



1 David Richmond, individually and as officers and directors of Modern Interactive  
2 Technology, Inc., pursuant to Section 13(b) of the Federal Trade Commission Act  
3 (“FTC Act”), 15 U.S.C. § 53(b), alleging violations of Sections 5 and 12 of the  
4 FTC Act, 15 U.S.C. §§ 45 and 22.

5 The Commission and defendants Modern Interactive Technology, Inc.,  
6 Mark Levine, and David Richmond, hereinafter referred to as “defendants,” have  
7 stipulated to the entry of the following “Stipulated Final Order for Permanent  
8 Injunction and Settlement of Claims for Monetary Relief as to Defendants Modern  
9 Interactive Technology, Inc., Mark Levine, and David Richmond” (“Order”) in  
10 settlement of the Commission’s complaint against them. The Court, being duly  
11 advised in the premises, finds:

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14 **FINDINGS**

15 ~~over the defendants. Venue in the Central District of California is proper.~~

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18 2. The Complaint states a claim upon which relief can be granted, and  
19 the Commission has authority to seek the relief it has requested under Sections 5,  
20 12, and 13(b) of the FTC Act, 15 U.S.C. §§ 45, 52, and 53(b).

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

23 4. Defendants waive all rights to seek judicial review of or otherwise  
24 challenge or contest the validity of, this Order. Defendants also waive any claim  
25 that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412,  
26 held under the

1 concerning the prosecution of this action to the date of this Order.

2 5. This action and the relief awarded herein are in addition to, and not in

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4 6. Each party shall bear its own costs and attorney's fees.

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6 7. Defendants, without admitting or denying the allegations of the  
7 Commission's Complaint, stipulate and agree to entry of this Order under Section  
8 13(d) of the FTC Act, 15 U.S.C. § 53(d).

9 Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of  
10 this Order are binding upon defendants, and their officers, agents, servants,  
11 employees, and attorneys, and upon all other persons or entities in active concert  
12 or participation with them, who receive actual notice of this Order by personal  
13 service or otherwise.

14 9. Nothing in this Order obviates defendants' obligation to comply with  
15 Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52.  
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17  
18 the negotiated agreement of the parties.

19 11. The paragraphs of this Order shall be read as the necessary

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22 12. Terms of this Order in the public interest.

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24 **DEFINITIONS**

25 For the purposes of this Order, the following definitions shall apply:  
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1 1. "Competent and reliable scientific evidence" shall mean tests,  
2 analyses, research, studies, or other evidence based on the expertise of  
3 professionals in the relevant area, that have been conducted and evaluated in an  
4 objective manner by persons qualified to do so, using procedures generally  
5 accepted in the profession to yield accurate and reliable results.  
6

7 2. Unless otherwise specified, "defendants" shall mean:

8 A. Modern Interactive Technology, Inc. ("MIT"), a corporation,  
9 its divisions and subsidiaries, its successors and assigns and its  
10 officers, agents, representatives and employees;

11 B. Mark Levine, individually and as an officer and director of

12 MIT; and

13 C. David Richmond, individually and as an officer and director of  
14 MIT.  
15

16 3. "Covered product" shall mean the Enforma System, Fat Trapper, Fat  
17 Trapper Plus, Exercise In A Bottle, or any dietary supplement, food, drug, or  
18 device.

19 4. "Endorsement" shall mean as defined in 16 C.F.R. § 255.0.

20 5. "Food" and "device" shall mean as defined in Section 15 of  
21 the FTC Act, 15 U.S.C. § 55.

22 6. "Employment" shall mean any affiliation with any business, non-  
23 profit, or government entity, including the performance of services as an officer,  
24 owner, manager, supervisor, employee, consultant, or independent contractor, and  
25 "employer" shall mean any and all individuals or entities for whom defendants  
26

1 Mark Levine and David Richmond perform services as an employee, consultant  
or independent contractor.

3 7. A requirement that any defendant "notify the Commission" or "file  
4 with the Commission" shall mean that the defendant shall send the necessary  
5 information via first class mail or via overnight courier, costs prepaid to:

6 Associate Director.

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8  
9 600 Pennsylvania Avenue, NW, NJ-3212,  
10 Washington, DC 20580

11  
12 The term "including" in this Order shall mean "without limitation."

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14 9. The terms "and" and "or" in this Order shall be construed con-  
15 junctively or disjunctively as necessary, to make the applicable phrase or sentence  
16 inclusive rather than exclusive.

