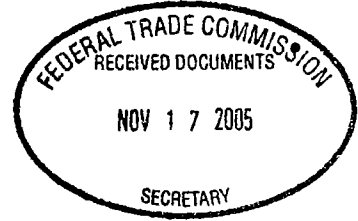


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
)

BASIC RESEARCH, L.L.C.,)
A.G. WATERHOUSE, L.L.C.,)
KLEIN-BECKER USA, L.L.C.,)
NUTRASPORT, L.L.C.,)
SOVAGE DERMALOGIC)
LABORATORIES, L.L.C.,)
BAN, L.L.C.,)
DENNIS GAY,)
DANIEL B. MOWREY, and)
MITCHELL K. FRIEDLANDER,)

Respondents.)
)
)

Docket No. 9318

PUBLIC

PARTIES' STIPULATIONS OF FACT AND AUTHENTICITY

In accordance with the Second Revised Scheduling Order, the parties stipulate to and jointly propose the following stipulations of fact and authenticity.¹ The parties respectfully submit that allowing these stipulations will result in a more efficient presentation of evidence.

The parties have not agreed to any stipulations of law.

I. STIPULATIONS OF FACT

¹ Pursuant to Rule of Practice 3.46, stipulations containing information for which Respondents seek confidential treatment are designated in brackets and in bold. Complaint Counsel do not necessarily agree that confidential treatment is warranted for such information. Complaint Counsel therefore reserve the right to challenge such designations.

1. [REDACTED].
2. [REDACTED].
3. [REDACTED].
4. [REDACTED].
5. [REDACTED].
6. [REDACTED].
7. [REDACTED].
8. [REDACTED].
9. [REDACTED].
10. [REDACTED].
11. Basic Research products have been sold nationally, both in the state of Utah and in other states.
12. Daniel B. Mowrey is not a medical doctor.
13. [REDACTED].
14. Dermalin advertisements appeared in national magazines such as Cosmopolitan, Redbook, Energy Times, Let's Live, and Muscle & Fitness Hers.
15. Cutting Gel advertisements appeared in national magazines such as Muscle & Fitness, Physical and Let's Live.
16. Cutting Gel was advertised to body builders.
17. Tummy Flattening Gel advertisements appeared in national magazines such as Cosmopolitan and Redbook.
18. Tummy Flattening Gel was targeted towards women for use on the tummy.
19. Leptoprin was advertised through direct response television on television stations throughout the United States.
20. Television advertisements for Leptoprin have aired over 10,000 times.

21. Anorex advertisements appeared in Redbook and Ladies' Home Journal.
22. PediaLean was advertised in magazines such as Redbook, Let's Live, and Healthy Living.
23. PediaLean was advertised in tabloids such as Star and The Enquirer.
24. PediaLean was advertised on the weightlossforchildren.com website.
25. PediaLean was advertised on television.
26. The target audience for PediaLean was parents of overweight children.
27. Dermalin-APg, Cutting Gel, Tummy Flattening Gel, Leptoprin, Anorex, and PediaLean were sold nationally.
28. Dermalin has been advertised on Basic Research's Internet websites.
29. Dermalin has been advertised in newspapers and tabloids.
30. Dermalin has been advertised in magazines.
31. Dermalin advertisements appeared in national magazines.
32. Cutting Gel has been advertised on Basic Research's Internet websites.
33. Cutting Gel has been advertised in newspapers and tabloids.
34. Cutting Gel has been advertised in magazines.
35. Cutting Gel advertisements appeared in national magazines.
36. Tummy Flattening Gel has been advertised on Basic Research's Internet websites.
37. Tummy Flattening Gel has been advertised in newspapers and tabloids.
38. Tummy Flattening Gel has been advertised in magazines.
39. Tummy Flattening Gel advertisements appeared in national magazines.
40. Leptoprin has been advertised on Basic Research's Internet websites.
41. Leptoprin has been advertised in newspapers and tabloids.

42. Leptoprin has been advertised in magazines.
43. Leptoprin has been advertised in television commercials.
44. Leptoprin was advertised through direct response television.
45. Leptoprin was advertised on television stations throughout the country.
46. Advertisements for Leptoprin have aired in numerous states of the United States.
47. A radio advertisement for Leptoprin aired.
48. Anorex has been advertised on Basic Research's Internet websites.
49. Anorex has been advertised in newspapers and tabloids.
50. Anorex has been advertised in magazines.
51. Anorex advertisements have appeared in national magazines such as Redbook and Ladies' Home Journal.
52. PediaLean has been advertised on Basic Research's Internet websites.
53. PediaLean has been advertised in newspapers and tabloids.
54. PediaLean has been advertised in magazines.
55. [REDACTED].
56. [REDACTED].
57. [REDACTED].
58. [REDACTED].
59. [REDACTED].
60. [REDACTED].
61. [REDACTED].
62. [REDACTED].

