1	DEBRA VALENTINE General Counsel	
2	JEFFERY A. KLURFELD	
3	Regional Director	
4 5	DAVID P. FRANKEL THEODORE H. HOPPOCK Federal Trade Commission	
6	600 Pennsylvania Avenue, NW, Room S-4002	
7	Washington, DC 20580 (202) 326-2812 (voice) (202) 326-3259 (fax)	
8	BARBARA CHUN	
9	CA Bar No. 186907 Federal Trade Commission	
10	10877 Wilshire Boulevard, Suite 700 Los Angeles, CA 90024	
11	(310) 824-4324 (voice) (310) 824-4380 (fax)	
12	ATTORNEYS FOR PLAINTIFF	
13	UNITED STATES DIST	
14	UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA	
15		
16	FEDERAL TRADE COMMISSION,	
17	Plaintiff,	Civil Number
18	v.	
19	STEVEN PATRICK GARVEY a/ka/STEVE	STIPULATED FINAL ORDER AND SETTLEMENT OF
20	GARVEY, GARVEY MANAGEMENT GROUP, INC., LARK KENDALL a/k/a KENDALL CARSON, MARK LEVINE, individually and as	CLAIMS FOR MONETARY RELIEF AS TO DEFENDANT LARK KENDALL A/K/A
21	an officer and director of MODERN INTERACTIVE TECHNOLOGY, INC., DAVID	KENDALL CARSON
22	RICHMOND, individually and as an officer and director of MODERN INTERACTIVE	
23	TECHNOLOGY, INC., and MODERN INTERACTIVE TECHNOLOGY, INC.,	
24	Defendants.	
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1	7. Defendant, without admitting or denying the allegations of wrongdoing set forth in	
2	the Commission's Complaint, stipulates and agrees to entry of this Order under Section 13(b) of	
3	the FTC Act, 15 U.S.C. § 53(b).	
4	8. Entry of this Order is in the public interest.	
5		
6	DEFINITIONS	
7	For the purposes of this Order, the following definitions shall apply:	
8	1. "Competent and reliable scientific evidence" shall mean tests, analyses, research,	
9	studies, or other evidence based on the expertise of professionals in the relevant area, that have	
10	been conducted and evaluated in an objective manner by persons qualified to do so, using	
11	procedures generally accepted in the profession to yield accurate and reliable results.	
12	2. Unless otherwise specified, "defendant" shall mean Lark Kendall a/k/a Kendall	
13	Carson and her agents, servants, employees and attorneys, and all other persons or entities in	
14	active concert or participation with them, who receive actual notice of this Order by personal	
15	service or otherwise.	
16	3als,	
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23	7.	
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7. 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 defendant, directly or through any corporation, partnership or other device, and her 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 endorsing, 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, burns sugar or carbohydrates before they turn to fat, or burns off fat already in the human body; or
 - 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, defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that defendant, directly or through any corporation, partnership or other device, and her agents, servants, employees and attorneys, and all other

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	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 endorsing, 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, directly or by implication, that she is a nutritionist or that	
	5 she has any other professional title or expertise unless, at the time the representation is made,	
,	defendant possesses the level of education, experience and/or training that members of that	
:	profession generally recognize as sufficient to qualify as a member of that profession.	
1) III.	
1	IT IS FURTHER ORDERED that defendant, directly or through any corporation,	
12	partnership or other device, and her agents, servants, employees and attornega nd attol notIII.	
RED that de	fendant, directly or through any corporation,	
her agents]	ervants, employees and attornekon, experi-45 TD /sor sale, sale or distribution of the Enforma System,	Fat Trapper,
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as sufficien	to qualify as a member of that profession.	
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13	3 III.	
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representation is made, defendant possesses and relies upon competent and reliable scientific
 evidence that substantiates the representation.

Provided, that it shall be a defense hereunder that defendant neither knew nor had reason to know of the inadequacy of the substantiation for the representation.

V.

IT IS FURTHER ORDERED that defendant, directly or through any corporation, partnership, subsidiary, division, or other device, and her 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 endorsing, 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.

VI.