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20 IT IS HEREBY ORDERED that defendants, directly or through any  
21 corporation, partnership, subsidiary, division, or other device, and their officers,  
22 agents, servants, employees, and laborers, that are liable for the offenses or  
23 active concert or participation with them who receive actual notice of this Order,  
24 by personal service or otherwise, in connection with the manufacturing, labeling,  
25 advertising, promotion, offering for sale, sale, or distribution of any covered  
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1 product in or affecting commerce, shall not make any representation in any  
2 manner, expressly or by implication, including through the use of the names "Fat  
3 Trapper," "Fat Trapper Plus," and "Exercise In A Bottle," or any other trade name  
4 or endorsement, that such covered product:

- 5
- 6 A. Enables consumers to lose weight, avoid weight gain or maintain  
7 weight loss;
- 8 B. Prevents the absorption of fat in the human body;
- 9 C. Increases metabolism, burns sugar or carbohydrates before they turn  
10 to fat, or burns off fat already in the human body; or
- 11 D. Enables consumers to lose weight even if consumers eat foods high in  
12 fat, including fried chicken, pizza, cheeseburgers, butter, and sour  
13 cream, ...

14 unless at the time the representation is made, defendants possess and rely upon  
15 competent and reliable scientific evidence that substantiates the representation.  
16

17

18 **II.**

19 IT IS FURTHER ORDERED that defendants, directly or through any  
20 corporation, partnership, subsidiary, division, or other device, and their officers,  
21 agents, servants, employees, and attorneys, and all other persons or entities in  
22 active concert or participation with them who receive actual notice of this Order,

23 by personal service or otherwise, in connection with the manufacturing, labeling,  
24 advertising, promotion, offering for sale, sale, or distribution of any covered  
25 product in or affecting commerce, shall not misrepresent in any manner, expressly  
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1 or by implication, including through the use of any endorsement, the profession  
2 expertise, training, education, experience or qualifications of any person who  
3 advertises, promotes, or endorses any such product, service, or program

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6 **III.**

IT IS FURTHER ORDERED that defendants, directly or through any  
7 corporation, partnership, subsidiary, division, or other device, and their officers,  
8 agents, servants, employees, and attorneys, and all other persons or entities in  
9 active concert or participation with them who receive actual notice of this Order,  
10 by personal service or otherwise, in connection with the manufacturing, labeling,  
11 advertising, promotion, offering for sale, sale, or distribution of any covered  
12 product in or affecting commerce, shall not make any representation, in any  
13 manner, expressly or by implication, including through the use of any trade name  
14 or endorsement, about the health or weight loss benefits, performance, safety, or  
15 efficacy of such product, unless, at the time the representation is made, defendants  
16 possess and rely upon competent and reliable scientific evidence that substantiates  
17 the representation.  
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22 **IV.**

IT IS FURTHER ORDERED that defendants, directly or through any  
23 corporation, partnership, subsidiary, division, or other device, and their officers,  
24 agents, servants, employees, and attorneys, and all other persons or entities in  
25 active concert or participation with them who receive actual notice of this Order,  
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1 by personal service or otherwise, in connection with the manufacturing, labeling,  
2 advertising, promotion, offering for sale, sale, or distribution of any covered  
3 product in or affecting commerce, shall not misrepresent, in any manner, expressly  
4 or by implication, including through the use of any trade name or endorsement, the  
5 existence, contents, validity, results, conclusions or interpretations of any test,  
6 study, or research.  
7

8  
9 **V.**

10 Nothing in this Order shall prohibit defendants from making any  
11 representation for any drug that is permitted in the labeling for such drug under  
12 any tentative final or final standard promulgated by the Food and Drug  
13 Administration, or under any new drug application approved by the Food and  
14 Drug Administration. Nothing in this Order shall prohibit defendants from  
15 making any representation for any product that is specifically permitted in labeling  
16 for such product by regulations promulgated by the Food and Drug Administration  
17 pursuant to the Nutrition Labeling and Education Act of 1990.  
18  
19

20 **VI.**

21 **RIGHT TO RECOVER**  
22 **IT IS FURTHER ORDERED that:**

23 A. The Commission's agreement to this Order, requiring that the  
24 defendants be liable for less than the full amount of consumer injury  
25 is expressly premised on the truthfulness, accuracy, and completeness  
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1 of their sworn financial statements and supporting documents

2 submitted to the Commission, namely:

3 1. the documentation transmitted September 21, 2004, *i.e.*, the  
4 2003 tax returns for Mark Levine, David J. Richmond, Spendor  
5 Products, Inc., Revolutionary Products, Inc., Tiger Fitness, Inc.,  
6 Evolutionary Products, Inc., Modern Interactive Technologies,  
7 Inc., Main Event, Inc., Modern Health Labs, Inc., Torso Tiger,  
8 Inc., and Total Tiger, Inc.;

9 2. the documentation transmitted November 1, 2004, *i.e.*, the FTC  
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13 2003, balance sheet for David Richmond as of 06/30/2004,  
14

15  
16 returns for Mark Levine for the years 1999-2003, balance sheet  
17 for Mark Levine of 06/30/2004. Assets and liabilities

18 statement for Mark Levine, financial statement of MIT, tax  
19 returns for MIT (d/b/a Modern Media) for 2001-2003,

20  
21 California Franchise Income tax return for MIT for the years  
22 2001-2003, balance sheet for MIT as of 09/30/2004, cash flow

23 MIT as of 12/31/2003, cash flow reports for MIT from  
24

25 01/01/01 thru 01/01/03 and balance sheets for MIT from  
26

1 3. the documentation transmitted November 29, 2004, i.e., the  
2 11/23/2004 letter from Mark D. Friedman, and marital  
3 settlement agreement of David Richmond.

4 ~~Such financial statements and supporting documents contain material~~  
5 information upon which the Commission relied in negotiating and  
6 agreeing to this Order.  
7

8 ~~B. If, upon motion by the Commission, this Court finds that:~~

9 1. Defendants have failed to disclose any material asset, or made  
10 any other material misrepresentation or omission in the above-  
11 referenced financial statements and related documents  
12 described in Paragraph A of this Part VI, the Court shall enter  
13 judgment against defendants, jointly and severally, in the  
14 amount of Two Million Dollars (\$2,000,000) in U.S. currency,  
15 which amount would be rendered immediately due and  
16 payable. Interest computed at the rate prescribed in 28 U.S.C.  
17 § 1961 shall immediately begin to accrue on the balance. For  
18

19 ~~the purposes of this Part VI and any subsequent proceedings in~~

20  
21 of the allegations in the Complaint filed in this action.

22 *Provided however*, that in all other respects this Order shall

23 remain in full force and effect unless otherwise ordered by the  
24 Court, and *provided further*, that proceedings instituted under  
25 this Part VI are in addition to, and not in lieu of, any other civil  
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1 or criminal remedies that may be provided by law, including  
2 any other proceedings the Commission may initiate to enforce  
3 this Order.  
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6 **VII.**  
7 **COMPLIANCE MONITORING**

8 **IT IS FURTHER ORDERED** that, for the purposes of monitoring and  
9 **enforcement** of compliance with any provision of this Order,

10 **As a condition** of the entry of this Order, **each** of the  
11 **Commission, Mark Lewine, David Richmond, and MIT** each  
12 shall submit additional written reports, sworn to under penalty of  
13 perjury; produce documents for inspection and copying; appear for  
14 deposition; and/or provide entry during normal business hours to any  
15 business location in such defendant's possession or direct or indirect  
16 control to inspect the business operation:

17 **In addition, the Commission is authorized to monitor compliance with**  
18 **this Order by all other lawful means, including but not limited to the**  
19 **following:**

- 20
- 21 1. obtaining discovery from any person, without further leave of  
22 court, using procedures proscribed by Fed. R. Civ. P. 30, 31,  
23 33, 34, 36, and 45;
  - 24 2. posing as consumers and suppliers to merchants, their  
25 employees, or any other entity managed or controlled in whole  
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1 or in part by Mark Levine, David Richmond, and MIT, without

the necessity of notification or prior notice, and

3 C. Mark Levine, David Richmond, and MIT shall permit representatives  
4 of the Commission to interview any employer, consultant,  
5 independent contractor, representative, agent, or employee who has  
6 agreed to such an interview, relating in any way to any conduct  
7 subject to this Order. The person interviewed may have counsel  
8 present.  
9

10 *Provided, however,* that nothing in this Order shall limit the Commission's  
11 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act,  
12 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things,  
13 testimony, or information relevant to unfair or deceptive acts or practices in or  
14 affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).  
15

### 16 VIII.

#### 17 COMPLIANCE REPORTING BY DEFENDANTS

18 **IT IS FURTHER ORDERED** that, in order that compliance with the  
19 provisions of this Order may be monitored:  
20

21 **IT IS ORDERED** that, for a period of five (5) years from the date of entry of this Order