63. [REDACTED].
64. In late 2002, APRL was renamed "DBM Enterprises."
65. [REDACTED].
66. [REDACTED].
67. [REDACTED].
68. [REDACTED].
69. [REDACTED].
70. [REDACTED].
71. [REDACTED].
72. [REDACTED].
73. [REDACTED].
74. [REDACTED].
75. [REDACTED].
76. [REDACTED].
77. [REDACTED].
78. [REDACTED].
79. [REDACTED].
80. [REDACTED].
81. [REDACTED].
82. [REDACTED].
83. The Dermalin-APg Magazine Advertisement reproduced at Exhibit A to the Complaint contained the following language:

**“Dermalin-APG: The next generation fat emulsifier
Penetrating Gel Emulsifies Fat On Contact
Dissolves Deep-Stored Body Fat Wherever Applied.”**

“Dermalin-APg’s unique transdermal ‘gel’ formulation releases fat stores from any problem area. . . . [W]hen the gel is applied to the tummy, waist or hips, a dramatic reduction of stored body fat occurs.”

“The Miracle of Dermalin-APg

Dermalin APg permits you to spot reduce. Put it on around your thighs - slimmer thighs. Over thirty and getting thick around the middle? Just apply Dermalin Apg’s transdermal gel to your waist or tummy and watch them shrink in size within a matter of days.”

84. The Dermalin-APg Website <www.dermalin.com> reproduced at Exhibit B to the Complaint contained the following language:

**“Dermalin-APG: The next generation transdermal fat emulsifying gel
BUY ONLINE NOW! or call 1-888-340-1628 Ext. KBWEB
Penetrating Gel Emulsifies Fat On Contact
Dissolves Deep-Stored Body Fat Wherever Applied.”**

“Dermalin-APg’s unique transdermal gel formulation releases fat stores from any problem area. . . . [W]hen the gel is applied to the tummy, waist or hips, a dramatic reduction of stored body fat occurs

The Miracle of Dermalin-APg

Dermalin APg permits you to spot reduce. Put Dermalin-APg on your thigh, it goes to work directly on your thigh. Over thirty and getting thick around the middle? Just apply Dermalin Apg’s transdermal gel to your waist or tummy and watch them shrink in size within a matter of days.”

85. The Cutting Gel Product Packaging reproduced at Exhibit C of the Complaint contained the following quoted language:

“CUTTING GEL’s patented, transdermal gel formulation has been specifically designed to reduce resistant surface body fat wherever applied. . . . Apply CUTTING GEL to your glutes, biceps, triceps, or lats, and the fat literally melts away, leaving pure, ripped muscle behind! And let’s not forget, if you’re a man over 40 and have a problem with ‘love handles’ (or a woman developing a ‘pre-menopausal tummy’), you can’t live without CUTTING GEL!

You apply CUTTING GEL topically, directly to the specific areas that need extra definition. CUTTING GEL penetrates the skin and goes to work directly on stubborn fat cells, literally forcing them to release fat into the bloodstream to be burned as energy. Now you can finally get rid of that last concealing layer of ugly fat and get really cut!” (emphasis in original).

86. Magazine advertisements for Cutting Gel, including the advertisement attached to the Complaint at Exhibit D, contained the following statements:

“FACT/ CUTTING GEL Gets Rid of Surface Body Fat!

Finally, there’s Cutting Gel, a unique, patented, transdermal gel that penetrates deep into the skin and dissolves stubborn body fat on contact. That’s right! A clinically proven, transdermal gel that dissolves surface body fat wherever applied! It’s called Cutting Gel, and it’s finally available in the United States in full clinical strength, without a prescription, and without annoying doctor’s visits.” (emphasis in original).

“Apply CUTTING GEL to your glutes, biceps, triceps, or lats, and the fat literally melts away, leaving pure, ripped muscle behind! And let’s not forget, if you’re a man over 40 and have a problem with ‘love handles,’ you can’t live without CUTTING GEL!

“FACT/ Clinically Proven, Full-Strength, Patented Formula!”

