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4. Plaintiff, the FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. § 41 *et seq.* The FTC is charged, *inter alia*, with enforcement of

study and you will see proof that it works right here today." Exh. 4 at 6.

n. "According to actual laboratory studies Fat Trapper safely allows you to eat up to 120 grams of fat per day." Exh. 4 at 13.

o. "Fat Trapper safely allows you to eat up to 120 grams of fat per day. That's over 1,000 calories from fat per day and you can still lose weight." Exh. 2 at 15-16.

p. "Fat Trapper blocks fat from wherever it may arise; grabs hold of the fat; wraps it up; ties it into a bundle, which is then too heavy to pass through the gut wall, and as a result that fat cannot stay in the human body - it has to be expelled. Your body has no other choice." Exh. 2 at 6.

q. Fat Trapper "permanently" blocks fat "so that it can never be absorbed by your body -- never." Exh. 2 at 11-12.

r. The advertisement (Exhibit 1) depicts Fat Trapper being added to a glass of water and blocking bacon grease in the water. Exh. 2 at 10-12

s. Carson: "Exercise In A Bottle works on a cellular level, forcing every cell in your body to work, whether you're exercising or not. And when your cells are working, you are burning calories or losing fat."

Garvey: "And, of course, all this happens without exercise, right?"

Carson: "Absolutely. In fact, lab studies have proven it, Steve." Exh. 2 at 21.

t. "Exercise In A Bottle can actually increase your metabolism at the cellular level and burn off the fat already in your body." Exh. 2 at 16.

u. "Exercise In A Bottle helps your body burn sugary carbohydrates before" they turn to fat. Exh. 2 at 16.

v. "Exercise In A Bottle works on a cellular level, forcing every cell in your body to work, whether you're exercising or not. And when your cells are working, you are burning calories or losing fat." Exh. 2 at 21.

11. Defendants also advertise, promote and market the Enforma System via an Internet

~~11A~~ The Enforma System aids in doing the two things that must be done to lose weight: 1) decrease calories from fat; and 2) increase metabolic rate. The Enforma System does this with no negative side effects, no jitters, no loss of sleep.

12. Defendants charge approximately \$69.90, plus shipping and handling, for 240 capsules of Fat Trapper and 120 capsules of Exercise In A Bottle. Defendants represent in their infomercials and on their Web site that these capsules constitute a two-month supply of the Enforma System.

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13. 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. §2(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. As set forth below, the defendants have engaged and are continuing to engage in such unlawful practices in connection with the marketing and sale of the "Enforma System."

14. For the purposes of Section 12 of the FTC Act, 15 U.S.C. §2, the "Enforma System" is either a "food" or a "drug" pursuant to Section 15(b) and (c) of the FTC Act, 15 U.S.C. §5(b) and (c).

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15. Through the use of representations, testimonials, and statements contained in the advertisements, including, but not limited to, Exhibits 1 through 5, defendants have represented, expressly or by implication, that:

- a. Use of the recommended daily dose of the Enforma System enables consumers to lose substantial weight without the need for a restricted calorie diet or exercise;
- b. Use of the recommended daily dose of the Enforma System enables consumers to lose substantial weight even if consumers eat substantial amounts of foods high in fat, including fried chicken, pizza, cheeseburgers, butter, and sour cream;
- c. Use of the recommended daily dose of the Enforma System enables consumers to avoid weight gain without the need for a restricted calorie diet or exercise;
- d. Use of the recommended daily dose of the Enforma System enables consumers to maintain weight loss without the need for a restricted calorie diet or exercise;
- e. Fat Trapper prevents the absorption in the human body of all, or substantially all fat consumed, up to 120 grams per day (over 1,000 calories from fat per day); and
- f. Exercise In A Bottle increases metabolism, burns sugar and carbohydrates before they turn to fat, and/or burns off fat already in the human body.

16. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 15 above, at the time the representations were made.

17. Therefore, the making of the representations set forth in Paragraph 15 above was, and is, a deceptive act or practice and constitutes false and misleading advertising of a food,

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

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18. Through the use of representations, testimonials, and statements contained in the advertisements, including, but not limited to Exhibits 1 through 4, defendants have represented, expressly or by implication, that scientific testing proves that: (a) taking the recommended daily dosage of Exercise In A Bottle causes weight loss without the need to exercise; (b) Fat Trapper prevents the absorption of up to 120 grams of fat (or more than 1,000 calories) per day; and (c) the Enforma System works to cause weight loss.

19. In truth and in fact, scientific testing has not proven that: (a) taking the recommended daily dosage of Exercise In A Bottle causes weight loss without the need to exercise; (b) Fat Trapper prevents the absorption of up to 120 grams of fat (or more than 1,000 calories) per day; and (c) the Enforma System works to cause weight loss.

20. Therefore, the making of the representations set forth in Paragraph 18 above was, and is, a deceptive act or practice and constitutes false and misleading advertising of a food, drug, device, service or cosmetic in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §45(a) and 52.

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21. 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.

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22. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy any violations of any provision of law enforced by the FTC.

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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:

- (a) Permanently enjoin defendants from violating Sections 5 and 12 of the FTC Act, as alleged herein, in connection with the advertising or sale of food, drugs, devices, cosmetics or other products, services or programs;
- (b) 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, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains; and
- (c) Award plaintiff the costs of bringing this action, as well as such other and additional equitable relief as the Court may deem just and proper.

Dated: April 25, 2000

Respectfully Submitted,

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