- 22 1. Mark Levine and David Richmond shall notify the Commission  
23 of the following:  
24 a. Any changes in residence, mailing addresses, and  
25 telephone numbers of Mark Levine and David Richmond  
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1 within ten (10) days of the date of such change;

2 b. Any changes in employment status (including self-  
3 employment) of Mark Levine and David Richmond and  
4 any change in the ownership of Mark Levine and David  
5 Richmond in any business entity, within ten (10) days of  
6 the date of such change. Such notice shall include the  
7 name and address of each business that Mark Levine and  
8 David Richmond is affiliated with, employed by, creates  
9 or forms, or performs services for; a statement of the  
10 nature of the business; and a statement of Mark Levine's  
11 and David Richmond's duties and responsibilities in  
12 connection with the business or employment; and  
13

14 c. Any changes in Mark Levine's and David Richmond's

16 2. Mark Levine, David Richmond, and MIT shall notify the  
17 Commission of any changes in corporate structure of MIT or  
18 any business entity that Mark Levine or David Richmond  
19 directly or indirectly controls, or has an ownership interest in  
20 that may affect compliance obligations arising under this  
21 Order, including but not limited to a dissolution, assignment,  
22 sale, merger, or other action that would result in the emergence  
23 of a successor entity; the creation or dissolution of a subsidiary,  
24 parent, or affiliate that engages in any acts or practices subject  
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1 to this Order; the filing of a bankruptcy petition; or a change in  
2 the corporate name or address, at least thirty (30) days prior to  
3 such change, *provided that*, with respect to any proposed  
4 change in such entity about which defendants learn less than  
5 thirty (30) days prior to the date such action is to take place,  
6 defendants shall notify the Commission as soon as is  
7 practicable after obtaining such knowledge.  
8

9 B. Ninety (90) days after the date of entry of this Order, Mark Levine,

10 David Richmond, and MIT shall provide a written report to the FTC,  
11 sworn to under penalty of perjury, setting forth in detail the manner  
12 and form in which they have complied and are complying with this  
13 Order. This report shall include, but not be limited to:

14 For Mark Levine and David Richmond:

15 a. The then-current residence address, mailing addresses,  
16 and telephone numbers of Mark Levine and David

17  
18 Richmond;

19 b. The then-current employment and business addresses  
20 and telephone numbers of Mark Levine and David

21 Richmond, a description of the business activities of  
22 each such employer or business, and the title and  
23 responsibilities of Mark Levine and David Richmond,  
24 for each such employer or business; and

25 c. Any other changes required to be reported under  
26  
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1 Paragraph A of this Part.

2 2. For Mark Levine, David Richmond, and MIT:

3 a. A copy of each acknowledgment of receipt of this Order,  
4 obtained pursuant to Part X.

5 b. Any other changes required to be reported under  
6 Paragraph A of this Part.

7 c. Copies of all then current advertisements, sales scripts,  
8 training materials, or other marketing materials used by  
9 any defendant(s) in the advertising, marketing,  
10

11 promotion, offering for sale, distribution, or sale of any

12 covered product in the United States; and

13 C. For purposes of the compliance reporting and monitoring  
14 required by this Order, the Commission is authorized to  
15 communicate directly with Mark Levine, David Richmond and  
16 MIT.  
17

18  
19 **IX.**

20 **RECORD KEEPING PROVISIONS**

21 IT IS FURTHER ORDERED that, for a period of eight (8) years from the  
22 date of entry of this Order, defendants MIT, Mark Levine and David Richmond  
23 and their agents, employees, officers, corporations, successors, and assigns, and  
24 those persons in active concert or participation with them who receive actual  
25 notice of this Order by personal service or otherwise, in connection with any  
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business where (a) any person (including defendant) is the majority owner of the business, or directly or individually manages or controls the business, and (b) the business is engaged in the advertising, marketing or promotion, offering for sale, distribution or sale of any covered product, are hereby restrained and enjoined from failing to create and retain the following records:

A. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

B. Accounting records that reflect the cost of goods or services sold, revenues generated, and net or gross profit on such revenues;

C. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;

D. Copies of all sales scripts, training materials, advertisements, promotions, or other marketing materials;

E. Copies of all substantiation relied on to support advertising claims subject to Parts I through IV; and

F. All other records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by Part X and Part XI, and all reports submitted to the FTC



1 pursuant to Part VIII.  
2

3 X.

4 DISTRIBUTION OF ORDER BY DEFENDANTS

5 IT IS FURTHER ORDERED that, for a period of five (5) years from the

7 date of entry of this Order, defendants shall deliver copies of the Order as directed  
8 below:

9 A MIT must deliver a copy of this Order to all of its principals, officers,  
10 directors, and managers. MIT also must deliver copies of this Order

11 to all of its employees, agents, and representatives who engage in  
12 conduct related to the subject matter of the Order. For current

13 personnel, delivery shall be within five (5) days of service of this

14 Order upon defendants. For new personnel, delivery shall occur prior

15 to them assuming their responsibilities.