“*Put Cutting Gel in a culture dish with fat cells and you can literally watch them deflate – similar to sticking a pin in a balloon.*”

Dr. Daniel B. Mowrey” (emphasis in original)

“Dissolves Surface Body Fat on Contact!

Published Clinical Trials Prove CUTTING GEL’s Power!”

87. The Cutting Gel Website <www.cuttinggel.com> reproduced at Exhibit E to the Complaint, contained the following statements:

“the future of fat-burning”

“FACT CUTTING GEL Gets Rid of Surface Body Fat!

Finally, there’s Cutting Gel, a unique, patented, transdermal gel that penetrates deep into the skin and dissolves stubborn body fat on contact. That’s right! A clinically proven, transdermal gel that dissolves surface body fat wherever applied! It’s called Cutting Gel, and it’s finally available in the United States in full clinical strength, without a prescription, and without annoying doctor’s visits.”

“Apply CUTTING GEL to your glutes, biceps, triceps, or lats, and the fat literally melts away, leaving pure, ripped muscle behind! And let’s not forget, if you’re a man over 40 and have a problem with ‘love handles’ you can’t live without Cutting Gel!”

“All of us want flat, washboard stomachs, firm buns, and tight, smooth thighs. But no matter how many pills we swallow, or how much we sweat all over our Stairmaster, we will can’t get rid of that extra layer of body fat covering up the results of all our pain and hard work. That is until now!”

“Just apply Cutting Gel directly to any resistant pocket of surface body fat (the fat around your abs, thighs, hips, or buttocks) and Cutting Gel’s transdermal formulation penetrates the skin, mobilizing stored fat and leaving only lean, sexy curves behind!”

88. Tummy Flattening Gel magazine advertisements, including the advertisement reproduced at Exhibit F to the Complaint, have contained the following quoted language:

“New Product Update from Sovage Dermalogic Laboratories

**PATENTED TOPICAL GEL
REDUCES TUMMY FAT!**

‘This new, highly concentrated formula allows for precise, targeted delivery... making it the first true spot-reducing gel capable of effective reduction of dense abdominal fat.’

Dr. Nathalie Chevreau, PhD, RD, Director of Women’s Health, Sovage Dermalogic Laboratories” (emphasis in original)

“CLINICALLY PROVEN

How It Works – The Science

It is well documented that when beta adrenergic stimulants such as Epidril are added to a culture dish with adipose (fat) cells, the cells deflate as they release their stored fat – very similar to the way a balloon deflates when stuck with a pin. The evidence is conclusive. Epidril has been verified by two published clinical trials and has been awarded a United States Patent [No. 4,525,359].”

“The ‘Fine Print’

As with all Epidril formulations, there are two caveats. First, because Sovage Tummy Flattening Gel works by forcing stored fat out of abdominal fat cells and into the bloodstream to be burned as energy, you have to help burn off the released fat by exercising or decreasing caloric intake so circulating fat is not redeposited. Second, you might be tempted to use more than the recommended dosage of Sovage Tummy Flattening Gel. Don’t...there is simply no way for your body to deal with that much released fat.

See Visible Results in Approximately 19 Days, Guaranteed!

Use Sovage Tummy Flattening Gel as directed, and you will begin to see dramatic, visible results in approximately 19 days.”

“NOTE: Many of our clients who have considered liposuction surgery use Sovage Tummy Flattening Gel first, as a kind of ‘test-drive’ before committing to a possibly dangerous surgical solution.”

89. The Tummy Flattening Gel from Internet Website www.sovage.com , including the Internet Website reproduced as Exhibit G to the Complaint, has contained the following statements:

“New Product Update from Sovage Dermalogic Laboratories

PATENTED TOPICAL GEL
REDUCES TUMMY FAT!

‘This new, highly concentrated formula allows for precise targeted delivery... making it the first true spot-reducing gel capable of effective reduction of dense abdominal fat.’

Dr. Nathalie Chevreau, PhD, RD, Director of Women’s Health, Sovage Dermalogic Laboratories” (emphasis in original)

“The evidence is conclusive. Epidril has been verified by two published clinical trials and has been awarded dual United States Patents [Nos. 4,525,359 and 4,588,724].”

