

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No.

FEDERAL TRADE COMMISSION,

Plaintiff

v.

SLIM DOWN SOLUTION, LLC, SLIM  
DOWN SOLUTION, INC., S.S.T.  
MANAGEMENT, INC., THE KARA  
GROUP, LLC, RONALD ALARCON,  
KATHLEEN ALARCON, MADERIA  
MANAGEMENT, INC.,  
POLYGLUCOSAMINE, LTD., AND  
STEPHEN PIERCE,

Defendants.

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**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), through its undersigned attorneys, for its Complaint alleges:

1. Plaintiff FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure temporary and preliminary injunctive relief, a permanent injunction, consumer redress, disgorgement, and other equitable relief against defendants for engaging in unfair or deceptive acts or practices in connection with the advertising, marketing, and sale of products purporting to cause weight loss, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 52, 53(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

### **THE PARTIES**

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce. The Commission, through its own attorneys, may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief, including consumer redress, as may be appropriate in each case. 15 U.S.C. § 53(b).

5. Defendant Slim Down Solution, LLC (“SDS”) is a Florida limited liability company with its principal office or place of business at 2060 Boca Raton Boulevard, Boca Raton, Florida 33431. At times relevant to the complaint, acting individually or in concert with others, SDS has distributed and sold Slim Down Solution to consumers throughout the United States. SDS transacts business in the Southern District of Florida.

6. Defendant Slim Down Solution, Inc. (“SDSI”) is a closely-held Florida corporation with its principal office or place of business at 2060 Boca Raton Boulevard, Boca Raton, Florida 33431. At times relevant to the complaint, acting individually or in concert with others, SDSI has

distributed and sold Slim Down Solution to consumers throughout the United States. SDS transacts business in the Southern District of Florida.

7. Defendant S.S.T. Management, Inc. (“SST”) is a closely-held Florida corporation with its principal office or place of business at 2060 Boca Raton Boulevard, Boca Raton, Florida 33431. At times relevant to the complaint, acting individually or in concert with others, SST has advertised and marketed Slim Down Solution to consumers throughout the United States. SST transacts business in the Southern District of Florida.

8. Defendant The KARA Group LLC (“KARA”) is a limited partnership organized under the laws of Florida with its principal office or place of business at 2060 Boca Raton Boulevard, Boca Raton, Florida 33431. At times relevant to the complaint, acting individually or in concert with others, KARA has marketed and distributed Slim Down Solution to consumers throughout the United States. KARA transacts business in the Southern District of Florida.

9.

SDSI, and Chief Executive Officer of KARA. With defendant Ronald Alarcon, Ms. Alarcon jointly manages SDS, SDSI, SST, and KARA, and jointly owns 40% of SDS and 100% of SDSI and SST. At all times relevant to this Complaint, acting individually or in concert with others, Ms. Alarcon has formulated, directed, or controlled the policies, acts, or practices of SDS, SDSI, SST, and KARA, including the acts or practices alleged in this Complaint. She resides and/or transacts business in the Southern District of Florida.

11. Defendants SDS, SDSI, SST, KARA, Ronald Alarcon, and Kathleen Alarcon have operated a common business enterprise while engaging in the deceptive acts and practices alleged below and are therefore jointly and severally liable for said acts and practices.

12. Defendant Maderia Management, Inc. (“Maderia”) is a Texas corporation with its principal office or place of business at 2453 North Pinewood Lane, Conroe, TX 77306. Maderia is also the general partner of defendant Polyglucosamine, Ltd. At times relevant to the complaint, acting individually or in concert with others, Maderia has advertised, marketed, distributed, and/or sold purported weight-loss products containing D-glucosamine, including Slim Down Solution, to consumers and resellers throughout the United States. At times relevant to this Complaint, it has transacted business in the Southern District of Florida. Maderia previously was known as Maderia, Inc.

13. Defendant Polyglucosamine, Ltd. is a Texas limited partnership with its principal office or place of business at 2453 North Pinewood Lane, Conroe, TX 77306. At times relevant to the complaint, acting individually or in concert with others, Polyglucosamine, Ltd. has advertised, marketed, distributed, and/or sold purported weight-loss products containing D-glucosamine, including Slim Down Solution, to consumers and resellers throughout the United States. At times relevant to this Complaint,

it has transacted business in the Southern District of Florida.

