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12 ATTORNEYS FOR PLAINTIFF

13
14 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

15
16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 STEVEN PATRICK GARVEY a/ka/ STEVE
GARVEY, GARVEY MANAGEMENT GROUP,
20 INC., LARK KENDALL a/k/a KENDALL
CARSON, MARK LEVINE, individually and as
21 an officer and director of MODERN
INTERACTIVE TECHNOLOGY, INC., DAVID
22 RICHMOND, individually and as an officer and
director of MODERN INTERACTIVE
23 TECHNOLOGY, INC., and MODERN
INTERACTIVE TECHNOLOGY, INC.,

24 Defendants.
25
26

Civil Number

**STIPULATED FINAL ORDER
AND SETTLEMENT OF
CLAIMS FOR MONETARY
RELIEF AS TO DEFENDANT
LARK KENDALL A/K/A
KENDALL CARSON**

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

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

13 14 **FINDINGS**

15 1. This Court has jurisdiction of the subject matter of this action and of the defendant.
16 Venue in the Central District of California is proper.

17 2. The Complaint states a claim upon which relief can be granted, and the
18 Commission has authority to seek the relief it has requested under Sections 5, 12 and 13(b) of the
19 FTC Act, 15 U.S.C. §§ 45, 52, and 53(b).

20 3. The acts and practices of the defendant were or are in or affecting commerce, as
21 “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

22 4. Defendant waives all rights to seek judicial review of, or otherwise challenge or
23 contest the validity of, this Order. Defendant also waives any claim that she may have held under
24 the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the
25 date of this Order.

26 5. This action and the relief awarded herein are in addition to, and not in lieu of, other
27 remedies as may be provided by law.

28 6. Each party shall bear its own costs and attorneys’ fees.

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

9
10 **III.**

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

18
19 **IV.**

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

1 **ASSIGNMENT**

2 **VII.**

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

6
7 **RECORD KEEPING**

8 **VIII.**

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

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

19
20 **MONITORING**

21 **IX.**

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

1 **X.**

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

8
9 **XI.**

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

14
15 **XII.**

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

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

27
28 **RETENTION OF JURISDICTION**

XIII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO STIPULATED:

DAVID P. FRANKEL
THEODORE H. HOPPOCK
Federal Trade Commission
600 Pennsylvania Ave., N.W., Rm. S-4002
Washington, D.C. 20580
(202) 326-2812, -3087 (voice)
(202) 326-3259 (facsimile)

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

LARK KENDALL a/k/a KENDALL
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Attorneys for Defendant
LARK KENDALL a/k/a
KENDALL CARSON

SO ORDERED

DATED: _____

UNITED STATES DISTRICT JUDGE

1 **APPENDIX A**

2 **UNITED STATES DISTRICT COURT**
3 **CENTRAL DISTRICT OF CALIFORNIA**

4 FEDERAL TRADE COMMISSION,

5 Plaintiff,

Civil Number

6 v.

7 STEVEN PATRICK GARVEY a/ka/ STEVE
8 GARVEY, GARVEY MANAGEMENT GROUP,
9 INC., LARK KENDALL a/k/a KENDALL
10 CARSON, MARK LEVINE, individually and as
11 an officer and director of MODERN
12 INTERACTIVE TECHNOLOGY, INC., DAVID
13 RICHMOND, individually and as an officer and
14 director of MODERN INTERACTIVE
15 TECHNOLOGY, INC., and MODERN
16 INTERACTIVE TECHNOLOGY, INC.,

17 Defendants.

18 **AFFIDAVIT OF LARK KENDALL**

19 Lark Kendall a/k/a Kendall Carson, being duly sworn, hereby states and affirms:

20 1. My name is Lark Kendall and I am also know as Kendall Carson. I am a citizen of
21 the United States and am over the age of eighteen. I have personal knowledge of the matters
22 discussed in this declaration, and if called as a witness, I could and would competently testify as
23 to the matters stated herein. I am a defendant in the above-captioned action.

24 2. My current address is _____
25 _____.

26 3. On (date) _____, 2000, I received a copy of the Stipulated Final
27 Order and Settlement of Claims for Monetary Relief as to Defendant Lark Kendall a/k/a Kendall
28 Carson, which was signed by the Honorable _____, United States District Court Judge
for the Central District of California. A true and correct copy of the Order that I received is
appended to this Affidavit.

1 I hereby declare under penalty of perjury under the laws of the United States of America
2 that the foregoing is true and correct. Executed on (date) _____, at (city,
3 state) _____.

4
5 _____
6 Lark Kendall a/k/a Kendall Carson

7 STATE OF CALIFORNIA

8 COUNTY OF _____

9
10 BEFORE ME this day personally appeared Lark Kendall a/k/a Kendall Carson, who being
11 first duly sworn, deposes and says that she has read and understands the foregoing statement and
12 that she has executed the same for the purposes contained therein.

13 SUBSCRIBED AND SWORN TO before me this _____ day of _____,
14 2000, by Lark Kendall a/k/a Kendall Carson. She is personally known to me or has presented
15 (state identification) _____ as identification.

16
17 _____
18 Print Name

19 NOTARY PUBLIC
20 STATE OF CALIFORNIA

21 Commission Number
22 Affix Seal

23
24
25
26
27 **APPENDIX B**

28 **Assignment**

1 This assignment is hereby made by Lark Kendall a/k/a Kendall Carson (“Kendall”), of 257
2 North Almont Drive, Beverly Hills, California 90211. The Federal Trade Commission (“FTC”)
3 is the assignee of this assignment.

4 Kendall, in consideration of the FTC’s agreement to enter into a Stipulated Final Order for
5 Permanent Injunction and Settlement of Claims for Monetary Relief as to Defendant Lark Kendall
6 a/k/a Kendall Carson, in FTC v. Steven Patrick Garvey a/k/a Steve Garvey, et al., (C.D. Cal.), and
7 of other good, valuable, and sufficient considerations, the receipt of which is acknowledged, sells,
8 assigns, transfers, sets over and delivers to the FTC, its successors and assigns, any and all claims,
9 demands, and cause or causes of action of whatsoever kind and nature Kendall may have to
10 payment or collection of any judgments, monies, fees, commissions, salary, due to Kendall from
11 Ronnell Raganas or Christian Alexander Models in connection with Kendall’s appearance in or
12 work with respect to any advertisements or infomercials for the Enforma System, Fat Trapper, Fat
13 Trapper Plus, or Exercise In A Bottle.

9 Kendall constitutes and appoints the FTC, and the FTC’s successors and assigns, its true
10 and lawful attorney-in-fact and attorneys-in-fact, irrevocably, with full power of substitution and
11 revocation, for Kendall and in Kendall’s name, or otherwise, but for the sole use and benefit of the
12 FTC, the FTC’s successors and assigns, to ask, demand, sue for, collect, receive, compound, and
13 give acquittances for such claim or claims, or any part of such claim or claims.

12 In witness whereof, Kendall has executed this assignment at _____,
13 California on _____, 2000.

14
15 _____
16 Lark Kendall a/k/a Kendall Carson

17 _____
18 Notary Public

18 My Commission Expires: _____
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