“The Power of Sovage Tummy Flattening Gel

The ultimate power of Sovage Tummy Flattening Gel results from a patent-pending process that allows precise delivery of its **ultra-concentrated** Epidril base formulation to resistant areas of dense abdominal fat – selectively accelerating the breakdown of regional fat cells. Sovage Tummy Flattening Gel is a quick-penetrating gel so thick, concentrated, and smooth some people call it a ‘fat burning paste.’” (emphasis in original)

“[T]he quickest way to capture a perfectly sculpted midsection is with the new, area-specific, clinically proven, super-concentrated Sovage Tummy Flattening Gel.”

90. Tummy Flattening Gel was targeted towards women, for use on the “tummy.”
91. The Leptoprin 120-Second television commercial attached to the Complaint as Exhibit H (with transcript attached at H-1) contained the following quoted language:

ON SCREEN: \$153 a bottle

FEMALE ANNOUNCER: When is a diet pill worth \$153 a bottle?

ON SCREEN: When You Need to Lose More than 20 pounds...
Developed for the Significantly Overweight.

FEMALE ANNOUNCER: When you're more than 20 pounds overweight and tired of wasting money on one ordinary diet pill after another and every diet plan has failed. Now, there's Leptoprin.

ON SCREEN: (Scrolling on screen)
Specifically developed for the significantly overweight, backed by two United States patents, two published clinical trials, and an ironclad 100 percent money back guarantee. Leptoprin is simply the most powerful, clinically proven weight control compound available...
Period!
1-800-460-2990
www.leptoprin.com

MALE ANNOUNCER: Specifically developed for the significantly overweight, backed by two United States patents, two published clinical trials and an ironclad 100 percent money back guarantee. Leptoprin is simply the most powerful, clinically proven weight control compound available, period.

ON SCREEN: Before photo
203 lbs.

1-800-460-2990
www.leptoprin.com

RHONDA WILLIAMS: I've gone from 203 pounds down to 153 pounds.

ON SCREEN: LOST 50 LBS.
Results May Not Be Typical
Rhonda Williams
Titusville, Florida
1-800-460-2990
www.leptoprin.com

RHONDA WILLIAMS: I went from a size 18 down to a size 7 dress. If you had told me that I would have dropped 50 pounds, I would never have believed it. And now look at me.

ON SCREEN: 1-800-460-2990
www.leptoprin.com

FEMALE ANNOUNCER: If you're one of those people who constantly worry about five or six vanity pounds, Leptoprin is not for you. Leptoprin is much too expensive and much too powerful for the casual dieter. But if you're one of the millions of Americans who are 20, 30, 50 pounds or more overweight, you need Leptoprin.

ON SCREEN: Before photo
404 lbs.
1-800-460-2990
www.leptoprin.com

TONY TRUPIANO: You don't have to be fat.

ON SCREEN: LOST 147 LBS.
Results May Not Be Typical
Tony Trupiano
Detroit, Michigan
1-800-460-2990
www.leptoprin.com

TONY TRUPIANO: Eight months ago I wore these pants at 404 pounds. I've lost 147. I'm actually going to frame these pants and put them on my wall. I am.

ON SCREEN: Before photo
235 lbs.
Amy Richardson
St. Louis, Missouri

1-800-460-2990
www.leptoprin.com

AMY RICHARDSON: I'm currently down to 175.

ON SCREEN: LOST 60 LBS.
Results May Not Be Typical
Amy Richardson
St. Louis, Missouri
1-800-460-2990
www.leptoprin.com

* * *

MALE ANNOUNCER: So, when is a diet pill worth \$153 a bottle? When it works, really works.

ON SCREEN: LOST 60 LBS.
1-800-460-2990
www.leptoprin.com

AMY RICHARDSON: It's like you're a new person.

ON SCREEN: LOST 147 LBS.
1-800-460-2990
www.leptoprin.com

TONY TRUPIANO: It's been an amazing journey.

ON SCREEN: LOST 50 LBS.
1-800-460-2990
www.leptoprin.com

RHONDA WILLIAMS: It works.

92. The Leptoprin Website <www.leptoprin.com>, including the Website reproduced at Exhibit I to the Complaint, contained the following statements:

“LEPTOPRIN

The Ultimate Weight Loss Compound For The Significantly Overweight... More Than 20 Pounds Overweight or A Body Mass Index (BMI) Greater Than 27”

“Unless a weight-control compound addresses the genetic factor – and helps you overcome your genetic predisposition to obesity – your attempts at weight loss become no more than an exercise in futility (and a waste of time and money).

But now there's Leptoprin – the first weight-control compound designed to mitigate the profound effect that variations in the human genetic code have on the storage, use, and disposition of body fat.