16 B. Mark Levine and David Richmond as Control Person: For any  
17 business that Mark Levine or David Richmond controls, directly or  
18 indirectly, or in which Mark Levine or David Richmond has a  
19 majority ownership interest, Mark Levine or David Richmond must  
20 deliver a copy of this Order to all principals, officers, directors, and  
21 managers of that business. Mark Levine and David Richmond must

22 also deliver copies of this Order to all employees, agents, and

23 representatives of that business who engage in conduct related to the

24 subject matter of the Order. For current personnel, delivery shall be  
25

1 within five (5) days of service of this Order upon defendants. For  
2 new personnel, delivery shall occur prior to them assuming their  
3 responsibilities.

4 C. Mark Levine and David Richmond as employee or non-control  
5 person: For any business where Mark Levine and David Richmond is  
6 not a controlling person of a business but otherwise engages in  
7 conduct related to the subject matter of this Order, Mark Levine and  
8 David Richmond must deliver a copy of this Order to all principals  
9

~~and managers of such business before engaging in such conduct.~~

10 D. Mark Levine, David Richmond, and MIT must secure a signed and  
11 dated statement acknowledging receipt of the Order, within thirty (30)  
12 days of delivery, from all persons receiving a copy of the Order  
13 pursuant to this Part.  
14  
15

#### 16 XI.

#### 17 ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

18 IT IS FURTHER ORDERED that each Mark Levine, David Richmond, and  
19 MIT within five (5) business days of receipt of this Order as entered by the Court,  
20 must submit to the Commission a truthful sworn statement acknowledging receipt  
21 of this Order.  
22

#### 23 XII.

#### 24 RETENTION OF JURISDICTION

25 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this  
26  
27

SO STIPULATED:

*David P. Frankel*

DAVID P. FRANKEL  
THEODORE H. HOPPOCK  
Federal Trade Commission  
601 Pennsylvania Ave., NW, S-4002

MODERN INTERACTIVE  
TECHNOLOGY, INC.

*Mark Levine*

BY: Mark Levine

MARK LEVINE, individually and on  
behalf of Modern Interactive Technology  
Inc.

Washington, DC 20560  
(202) 326-3812; 3087, 3244 (voice)  
(202) 326-3250 (facsimile)

*David Richmond*

DAVID RICHMOND, individually and on  
behalf of Modern Interactive Technology  
Inc.

FEDERAL TRADE COMMISSION

*Sandra F. Thurner*

Venable, LLP  
575 7<sup>th</sup> Street, NW  
Washington, DC 20004-1601  
(202) 344-4805 (voice)  
(202) 344-8300 (facsimile)

*Harvey Safirstein*  
HARVEY SAFERSTEIN  
Mintz Levin  
Water Garden Phase 1

1620 26th Street, Suite 2068 North  
Santa Monica, CA 90404  
(310) 586 3200 (voice)  
(310) 586 3202 (facsimile)

Attorneys for Defendants

SO ORDERED:

DATED: 2/17/05

*GARY ALLEN FEESS*  
HONORABLE GARY A. FEESS  
UNITED STATES DISTRICT JUDGE

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**APPENDIX A**  
**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

STEVEN PATRICK GARVEY a/k/a  
STEVE GARVEY, GARVEY  
MANAGEMENT GROUP, INC., LARK  
KENDALL a/k/a KENDALL CARSON,  
MARK LEVINE, individually and as an  
officer and director of MODERN

CV 00-09358 GAF (CWx)

**STIPULATED FINAL  
ORDER FOR  
PERMANENT  
INJUNCTION AND  
SETTLEMENT OF  
CLAIMS FOR  
MONETARY RELIEF AS**

~~INTERACTIVE TECHNOLOGY, INC.,~~

~~TO DEFENDANTS~~

~~DAVID RICHMOND, individually and as~~

~~MODERN INTERACTIVE~~

~~an officer and director of MODERN~~

~~TECHNOLOGY, INC.,~~

INTERACTIVE TECHNOLOGY, INC., and  
MODERN INTERACTIVE  
TECHNOLOGY, INC.,

**MARK LEVINE, AND  
DAVID RICHMOND**

Defendants:

**AFFIDAVIT OF DAVID RICHMOND**

David Richmond, being duly sworn, hereby states and affirms:

1. My name is David Richmond. I am a citizen of the United States and  
am over the age of eighteen. I have personal knowledge of the matters discussed  
in this affidavit, and if called as a witness, I could and would competently testify

1 as to the matters stated herein. I am a defendant in the above-captioned action

2 2. On (date) \_\_\_\_\_, 2005, I received a copy of the

3 Stipulated Final Order and Settlement of Claims for Monetary Relief as to

4 ~~Defendants Madam Interactive Technology, Inc., Mark Levine, and David~~

5 ~~Richmond, which was signed by the Honorable Gary A. Form, United States~~

6 District Court Judge for the Central District of California. A true and correct copy

7 of the Order that I received is appended to this Affidavit.

8 3. I reaffirm and attest to the truthfulness, accuracy and completeness of

9 the financial statements referenced in Part VIA of the Order.

10 I hereby declare this declaration under penalty of perjury that the foregoing is true and

11 correct. Executed on (date) \_\_\_\_\_ at (city, state) \_\_\_\_\_

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David Richmond

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**APPENDIX B**  
**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

STEVEN PATRICK GARVEY a/k/a

STEVE GARVEY, GARVEY  
MANAGEMENT GROUP, INC., LARK

KENDALL a/k/a KENDALL CARSON,  
MARK LEVINE, individually and as an  
officer and director of MODERN  
INTERACTIVE TECHNOLOGY, INC.,  
DAVID RICHMOND, individually and as  
an officer and director of MODERN  
INTERACTIVE TECHNOLOGY, INC., and  
MODERN INTERACTIVE  
TECHNOLOGY, INC.,

Defendants.

CV 00-09358 GAF (CWx)

**STIPULATED FINAL  
ORDER FOR**

**PERMANENT  
INJUNCTION AND**

**SETTLEMENT OF  
CLAIMS FOR  
MONETARY RELIEF AS  
TO DEFENDANTS  
MODERN INTERACTIVE  
TECHNOLOGY, INC.,  
MARK LEVINE, AND  
DAVID RICHMOND**

**AFFIDAVIT OF MARK LEVINE**

~~Mark Levine, being duly sworn, deposes and affirms:~~

23 1. My name is Mark Levine. I am a citizen of the United States and am  
24 over the age of eighteen. I have personal knowledge of the matters discussed in  
25 this affidavit, and if called as a witness, I could and would competently testify as  
26  
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1 to the matters stated herein. I am a defendant in the above-captioned action.

2           2.     On (date) \_\_\_\_\_, 2005, I received a copy of the  
3  
4 Stipulated Final Order and Settlement of Claims for Monetary Relief as to  
5 Defendants Modern Interactive Technology, Inc., Mark Levine, and David  
6 Richmond, which was signed by the Honorable Gary A. Feess, United States  
7 District Court Judge for the Central District of California. A true and correct copy  
8 of the Order that I received is appended to this Affidavit.  
9

10           3.     I reaffirm and attest to the truthfulness, accuracy and completeness of  
11 the financial statements referenced in Part VIA of the Order.  
12

13           I hereby declare under penalty of perjury that the foregoing is true and  
14 correct. Executed on (date) \_\_\_\_\_, at (city, state) \_\_\_\_\_,  
15

16 \_\_\_\_\_  
17  
18  
19 \_\_\_\_\_  
20 Mark Levine  
21  
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23  
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26  
27

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 15, 2005, a true and correct copy of  
the foregoing ~~SHOULD BE FINAL ORDER FOR PERMANENT INJUNCTION~~  
AND SETTLEMENT OF CLAIMS FOR MONETARY RELIEF AS TO  
DEFENDANTS MODERN INTERACTIVE TECHNOLOGY, INC., MARK  
LEVINE, AND DAVID RICHMOND was served in the manner indicated on:

**Edward F. Glynn, Jr., Esq. (via Federal Express - priority overnight)**

CHARLES, LLC  
575 7<sup>th</sup> Street, N.W.  
Washington, D.C. 20004-1601  
ATTORNEY FOR DEFENDANTS

**Harvey Saferstein (via Federal Express - priority overnight)**

Mintz Levin  
Water Garden Phase I  
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Devenette Cox, Investigator  
Federal Trade Commission  
Division of Advertising Practices