Nothing in this Order shall prohibit defendant 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 defendant 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.

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ASSIGNMENT

VII.

IT IS FURTHER ORDERED that within five (5) business days from the date of entry of this Order, defendant shall execute a written assignment to the Commission in a form substantially similar to the form attached to this Order as Appendix B.

RECORD KEEPING

VIII.

IT IS FURTHER ORDERED that defendant, for a period of five (5) years after the last date of dissemination of any representation covered by this Order, shall maintain and upon request make available to the Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession, custody, or control that contradict, qualify, or call into question the 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 defendant, within five (5) business days of entry of this Order, shall notify the Commission of (1) her residence address and mailing address; (2) the name, address, and telephone number of her employer(s); (3) if applicable, the names of her supervisors, and (4) a description of her employer's activities, and her duties and responsibilities.

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1	XIII.		
2	IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for		
3	purposes of construction, modification, and enfore	cement of this Order.	
4			
5	SO STIPULATED:		
6			
7	DAVID P. FRANKEL THEODORE H. HOPPOCK	LARK KENDALL a/k/a KENDALL CARSON	
8 9	Federal Trade Commission 600 Pennsylvania Ave., N.W., Rm. S-4002 Washington, D.C. 20580 (202) 326-2812, -3087 (voice)		
10	(202) 326-2812, -3087 (voice) (202) 326-3259 (facsimile)	EDWARD F. GLYNN, JR.	
11	Attorneys for Plaintiff FEDERAL TRADE COMMISSION	GARY D. HAILEY Venable, Baetjer, Howard &	
12	FEDERAL TRADE COMMISSION	Civiletti, LLP 1201 New York Avenue, N.W.	
13		Suite 1000 Washington, D.C. 20005-8300	
14		(202) 962-4800 (voice) (202) 962-8300 (facsimile)	
15		Attorneys for Defendant	
16		LARK ŘENDALL a/k/a KENDALL CARSON	
17	SO ORDERED		
18			
19	DATED:		
20		UNITED STATES DISTRICT JUDGE	
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1	APPENDIX	ζ Α
2	UNITED STATES DISTRICT COURT	
3	CENTRAL DISTRICT OF CALIFORNIA	
4		
5	FEDERAL TRADE COMMISSION,	
6	Plaintiff, v.	Civil Number
7	STEVEN PATRICK GARVEY a/ka/ STEVE	
8 9	GARVEY, GARVEY MANAGEMENT GROUP, INC., LARK KENDALL a/k/a KENDALL CARSON, MARK LEVINE, individually and as	
10	an officer and director of MODERN INTERACTIVE TECHNOLOGY, INC., DAVID	
11	RICHMOND, individually and as an officer and director of MODERN INTERACTIVE	
12	TECHNOLOGY, INC., and MODERN INTERACTIVE TECHNOLOGY, INC.,	
13	Defendants.	
14		
15		
16	AFFIDAVIT OF LARK KENDALL	
17	Lark Kendall a/k/a Kendall Carson, being duly	
18	1. My name is Lark Kendall and I am also know as Kendall Carson. I am a citizen of	
19	the United States and am over the age of eighteen. I have personal knowledge of the matters	
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I

1	I hereby declare under penalty of perjury under the laws of the United States of America			
2	that the foregoing is true and correct. Executed on (date), at (city,			
3	state),			
4				
5	Lark Kendall a/k/a Kendall Carson			
6	Laik Kendan a/k/a Kendan Caison			
7				
8	STATE OF CALIFORNIA			
9	COUNTY OF			
10	BEFORE ME this day personally appeared Lark Kendall a/k/a Kendall Carson, who being			
11	first duly sworn, deposes and says that she has read and understands the foregoing statement and			
12	that she has executed the same for the purposes contained therein.			
13	2000, by Lark Kendall a/k/a Kendall Carson. She is personally known to me or has presented			
14				
15	(state identification)as identification.			
16				
17				
18	Print Name			
19	NOTARY PUBLIC STATE OF CALIFORNIA			
20	Commission Number			
21	Affix Seal			
22				
23				
24				
25				
26				
27	APPENDIX B			
28	Assignment			
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