Leptoprin is an extremely powerful anorectic agent and is not intended for use by the casual dieter who is merely attempting to shed five or ten 'vanity' pounds. However, if substantial, excess body fat is adversely affecting your health and self-esteem, then it's time for you to discover Leptoprin – the first comprehensive weight-loss compound designed specifically to overcome your genetic predisposition.

Leptoprin: The Result of an Extraordinary Collaboration

Leptoprin (or more correctly, its patent-protected core compound, Leptoprin) is the result of an extraordinary collaborative effort between Dr. Daniel B. Mowrey, Director of Scientific Affairs, APRL (American Phytotherapy Research Laboratory), Salt Lake City, Utah, and Dr. Edward G. Fey, University of Massachusetts Medical Center, Worcester, Massachusetts. Though working independently, both doctors were keenly aware of the growing body of evidence linking obesity to certain genetic 'markers.' In September of 1998, Drs. Mowrey and Fey discovered each had access to compatible patents for variant methods of regulating obesity. As they familiarized themselves with each others' work, it became clear that combining the patented formulations could overcome genetic anomalies responsible for significant overweight."

"Leptoprin: Now Available in The United States Without A Prescription

In a report dated February 19, 2000, Dr. Mowrey stated 'Although Leptoprin is much too powerful for the 'casual dieter,' the ability of Leptoprin to help people overcome the genetic implications of obesity leads me to believe Leptoprin, and its base formulation Leptoprin, is the most effective means of providing considerable benefit to that vast population of American men and women who are significantly overweight. That is, until science develops a reliable means of altering the genetic code.' If You're Significantly Overweight, You Need Leptoprin. If you're significantly overweight (more than 20 lbs. of excess body weight and/or a BMI greater than 30), there is only one weight-control compound specifically designed for you... it's Leptoprin. Patent-protected, clinically established, and guaranteed to help you become the thinner, healthier, and more active person you've always wanted to be." (Ellipses in original)

93. An Anorex website <www.anorex.com> , including the website reproduced at Exhibit J to the Complaint has contained the following quoted language:

"To begin, if you are one of those people who constantly worry about 5 or 6 simple 'vanity' pounds, Anorex is not for you. But if you're one of the millions of Americans who are significantly overweight (more than 20 lbs. of excess body weight and/or a BMI [body mass index] greater than 30) there is no longer any way to deny that ordinary diet pills and so-called 'fat burners' (if they work at all) so often fail to help the significantly overweight. . . .

But now there's Anorex – the first weight-control compound designed to mitigate the profound effect that variations in the human genetic code have on the storage, use, and disposition of body fat. Anorex is an extremely powerful anorectic agent and is not intended for use by the casual dieter who is merely attempting to shed five or ten 'vanity' pounds. However, if substantial, excess body fat is adversely affecting your health and self-esteem, then it's time for you to discover Anorex – the first comprehensive weight-loss compound designed specifically to overcome your genetic predisposition.

Anorex: The Result of an Extraordinary Collaboration

Anorex (or more correctly, its patent-protected core compound, Leptoprin) is the result of an extraordinary collaborative effort between Dr. Daniel B. Mowrey, Director of Scientific Affairs, APRL (American Phytotherapy Research Laboratory), Salt Lake City, Utah, and Dr. Edward G. Fey, University of Massachusetts Medical Center, Worcester, Massachusetts. Though working independently, both doctors were keenly aware of the growing body of evidence linking obesity to certain genetic 'markers.' In September of 1998, Drs. Mowrey and Fey discovered each had access to compatible patents for variant methods of regulating obesity. As they familiarized themselves with each others' work, it became clear that combining the patented formulations could overcome genetic anomalies responsible for significant overweight."

“Although Anorex is much too powerful for the ‘casual dieter’ (someone concerned about losing 5 or 6 extra ‘vanity pounds), its distinct ability to help overcome the genetic implications of obesity makes it the most effective means of providing considerable benefit to that vast population of American men and women who are significantly overweight.’

Dr. Daniel B. Mowrey,
Director Scientific Affairs
Klein-Becker usa

CAUTION: Anorex is Not a Toy. Anorex Should Not Be Used by the ‘Casual Dieter’.”