14. Defendant Stephen Pierce is President of Maderia. Mr. Pierce manages and owns defendants Maderia and Polyglucosamine, Ltd. At all times relevant to this Complaint, acting individually or in concert with others, Mr. Pierce has formulated, directed, or controlled the policies, acts, or practices of Maderia and Polyglucosamine, Ltd., including the acts or practices alleged in this

account on a monthly basis.

### **Slim Down Solution**

17. Slim Down Solution is a tablet containing D-glucosamine. The SDS defendants charge \$59.95 plus \$9.95 shipping and handling for a 60-tablet bottle of Slim Down Solution, a one-month supply. From August 2001 through September 2002, gross sales of Slim Down Solution exceeded \$30 million.

18. To induce consumers to purchase Slim Down Solution, the SDS defendants have disseminated or caused to be disseminated a 30-minute television infomercial; a company product brochure; and Internet advertisements on the website [www.slimdownsolution.com](http://www.slimdownsolution.com). These advertisements include but are not limited to the attached Exhibits A through D and contain, among other things, the following statements or depictions:

a. **[EXCERPTS FROM INFOMERCIAL SCRIPT]**

MALE ANNOUNCER: Introducing the Slim Down Solution. This totally

\* \* \*

MALE ANNOUNCER: One tablet can help eliminate as much as 20 grams of fat. That can reduce the amount of fat in chicken nuggets and fries down to the fat in a fresh garden salad.

\* \* \*

JOAN VAN ARK: Now, Corey, tell us, how does it work?

SPOKESPERSON: Well, first, it's an incredible fat fighter, Joan. The active ingredient attracts, isolates and separates some of the fat from your food. And then it surrounds, sequesters and traps those fats so that they can be safely carried out of your system.

JOAN VAN ARK: Well, now, can you explain to our viewers how that results in lost inches and pounds?

SPOKESPERSON: Sure I can. You see, your body must burn fat, Joan, to give you energy. So, if you aren't bringing in enough new fat because Slim Down is isolating and trapping much of it, well, your body is forced to burn off the fat that's already stored and usually in those unwanted areas. By burning off the fat, you drop pounds and you drop inches.

\* \* \*

SPOKESPERSON: Now, in order to get the same fat blocking potential as one tiny Slim Down Solution tablet, you would have to take 16 chitosan capsules.

\* \* \*

SPOKESPERSON: Ninety-eight percent of chitosan, what's right here, is non-reactive and what that means is that only 2 percent of what you're taking in chitosan is actually helping you to fight fat. And that 2 percent is d-glucosamine.

\* \* \*

JOAN VAN ARK: Isn't it true that you can adjust the amount of Slim Down you take based on what you're eating that day?

SPOKESPERSON: Yes, you can. You see Slim Down allows you to control your lipid intake. If you know you're going to be out at a long meal that's loaded in fatty foods, well, you know you're going to be tempted. Well, it's ok. Just take two Slim Down instead of one and eliminate twice the fat.

JOAN VAN ARK: So, Corey, this means that you can eat the things you like, the cheesecakes and the hamburgers, or in my case, the chocolate.

SPOKESPERSON: Chocolate, yes.

JOAN VAN ARK: Yes. You don't have to always deny yourself these pleasures?

SPOKESPERSON: No, you don't.

\* \* \*

MALE ANNOUNCER: Slim Down is designed to isolate, separate and eliminate much of the fat from your favorite foods. Just one tiny Slim Down tablet can reduce the amount of fat in a slice of chocolate cake down to the fat in a fruit cocktail. And by eliminating some of the fat from your food, your body is forced to burn off the fat that's already stored on your belly, hips and thighs.

\* \* \*

TRACY: I had gained 62 pounds. I wanted to lose all 62 pounds, and thanks to Slim Down, I did. I feel like I can do anything now, and I went from a size 14 down to a size 3, and I feel great.

