

DEBRA VALENTINE  
General Counsel

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Regional Director

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Venue in the Central District of California is proper.

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

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

4. Defendants waive all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order. Defendants also waive any claim that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 1218, concerning the prosecution of this action to the date of this Order.

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

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

7. Defendants, without admitting or denying the allegations of wrongdoing set forth in the Commission's Complaint, stipulate and agree to entry of this Order under Section 13(b) of the FTC Act, 15 U.S.C. § 13(b).

8. Entry of this Order is in the public interest.

#### DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

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

A. Enforma Natural Products, Inc. ("Enforma Natural"), its divisions, subsidiaries, successors and assigns, and their officers, agents, servants, employees and attorneys, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise;

B. Andrew Grey, a/k/a Drew Grey, individually and in his capacity as an officer or director of Enforma Natural, and his agents, servants, employees and attorneys, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise; and

C. Each of the foregoing, and any combination of the foregoing.



Washington, D.C. 20580. Attn: *FTC v. Enforma Natural Products, Inc., et al.*  
(C.D. Cal.).

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

9. The terms "and" and "or" in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

## CONDUCT PROHIBITIONS

### I.

IT IS HEREBY ORDERED that defendants, directly or through any corporation, partnership, subsidiary, division, or other device, and their officers, agents, servants, employees and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of the Enforma System, Fat Trapper, Fat Trapper Plus, or Exercise In A Bottle, or any other product, service or program in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of the names "Fat Trapper," "Fat Trapper Plus," and "Exercise In A Bottle," that such product, service or program:

A. Enables consumers to lose weight, avoid weight gain or maintain weight loss without the need for a restricted calorie diet or exercise;

B. Prevents the absorption of fat in the human body;

C. Increases metabolism at the cellular level, burns sugar or carbohydrates before they turn to fat, or burns off fat already in the human body; or

D. Enables consumers to lose weight even if consumers eat foods high in fat, including fried chicken, pizza, cheeseburgers, butter, and sour cream,

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

### II.

IT IS FURTHER ORDERED that defendants, directly or through any corporation, partnership, subsidiary, division, or other device, and their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, service or program in or affecting commerce, are hereby enjoined from representing, in any manner, expressly or by implication, including through use of the names "Fat Trapper," "Fat Trapper Plus," and "Exercise In A Bottle," that any such product, service or program enables consumers to lose weight, avoid gaining weight, or maintain weight loss, unless defendants disclose, clearly and prominently, that reducing caloric intake and/or increasing exercise is required to lose weight;

that such product, service or program is effective without reducing caloric intake and/or increasing exercise;

B. *Provided further*, that a clear and prominent disclosure that "Dieting or exercise is required to lose weight" shall constitute compliance with this Paragraph; and

C. *Provided further*, that any commercial or other video advertisement of fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer shall display visually the required disclosure, in a clear and prominent manner and for a length of time sufficient for an ordinary consumer to read, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product, program or service. For the purposes of this provision, the oral or visual presentation of a telephone number or address (including Internet or email address) for viewers to contact to place an order for the product, program or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein.

### III.

IT IS FURTHER ORDERED that defendants, directly or through any corporation, partnership, subsidiary, division, or other device, and their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the Enforma System, Fat Trapper, Fat Trapper Plus, or Exercise In A Bottle; or any other food, dietary supplement, drug, device; or weight loss product, service, or program; in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the health or weight loss benefits, performance, safety, or efficacy of such product, service or program, unless, at the time the representation is made, defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

### IV.

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

### V.

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

VI.

IT IS FURTHER ORDERED that the provisions of this Order shall not apply to any label or labeling printed prior to April 11, 2000, and shipped by defendants to purchasers, distributors or retailers prior to June 9, 2000. *Provided however that* with respect to all packaging and labeling for the Enforma System not otherwise complying with all other provisions of this Order and shipped to individual purchasers, defendants shall place the following clear and prominent statement either:

- (a) on an insert in all packaging on a separate sheet containing no other information, which insert shall be no smaller than three inches by five inches, or
- (b) on all product labeling on all packages:

"Dieting or exercise is required to lose weight."