“If You’re Significantly Overweight, You Need Anorex

If you're significantly overweight (more than 20 lbs. of excess body weight and/or a BMI greater than 30), there is only one weight-control compound specifically designed for you... it's Anorex. Patent-protected, clinically established, and guaranteed to help you become the thinner, healthier, and more active person you've always wanted to be.”
(Ellipses in original)

94. PediaLean magazine advertisements, including the advertisement reproduced at Exhibit K to the Complaint contained the following quoted language:

“Now there's hope for you and your Overweight Child
At Last! A Clinically Proven, Safe & Effective, All-natural Weight Control Compound Designed, Tested and Developed Specifically for Children... Discovered in Europe and Now Available in America.

If you're the parent or grandparent of one of the more than 11 million overweight or obese school-aged children in the United States, you know the pain and embarrassment this growing 'Epidemic' can cause. But now, a revolutionary, all-natural weight control compound offers new hope. It's called PediaLean: the first and only clinically proven, safe, and effective weight-control compound designed for children and adolescents... and it's finally available in America exclusively from Klein-Becker usa." (Emphasis and ellipses in original)

"Klein-Becker's proprietary micronization process guarantees that PediaLean is not only safe, but is the one and only weight-control compound designed, manufactured, and clinically proven safe and effective for use by overweight children and adolescents.

Does PediaLean work? You bet it does! In a well-controlled double-blind clinical trial, each and every child who used PediaLean as directed lost a significant amount of excess body weight... a success rate of 100%."

"Published Medical Studies Don't Lie...Clinically Proven Safe and Effective
Children who used PediaLean along with a healthy, but not calorie-reduced diet and modest exercise lost an incredible 20% of their excess body weight. Those who followed the same diet and exercise program, but did not take PediaLean, failed to lose any significant excess weight at all. In other words, the only difference between success and failure was PediaLean. See the actual study at www.WeightLossForChildren.com." (Ellipses in original)

95. The PediaLean website www.pedialean.com , including the website reproduced at Exhibit L to the Complaint, has contained the following statements:

"New Product Update by Klein-Becker usa
Weight Loss for Children

When Your Child Needs More Than Diet and Exercise.

European Breakthrough Gives Hope to You and Your Overweight Child!

If you're the parent or grandparent of one of the more than 11 million overweight or obese school-aged children in the United States, you know the pain and embarrassment this growing 'Epidemic' can cause. But now, a revolutionary, all-natural weight control compound offers new hope. It's called PediaLean: the first and only clinically proven, safe, and effective weight-control compound designed for children and adolescents... and it's finally available in America exclusively from Klein-Becker usa." (Ellipses in original)

"Klein-Becker's proprietary micronization process guarantees that PediaLean is not only safe, but is the one and only weight-control compound designed, manufactured, and clinically proven safe and effective for use by overweight children and adolescents.

Does PediaLean work? You bet it does! In a well-controlled double-blind clinical trial, each and every child who used PediaLean as directed lost a significant amount of excess body weight... a success rate of 100%.” (Ellipses in original)

“Published Medical Studies Don’t Lie...Clinically Proven Safe and Effective”
(Ellipses in original)

“What does this mean in plain English?”

Children who used PediaLean along with a healthy, but not calorie-restricted diet and modest exercise lost an incredible 20% of their excess body weight. Those who followed the same diet and exercise program, but did not take PediaLean, failed to lose any significant excess weight at all. In other words, the only difference between success and failure was PediaLean. (Individual results may vary.)”

96. The target audience for PediaLean was parents of overweight children.
97. Nathalie Chevreau testified that she took the word “significant” directly from a scientific study and put it in her statement that appeared in the PediaLean print advertisement. She acknowledged that the word “significant” had been used in the Livieri study in referring to the results of a statistical test.
98. Respondent Mowrey has an undergraduate degree in general psychology and a graduate degree in experimental psychology.
99. A photograph of Dr. Julia Steinberger, M.D., wearing a white lab coat appears in an advertisement for PediaLean.
100. An email from Nathalie Chevreau to Dr. Steinberger states as follows: “We would like a new picture of you on which you wear a white coat and a stethoscope around your neck (to differentiate you from the PhDs).”
101. Respondents’ expert, Dr. Mowrey, has published only one clinical study, and that was in 1982.
102. Dr. Mowrey has never been a second author on any published clinical studies.
103. Dr. Mowrey has never published any abstracts of clinical studies.
104. The Daly study, CX 503, used a formulation that contained 75 to 150 mg daily dose of ephedrine for the treatment group.
105. Dr. Mowrey became one of the directors of APRL when it became a non-profit corporation for a short period of time.
106. [REDACTED].