\* \* \*

KATHLEEN: If you're thinking about trying Slim Down, I highly recommend it. I've lost 57 pounds in just over six months. I have gone from a size – almost a size 16 down to a size 6. You've seen my before pictures, you see me now. If it works for me, I am telling you, it will work for you.

\* \* \*

SPOKESPERSON: Well, you know, there are many diet programs and systems out there. . . . But the one thing they all have in common is that you have to change your lifestyle and your eating habits for them to be successful. . . . The Slim Down Solution doesn't require you to change anything. That's the beauty of it. It's effortless.

\* \* \*

SPOKESPERSON: You don't need willpower with the Slim Down Solution because within 60 to 90 seconds, it liquifies in your stomach and is ready to absorb a lot of fat.

\* \* \*

UNIDENTIFIED FEMALE: I went down almost two whole sizes. The day you make up your mind that you don't want to be heavy any longer, you take your pill, you go to work, you change nothing, nothing, and you get smaller.

\* \* \*

JOAN VAN ARK: Okay, Corey, can you tell our viewers why they can trust the testing that's been done on this product?

SPOKESPERSON: Absolutely. Let me first say, Joan, that the maker of the Slim Down Solution is the only manufacturer to submit this product to U.S. Government standardization testing procedures for both purity and performance.

JOAN VAN ARK: So, in other words, the testing was done using U.S. Government standards by someone who does not have a financial interest in the product, say a third party?

SPOKESPERSON: That's right. And what they did was to reconstruct the human digestive system, if you can imagine that, and the process that it uses to digest fat. The results demonstrated that the active ingredient in the Slim Down Solution can bind a very large amount of fat. In fact, take a look at this, Joan. In this tiny tablet, up to 20 grams.



[At various points throughout the infomercial, fine-print disclaimers appear at the bottom of the television screen stating that “Exercise and proper diet are required to lose weight” and “Individual results may vary. These results may not be typical.”]

– Exhibit A, pp. 3-12, 15, 17, 20-22, pages from infomercial script, and Exhibit B, infomercial tape

b. **[EXCERPTS FROM PRODUCT BROCHURE]**

For decades, people all over the world have taken Chitosan for weight loss. BUT the only active ingredient in Chitosan, [sic] is D-Glucosamine.

\* \* \*

[D-glucosamine] has been proven in third party laboratory tests, [sic] to isolate the fat (lipids), in the dietary intake; [sic] preventing that excess lipid from being digested. . . .

– Exhibit C, p. 3, page from product brochure

c. **[EXCERPTS FROM INTERNET WEBSITE]**

The Slim Down Solution is an incredible tiny tablet that contains D-Glucosamine, a powerful, all-natural, fat magnet and trapper – refined, extracted, and concentrated – into it’s [sic] purest form. One tablet can help eliminate as much as 20 grams of Fat! [T]hat can reduce the amount of fat in a fast food cheeseburger with everything on it to less fat than a plain turkey sandwich. In order to burn off that same number of calories, you would have to walk over four miles.

\* \* \*

Kathy Aaron [consumer endorser]: I went from a size 14 to a size 8. I have had great results with Slim Down I would not do anything else. You just feel so good you feel like you are doing something without even knowing it.

\* \* \*

Peggy Bass [consumer endorser]: I’ve been able to carry on a normal life, normal exercise, not doing anything out of the ordinary, and I am losing weight. I eat whatever I want, the fat doesn’t stay. Without the pain of dieting and without the starving or the strictness of a strict diet I have lost 25 pounds.

\* \* \*

Dave Lankford [consumer endorser]: I really haven’t adjusted my eating habits and at all [sic]. The only thing I adjust is the amount of Slim Down tablets I take. The more greas[e] I eat the

\* \* \*

For decades, people all over the world have taken Chitosan, for weight loss. BUT the only active ingredient in Chitosan, [sic] is D-glucosamine.

\* \* \*

[D-glucosamine] has been proven in third party tests, [sic] to isolate the fat (lipids), in dietary intake, preventing that excess lipid from being digested. . . .

