have. Based upon discussion with representatives of the Federal Trade Commission, Lomas has agreed to provide refunds to certain consumers who were affected by the cancellation of their loan lock-in or commitment.

To be eligible for a refund, you must submit the enclosed claim form by XXXXXXXXXXXX, 199X. If your claim form is not received by XXXXXXXX, 199X you will not receive a refund. Lomas has the right to challenge your eligibility based upon its loan records.

The amount you may be eligible to receive as a refund depends on: 1) the total number of customers qualifying for a refund and 2) the total amount actually paid into a settlement fund by Lomas. Depending on the number of people who qualify for a refund, you may receive as much as \$1,000.00.

Lomas looks forward to a satisfactory resolution of your situation and thanks you for your patience and cooperation.

EXHIBIT B

FTC vs. Lomas Consumer Refund Program

CLAIM FORM

I believe that I am entitled to participate in the refund program provided by the Federal Trade Commission ("FTC") agreement with Lomas Mortgage USA, Inc., formerly known as The Lomas and Nettleton Company ("Lomas"), because of the following:

1. I applied for a FHA loan to Lomas after February 1, 1987, and my lock-in or commitment was pending on April 13, 1987.
2. I chose to execute a conditional commitment or "lock-in" agreement with Lomas which provided for a rate of interest of _____ and I agreed to pay _____ points.
3. I (circle one):
 - (a) closed a loan with Lomas; or
 - (b) closed a loan with another lender with whom I applied within ten (10) days of canceling my Lomas application which later closed at a rate and points higher than the rate and points at which I applied at Lomas; or
 - (c) was prevented from closing the loan I sought because of the conduct of Lomas which I felt was unjustified.
4. I closed my loan at a rate of interest of _____ and I agreed to pay _____ points. I am still making payments on my loan.
5. I believe that I was entitled to receive the interest rate of _____ and pay _____ points because I was told I would receive such interest rate and points or I understood from the agreement I signed with Lomas that I would receive the stated interest rate and points, and I did not receive such interest rate and points in my view due to the fault of Lomas. I did everything I was required to do to close at the rate provided for in my original application with Lomas.
6. If I closed a loan with another lender, I am attaching a copy of my HUD-1 Settlement Statement from the title company and a copy of my mortgage. If I closed a loan with Lomas I need not attach such documents.
7. I am returning an executed release as attached which I understand will be delivered to Lomas at the time a check is forwarded to me.
8. I understand that Lomas has the right to dispute my claim.

Claim No. _____

Under penalty of perjury, I certify that the information provided above is true and correct to the best of my knowledge.

Name Date

My current address is:

EXHIBIT C

FTC vs. Lomas Refund Program

GENERAL RELEASE

The release, given by the undersigned person of the State of _____ to Lomas Mortgage U.S.A., Inc., formerly known as The Lomas & Nettleton Company (hereinafter referred to as "Lomas").

WITNESSETH:

In consideration of the payment by Lomas of \$10.00 and other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned and their heirs and assign(s), hereby release(s), and forever discharge(s) Lomas together with all of its past and present officers, agents, employees, insurers, predecessors, successors and assigns of and from any and all claims, demands, damages, causes of action or liabilities of any kind or nature whatsoever, whether now or existing or hereafter and whether now known or unknown, arising from my application for a FHA loan in the spring of 1987 and relating to the rate of interest and/or points on that loan.

The undersigned acknowledge(s) that this release is given as part of the compromise of the claim against Lomas and agrees that the payment made hereunder is not to be construed as an admission of liability on the part of Lomas.
D a t e : - - - - -

Name

Name

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

Having found reason to believe that Lomas Mortgage U.S.A., Inc., violated Section 5 of the FTC Act based on its oral representations and other conduct in treating loan applications, I concur in the Commission's decision to approve issuance of a final decision and order pursuant to a consent agreement with Lomas. I do not reach the question whether the loan application form (Exhibit I attached to the complaint) within its four corners is deceptive and, therefore, express no opinion on whether construction of the loan application form under the FTC Act differs from the construction of the form by the court in *Goodbar v. The Lomas & Nettleton Co.*, No 88-1873, 1989 U.S. Dist. Lexis 6151 (E.D. La. May 25, 1989), holding, in favor of Lomas, that the form is not deceptive under Louisiana law. In my view, the proposed requirement that Lomas provide additional written disclosures to loan applicants is appropriate fencing-in relief.