107. [REDACTED].
108. [REDACTED].
109. The “DBM” in DBM Enterprises are Dr. Mowrey’s initials.
110. Dr. Mowrey has been the president of DBM Enterprises from the time APRL became DBM Enterprises to the present.
111. Dr. Mowrey is DBM Enterprises’ sole employee.
112. Dr. Mowrey is a director of DBM Enterprises.
113. Dr. Mowrey has access to the Corporate Respondents’ computer network.
114. Statements attributed to Dr. Mowrey appear in the Dermalin ads attached as Exhibits A and B to the Complaint (CX-1-A, CX-1-B).
115. Statements attributed to Dr. Mowrey appear in the Cutting Gel ad attached as Exhibit D to the Complaint (CX-1-D).
116. Statements attributed to Dr. Mowrey appear in the Leptoprin ad attached as Exhibit I to the Complaint (CX-1-I).
117. Statements attributed to Dr. Mowrey appear in the Anorex ad attached as Exhibit J to the Complaint (CX-1-J).
118. In approximately 1993, Friedlander received a patent for the ephedrine, caffeine, and aspirin combination (ECA).
119. Anorex, one of the challenged products, contains or contained the ephedrine, caffeine, and aspirin (ECA) combination.
120. Leptoprin, one of the challenged products, contains or contained the ephedrine, caffeine, and aspirin (ECA) combination.
121. In determining the commercial viability of a product, Friedlander relied on his own opinion, not outside research like marketing consumer research.
122. After Friedlander received a set of bullets from Dr. Mowrey, he wrote ad copy for Cutting Gel.
123. Friedlander elicited Dr. Mowrey’s opinion about what could or could not be said about product efficacy in ads for the challenged products.

124. Friedlander discussed the substantiation of claims that appeared in ads for the challenged products with Dr. Mowrey.

II. STIPULATIONS OF AUTHENTICITY

The parties stipulate to the authenticity of the following documents, but not to the truthfulness of their contents. The parties reserve the right to object to any document identified below as irrelevant, immaterial, hearsay or for any other basis permitted for objection under the Federal Rules of Evidence, except for a challenge to the document's authenticity.

1. All documents Corporate Respondents produced in this proceeding that were authored by, produced at the direction of, or are a record whose content was kept in the ordinary course of the Corporate Respondents' business are genuine and authentic.
2. All documents produced by Dr. Mowrey that were authored by or produced at the direction of Dr. Mowrey are genuine and authentic.
3. Exhibit A to the Complaint is a genuine and authentic photocopy of advertising for the challenged product Dermalin APg.
4. Exhibit B to the Complaint is a genuine and authentic photocopy of advertising for certain challenged products.
5. Exhibit C to the Complaint is a genuine and authentic photocopy of advertising for the challenged product Cutting Gel.
6. Exhibit D to the Complaint is a genuine and authentic photocopy of advertising for the challenged product Cutting Gel.
7. Exhibit E to the Complaint is a genuine and authentic photocopy of advertising for the challenged product Cutting Gel.
8. Exhibit F to the Complaint is a genuine and authentic photocopy of advertising for Tummy Flattening Gel.
9. Exhibit G to the Complaint is a genuine and authentic photocopy of advertising for the challenged product Tummy Flattening Gel.
10. Exhibit H-1 to the Complaint is a genuine and authentic transcript of a television commercial for the challenged product Leptoprin.

11. Exhibit I to the Complaint is a genuine and authentic photocopy of advertising for the challenged product Leptoprin.
12. Exhibit J to the Complaint is a genuine and authentic photocopy of advertising for the challenged product Anorex.
13. Exhibit K to the Complaint is a genuine and authentic photocopy of advertising for the challenged product PediaLean.
14. Exhibit L to the Complaint is a genuine and authentic photocopy of advertising for the challenged product PediaLean.
15. The documents produced by Respondents contained in the Anorex product binder are genuine and authentic.
16. The documents produced by Respondents contained in the Cutting Gel product binder are genuine and authentic.
17. The documents produced by Respondents contained in the Dermalin product binder are genuine and authentic.
18. The documents produced by Respondents contained in the Leptoprin product binder are genuine and authentic.
19. The documents produced by Respondents contained in the PediaLean product binder are genuine and authentic.
20. The documents produced by Respondents contained in the Tummy Flattening Gel product binder are genuine and authentic.
21. The documents and materials identified on Complaint Counsel's final proposed exhibit list of February 18, 2005, are true and accurate copies of the original documents and materials. The documents identified as CX-1-75, 925, and 929-30 are true and accurate copies of legal pleadings and/or written discovery requests or answers that Respondents (and/or their employees, agents, or persons working for or on behalf of the foregoing) have received or given.
22. The documents identified as CX-263, 811-14, 900-01, 908-16, 918, 922, 927, 933, 934, and 938 are true and accurate copies of affidavits or declarations that Respondents (and/or their employees, agents, or persons working for or on behalf of the foregoing) have received or given.
23. The documents identified as CX-76-78, 88-90, 100, 115-17, 133-35, 147-49, 162-64, 181-84, 196-99, 217-19, 231-232, 237-38, 241-43, 253-56, 276-78, 280-82, 324-27, 333-34, 899, 903-07, 917, 919-921, 923-24, 926, 932, 935-37, and 939 are true and accurate