– Exhibit D, p. 1-3, 13, 15, 17-18, pages of website  
[www.slimdownsolution.com](http://www.slimdownsolution.com)

### **Slim Down Solution Continuity Program**

19. Consumers may buy Slim Down Solution over the Internet or by calling a toll-free number. When a consumer calls the toll-free number to order Slim Down Solution, the SDS defendants, through their telemarketing agents, generally ask the consumer to provide billing information, such as a credit or debit card or bank account number, to pay for the order.

20. After obtaining the billing information to process a sales transaction for Slim Down Solution, the SDS defendants' telemarketing staff attempts to persuade consumers to enroll in a continuity program, whereby consumers agree to automatic monthly shipments of Slim Down Solution for \$49.95 plus \$9.95 shipping and handling.

21. In many instances, the SDS defendants have enrolled consumers in the continuity program without their consent. Approximately one month after receiving a requested shipment of Slim Down Solution, the defendants have typically expected y osted sgtSe daioteconsent.Subs reqntlyon, ty learnng thon

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refund. When a refund ultimately is paid, the SDS defendants reimburse the consumers only the cost of the Slim Down Solution product – not the cost of shipping and handling. Furthermore, in many instances, consumers are able to obtain the refunds only after complaining to the Better Business Bureau.

**Maderia, Polyglucosamine, Ltd., and Stephen Pierce**

23. Since at least January 2000, defendants Maderia and Stephen Pierce, and since at least August 2001, defendant Polyglucosamine, Ltd. (together, the “Maderia defendants”) have manufactured, labeled, advertised, offered for sale, sold, and distributed products to the public, including D-glucosamine products advertised for fat absorption and weight loss.

24. The Maderia defendants sell some of these products directly to consumers, including New You 2000 and KrystaLean. New You 2000 contains liquid D-glucosamine and KrystaLean contains powdered D-glucosamine, like Slim Down Solution. Maderia charges consumers \$29.95 for a 2-ounce bottle of New You 2000 (up to a thirty-day supply) and \$19.95 and \$39.95, respectively, for one-week and 15-day supplies of single-serving packets of KrystaLean.

25. The Maderia defendants also sell their D-glucosamine products to other companies,

[EXCERPTS FROM INTERNET WEBSITE]

*New You 2000* for weight management. Just 28 drops (2 squirts) in your favorite drink (non-dairy) will isolate up to 32 grams of ingested fat. . . *New You 2000* is a **PURE D-Glucosamine** Weight Management, Concentrated Liquid Formula that enables you to control dietary fats. . . . Dose for Dose, *New You 2000* isolates 4 times **MORE** fat than conventional chitosan tablets. One 2 ounce bottle has enough *D-Glucosamine* to isolate more than D-Glucosamine

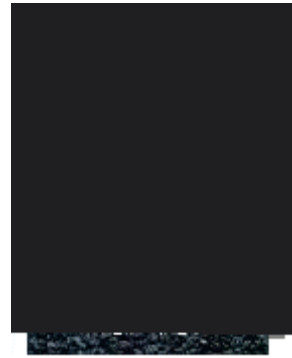
*Maderia*  
***Fat A[b]sorption & Fat Reduction Products***  
***For Dietary Applications***

**Maderia Liquid PolyGlucosamine addition to 15 gr Fat Emulsion**



[The above picture shows drops of D-glucosamine being added to beaker containing 15 grams of emulsified fat.]

**Maderia Liquid PolyGlucosamine (1cc) Reaction With Fat Emulsion**



[The above picture shows the same beaker as previously pictured after the D-glucosamine isolated the fat from the rest of the liquid.]

\* \* \*

**How Much Is 15 Grams of Fat?**

<b><u>PG</u></b>	<b><u>Dietary Fat</u></b>	<b><u>Calorie Equivalency</u></b>	<b><u>Pounds Raw Dietary Fat</u></b>	<b><u>Pounds of Body Weight</u></b>
1 CC	15 grams	135 Calories	0.039	0.13
2CC	30 grams	270 Calories	0.078	0.26
<b>60 CC (1Btl)</b>	<b>900 grams</b>	<b>8,100 Calories</b>	<b>2.34</b>	<b>7.8</b>

\* \* \*

**KrystaLean** enables the user to directly control his or her intake of fats in the diet, prior to them being processed, and stored in body tissues. . . . **KrystaLean** removes fat from dietary intake. Removal rates are up to 10-12 grams per gram of product [packet]. . . . Removal of dietary fat [on ingestion] encourages the body to burn stored fat, thus potential weight loss.