MONETARY RELIEF

VII.

IT IS FURTHER ORDERED that:

A. Defendants jointly and severally shall pay to the Federal Trade Commission as consumer redress the sum of Ten Million Dollars (\$10,000,000.00) according to the following schedule: Not later than five (5) days after the date of entry of this Order, defendants shall deposit by electronic funds transfer into an escrow account to be established by the Federal Trade Commission for the purpose of receiving payments due under the provisions of this Order, the sum of Five Million Dollars (\$5,000,000.00). Defendants shall pay the balance of Five Million Dollars (\$5,000,000.00) by depositing payments by electronic funds transfer into the escrow account in installments, as follows: (1) within 60 days of the date of entry of this Order defendants shall pay One Million Dollars (\$1,000,000.00); (2) within 120 days of the date of entry of this Order defendants shall pay One Million Dollars (\$1,000,000.00); and (3) within 180 days of the date of entry of this Order defendants shall pay Three Million Dollars (\$3,000,000.00). The unpaid balance of Five Million Dollars (\$5,000,000.00) shall be secured by a non-interest bearing promissory note executed by defendants in such amount in favor of the note Trade The

the date of payment. In the event such default continues for ten (10) calendar days beyond the date the payment is due, the entire unpaid amount shall immediately become due and payable. Defendants shall be jointly and severally liable for all payments required by this Paragraph and any interest on such payments.

B. The funds paid by defendants pursuant to Subparagraph A above, together with accrued interest, shall, in the discretion of the Federal Trade Commission, be used by the Federal Trade Commission or a Redress Administrator designated by the Federal Trade Commission to provide refunds to persons who purchased the Enforma System directly from defendants and made their first purchase prior to March 31, 2000, and to pay any attendant costs of administration. Payment to such persons represents redress and is intended to be compensatory in nature, and no portion of such payment shall be deemed a payment of any fine, penalty, or punitive assessment. A consumer shall have the right to participate in the redress distribution only upon signing a waiver of rights to make any claim against defendants for the amount of the refund received. If the Federal Trade Commission determines, in its sole discretion, that redress to purchasers of the Enforma System is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Defendants shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Federal Trade Commission. The Federal Trade Commission, or its designated Redress Administrator, shall in its sole discretion select the escrow agent.

C. Defendants relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds shall vest in the Treasurer of the United States unless and until such funds are disbursed to the designated purchasers of the Enforma System. Defendants shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any defendant, defendants acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

D. Not later than the date this Order is filed with the district court, defendants shall provide to the Federal Trade Commission, in computer readable form (an ASCII-delimited comma separated file on a Zip™ disc formatted to PC specifications or other medium which is pre-approved by the Commission) defendants provide to the Federal is

representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental entities or consumer protection organizations.

## MONITORING

### IX.

IT IS FURTHER ORDERED that defendants, for a period of five (5) years after the date of service of this Order, shall deliver a copy of this Order to all current and future officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendants shall deliver this Order to current personnel within thirty (30) calendar days after the date of service of this Order, and to future personnel within thirty (30) calendar days after the person assumes such position or responsibilities. Defendants shall maintain and upon request make available to the Commission for inspection and copying each such signed and dated statement for a period of five (5) years after such statement is signed.

### X.

IT IS FURTHER ORDERED that corporate defendant Enforma Natural shall notify the Commission at least thirty (30) calendar days prior to any change in the corporation that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which Enforma Natural learns less than thirty (30) calendar days prior to the date such action is to take place, it shall notify the Commission as soon as is practicable after obtaining such knowledge.

### XI.

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

### XII.

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

### XIII.

IT IS FURTHER ORDERED that defendants shall, within sixty (60) calendar days after





NATURAL PRODUCTS, INC.