- copies of testimony, transcripts of proceedings, recordings, and/or subpoenas that Respondents (and/or their employees, agents, or persons working for or on behalf of the foregoing) have received or given.
24. The documents identified as CX-92-94, 96, 121-26, 128-32, 151, 155-56, 180, 296, 320, 335-65, 367-72, 374-428, 430-47, 449-50, 458-65, 471-87, 632, and 833 are true and accurate copies of promotional materials that Respondents (and/or their employees, agents, or persons working for or on behalf of the foregoing) have received or disseminated or have caused to be disseminated.
 25. The documents identified as CX-79-87, 91, 95, 97-99, 101-08, 110-14, 118-20, 127, 153-54, 171-79, 192-95, 200-16, 244-52, 283-94, 297-302, 205-15, 319, 321-23, 458, 609, 632, 639-811, 815-821, 825-26, 828, 831-32, 865, 867-75, 879-880, 886, and 890-95 are true and accurate copies of communications that Respondents (and/or their employees, agents, or persons working for or on behalf of the foregoing) have received or disseminated or have caused to be disseminated.
 26. The materials identified as CX-466 through CX-470 are true and accurate copies of challenged products and/or the packaging for those products.
 27. The documents identified as CX-109, 152, 166-70, 185-86, 189, 191, 259-62, 264, 266-74, 316-18, 366, 369, 386, 412-13, 429, 448, 451-58, 610-11, 617-19, and 625-638 are true and accurate copies of documents produced or generated by Respondents (and/or their employees, agents, or persons working for or on behalf of the foregoing).
 28. The documents identified as CX-159-61, 187-90, 257-60, 275, 373, 615-16, and 628, are true and accurate copies of public records and/or official decisions, reports, or documents.
 29. The documents identified as CX-620-27 and CX-629-32 are true and accurate copies of publications or portions thereof.
 30. The documents identified as CX-143-44, 227, 230, 239, 271-74, 279, 488-509, 518-608, and 612-614 are true and accurate copies of reports produced or generated by designated expert witnesses in this matter, and/or the attachments thereto.

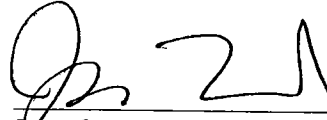
Respectfully submitted,

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Date submitted: November 16, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 2005, I caused the Parties' Stipulations of Fact and Authenticity to be served and filed as follows:

- (1) the original, two (2) paper copies filed by hand delivery on November 17, 2005; and one (1) electronic copy via email on November 16, 2005 to:
Donald S. Clark, Secretary
Federal Trade Commission
600 Penn. Ave., N.W., Room H-135
Washington, D.C. 20580

- (2) two (2) paper copies served by hand delivery on November 17, 2005 to:
The Honorable Stephen J. McGuire
Administrative Law Judge
600 Penn. Ave., N.W., Room H-104
Washington, D.C. 20580

- (3) one paper copy by first class U.S. mail on November 17, 2005, and one electronic copy in PDF format by electronic mail on November 16, 2005 to:

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(4) one (1) electronic copy in PDF format via email on November 16, 2005 and one (1) paper copy by first class mail on November 17, 2005 to:

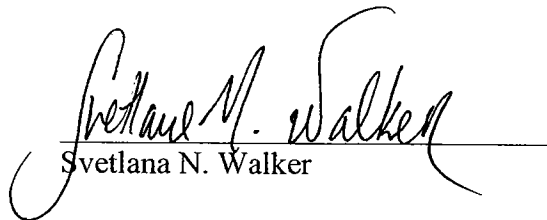
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