\* \* \*

Independent and academic studies . . . support the kinetics, and processes, as presented in this description of . . . PolyGlucosamine.

– Exhibit E, pp. 14, 19, 20-21, 23-24, 27-28, web pages from [www.polyglucosamine.com](http://www.polyglucosamine.com) (bracketed text)

added)

27. In addition, the Maderia defendants provided product claims to the SDS defendants, including but not limited to:

- a. In the final form, post extraction and refinement, we have a choice of either making it liquid, or a solid. With the Ever Slim we had a liquid. With Slim Down we have a solid. Same D-glucosamine, one with water, the other without water;
- b. Slim Down is one of the easiest ways to help reduce your fat intake;
- c. Slim Down is the ultimate dietary fat absorber;
- d. Slim Down isolates, surrounds and binds some of the fat in your food and safely carries it out of your system; and
- e. Slim Down can absorb 9.5-16 times its own weight in some of the fat in your food. The fat it binds is then eliminated as waste.

28. In addition, the Maderia defendants edited product claims made by the SDS defendants in the Slim Down Solution infomercials.

### **THE FTC ACT**

29. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, Slim Down Solution and other D-glucosamine products are either “foods” or “drugs” as defined in Sections 15(b) and (c) of the FTC Act, 15 U.S.C. §§ 55(b), (c). As set forth below, defendants have engaged and are continuing to engage in such unlawful practices in connection with the marketing and sale of Slim Down Solution and/or other D-glucosamine

products for fat absorption and weight loss.

**UNFAIR OR DECEPTIVE ACTS OR PRACTICES**  
**IN VIOLATION OF THE FTC ACT**

**COUNT I**

**False Claims for Slim Down Solution by the SDS Defendants**

30. Through the means described in Paragraph 18, above, the SDS defendants have represented, expressly or by implication, that:

- a. Slim Down Solution causes substantial weight loss without calorie reduction or exercise, enabling consumers to lose at least 10 pounds and 2 inches in 30 days;
- b. Slim Down Solution causes weight loss even if consumers eat substantial amounts of food high in fat, including hamburgers, chocolate, cheesecake, chicken nuggets, french fries, cheeseburgers, and chocolate cake; and
- c. Slim Down Solution isolates up to 20 grams of dietary fat per dose, then binds it to be carried out of the body as waste.

31. In truth and in fact,

- a. Slim Down Solution does not cause substantial weight loss without calorie reduction or exercise, enabling consumers to lose at least 10 pounds and 2 inches in 30 days;
- b. Slim Down Solution does not cause weight loss even if consumers eat substantial amounts of food high in fat, including hamburgers, chocolate, cheesecake, chicken nuggets, french fries, cheeseburgers, and chocolate cake; and
- c. Slim Down Solution does not isolate up to 20 grams of dietary fat per dose, then bind it to be carried out of the body as waste.

Therefore, the making of the representations set forth in Paragraph 30 constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52.

**COUNT II**

**Unsubstantiated Claims for Slim Down Solution by the SDS Defendants**

32. Through the means described in Paragraph 18, above, the SDS defendants have represented, expressly or by implication, that:

- a. Slim Down Solution causes substantial weight loss without calorie reduction or exercise, enabling consumers to lose at least 10 pounds and 2 inches in 30 days;
- b. Slim Down Solution causes weight loss;
- c.



affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52.

### **COUNT III**

#### **False Establishment Claim for Slim Down Solution by the SDS Defendants**

34. Through the means described in Paragraph 18, above, the SDS defendants have represented, expressly or by implication, that independent laboratory testing using U.S. government standards prove that Slim Down Solution binds dietary fat in the human digestive system.