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

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Attorneys for Defendants  
ANDREW GREY and  
ENFORMA NATURAL PRODUCTS, INC

SO ORDERED

DATED:

UNITED STATES DISTRICT JUDGE

APPENDIX A

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION, Plaintiff,

v.

ENFORMA NATURAL PRODUCTS, INC.,  
ANDREW GREY, and  
FRED ZINOS, Defendants.

Civil Number

AFFIDAVIT OF ANDREW GREY

Andrew Grey, being duly sworn, hereby states and affirms:

1. My name is Andrew Grey. I am a citizen of the United States and am over the age of

4. I reaffirm and swear to the truthfulness, accuracy and completeness of the financial statements that I submitted on behalf of defendant Enforma Natural Products, Inc. to the Federal Trade Commission on or about \_\_\_\_\_ .

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

Andrew Grey

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

BEFORE ME this day personally appeared Andrew Grey, who being first duly sworn, deposes and says that he has read and understands the foregoing statement and that he has executed the same for the purposes contained therein.

SUBSCRIBED AND SWORN TO before me this \_\_\_ day of \_\_\_\_\_, 2000, by Andrew Grey. He is personally known to me or has presented (state identification) \_\_\_\_\_ as identification.

\_\_\_\_\_  
Print Name

NOTARY PUBLIC  
STATE OF CALIFORNIA

Commission Number  
Affix Seal

APPENDIX B

Promissory Note

Date:

Five Million Dollars  
(\$5,000,000.00)

FOR VALUE RECEIVED, the undersigned, Enforma Natural Products, Inc. ("Enforma Natural") and Andrew Grey ("Grey"), jointly and severally, promise to pay to the Federal Trade Commission together with its assigns ("Holder") at such place as the Holder may designate in writing, in lawful money of the United States of America, the principal sum of Five Million Dollars (\$5,000,000.00).

This Note shall be paid in three installments as follows: (1) within 60 days of the date of entry of the Stipulated Final Order and Settlement of Claims for Monetary Relief as to Defendants Enforma Natural Products, Inc. and Andrew Grey (the "Order"), Enforma Natural and Grey, jointly and severally, shall pay One Million Dollars (\$1,000,000.00); (2) within 120 days of the date of entry of the Order, Enforma Natural and Grey, jointly and severally, shall pay One Million Dollars (\$1,000,000.00); and (3) within 180 days of the date of entry of the Order, Enforma Natural and Grey, jointly and severally, shall pay Three Million Dollars (\$3,000,000.00). In the event of any default on any obligation to make payment under this Note, interest, computed pursuant to 28 U.S.C. (b), shall

accrue from the date of default to the date of payment. In the event such default continues for ten (10) calendar days beyond the date the payment is due, the entire unpaid amount shall immediately become due and payable. The Maker and any endorser or guarantor hereof shall have the right to prepay this Note at any time in whole or in part without premium or penalty.

The Maker and any endorsers waive presentment, notice of dishonor and protest; and agree that any extension of the time of payment of all or any part of this Note may be made before, at, or after maturity by agreement with the Holder without notice to and without releasing the liability of any other party to this Note.

This Note is secured by all assets of Enforma Natural subject only to the pre-existing security interest in favor of City National Bank filed of record in the public records of the County of Los Angeles, California. Such assets shall include, but are not necessarily limited to those listed in Appendix C, attached hereto.

WITNESS the following signatures and seals:

Enforma Natural Products, Inc.  
BY: Andrew Grey  
Chief Executive Officer

Andrew Grey  
Individually

#### APPENDIX C

#### LIST OF ASSETS

Cash in checking or savings accounts in City National Bank  
Raymond James Investment Account  
Total Accounts Receivable  
Card Service Security Retention  
Deferred Tax Assets  
Inventory  
All loans receivable  
Total fixed assets  
Prepaid Expenses  
Prepaid Taxes