35. In truth and in fact, independent laboratory testing using U.S. government standards does not prove that Slim Down Solution binds dietary fat in the human digestive system. Therefore, the making of the representation set forth in Paragraph 34, above, constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52.

### **COUNT IV**

#### **Unauthorized Billing by the SDS Defendants**

36. Through the means described in Paragraphs 19 through 22, above, in numerous instances, in connection with the advertising, promotion, marketing, offering for sale, sale, or distribution of Slim Down Solution, the SDS defendants have caused charges for automatic shipments in the Slim Down Solution continuity program to be billed to a consumer's credit card or debited from a consumer's bank account without the consumer's knowledge or authorization.

37. The SDS defendants' practice of causing charges to be billed to a consumer's credit card or debited from a consumer's bank account without the consumer's knowledge or authorization has caused or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and is not outweighed by countervailing benefits to consumers or to competition.

Therefore, the SDS defendants' practice, as alleged in Paragraph 36, is unfair and violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **COUNT V**

##### **False Efficacy Claim for D-glucosamine Products by the Maderia Defendants**

38. Through the means described in Paragraph 26, above, the Maderia defendants have represented, expressly or by implication, that their D-glucosamine products isolate up to 16-20 grams of dietary fat per dose, then bind it to be carried out of the body as waste.

39. In truth and in fact, their D-glucosamine products do not isolate up to 16-20 grams of dietary fat per dose, then bind it to be carried out of the body as waste. Therefore, the making of the representation set forth in Paragraph 38 constitutes a deceptive practice, and the making of a false advertisement, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52.

#### **COUNT VI**

##### **Unsubstantiated Efficacy Claims for D-glucosamine Products by the Maderia Defendants**

40. Through the means described in Paragraph 26, above, the Maderia defendants have represented, expressly or by implication, that:

- a. their D-glucosamine products cause weight loss; and
- b. their D-glucosamine products isolate up to 16-20 grams of dietary fat per dose,

then bind it to be carried out of the body as waste.

41. The Maderia defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 40, above, at the time the representations were

made. Among other reasons, the human studies relied upon by the Maderia defendants did not test D-glucosamine, placed subjects on low (1000 per day) calorie diets, and were improperly controlled. Therefore, the making of the representations set forth in Paragraph 40, above, constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52.

### **COUNT VII**

#### **False Establishment Claim for D-glucosamine Products by the Maderia Defendants**

42. Through the means described in Paragraph 26, above, the Maderia defendants have represented, expressly or by implication, that independent and academic studies prove that its D-glucosamine products absorb dietary fat thereby causing weight loss in humans.

43. In truth and in fact, independent and academic studies do not prove that their D-glucosamine products absorb dietary fat thereby causing weight loss in humans. Therefore, the making of the representation set forth in Paragraph 42, above, constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52.

### **COUNT VIII**

#### **Providing the Means and Instrumentalities for Deception by the Maderia Defendants**

44. By providing the SDS defendants with the claims described in Paragraphs 26 and 27, above, the Maderia defendants furnished the means and instrumentalities to the SDS defendants to engage in deceptive acts or practices, including the dissemination of certain of the statements set forth in Paragraph 18, above, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52.

### **INJURY**

45. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of defendants' unlawful acts or practices. In addition, defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

#### **THIS COURT'S POWER TO GRANT RELIEF**

46. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including consumer redress, consumer education, disgorgement, and restitution, to prevent and remedy injury caused by defendants' law violations.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

(1) Award plaintiff temporary and preliminary injunctive relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;

(2) Enjoin defendants permanently from violating Sections 5 and 12 of the FTC Act, in connection with the advertising or sale of food, drugs, devices, cosmetics, or other products, services or programs;

(3) Award such equitable relief as the Court finds necessary to redress injury to consumers

resulting from defendants' violations of the FTC Act, including but not limited to redress, refund of monies paid, or disgorgement of ill-gotten gains; and

(4) Award plaintiff the costs of bringing this action and any other equitable relief the Court may determine to be just and proper.

Dated:

Respectfully submitted,  
WILLIAM E. KOVACIC  
General Counsel

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