

DEBRA VALENTINE
General Counsel

JEFFERY A. KLURFELD
Acting Regional Director

THOMAS J. SYTA
CA Bar No. 116286
Federal Trade Commission
10877 Wilshire Boulevard, Suite 700
Los Angeles, CA 90024
(310) 824-4324 (voice)
(310) 824-4380 (fax)

DAVID P. FRANKEL
THEODORE H. HOPPOCK

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
(202) 326-2812 (voice)
(202) 326-3259 (fax)

ATTORNEYS FOR PLAINTIFF

**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

**STIPULATED FINAL ORDER AND SETTLEMENT OF CLAIMS FOR
MONETARY RELIEF**

Plaintiff, the Federal Trade Commission (the "Commission"), filed a complaint for a permanent injunction and other equitable relief against Enforma Natural Products, Inc., Andrew Grey, and Fred Zinos, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), alleging violations of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52.

The Commission and defendant Zinos have stipulated to the entry of the following Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief ("Order") in settlement of the Commission's complaint against defendant Zinos. The Court, being duly advised in the premises, finds:

FINDINGS

1. This Court has jurisdiction of the subject matter of this action and of defendant Zinos. 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 defendant Zinos were or are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Defendant Zinos waives all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order. Defendant Zinos also waives any claim that he may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, 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. Defendant Zinos, without admitting or denying the allegations of wrongdoing set forth in the Commission's Complaint, stipulates and agrees to entry of this Order under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).
8. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding upon defendant Zinos, 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.
9. 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, "defendant Zinos" shall mean Fred Zinos, individually and in his capacity as an officer, agent or employee of Enforma Natural Products, Inc.
3. "Video advertisement" shall mean any advertisement intended for dissemination through television broadcast, cablecast, home video, theatrical release, or via interactive media such as the Internet and online service.
4. "Clearly and prominently" shall mean as follows:
 - A. In an advertisement communicated through an electronic medium (such as a radio or video advertisement), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. *Provided, however,* that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the advertisement is presented. The audio disclosure shall be delivered

in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in all of the languages that are present in the advertisement. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

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

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

7. A requirement that defendant Zinos "notify the Commission" or "file with the Commission" shall mean that he shall send the necessary information via first class mail, costs prepaid, to the Associate Director for Advertising Practices, Federal Trade Commission, 600 Pennsylvania, Avenue, N.W., 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 defendant Zinos, 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, 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" 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
- 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, defendant Zinos possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that defendant Zinos, 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" 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 defendant Zinos discloses, clearly and prominently, that reducing caloric intake and/or increasing exercise is required to lose weight;

- A. *Provided however*, that this disclosure shall not be required if defendant Zinos possesses and relies upon competent and reliable scientific evidence demonstrating that such product, service or program is effective without reducing caloric intake and/or increasing exercise;
- B. *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 defendant Zinos, 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, 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, defendant Zinos possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

IV.

IT IS FURTHER ORDERED that defendant Zinos, 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 defendant Zinos 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 Zinos 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.

RECORD KEEPING

VI.

IT IS FURTHER ORDERED that defendant Zinos, for a period of ten (10) 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

VII.

IT IS FURTHER ORDERED that defendant Zinos, for a period of ten (10) years after the date of entry of this Order, shall deliver a copy of this Order to all current and future principals, 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. Defendant Zinos 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. Defendant Zinos 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.

VIII.

IT IS FURTHER ORDERED that defendant Zinos, within five (5) business days of entry of this Order, shall notify the Commission of (1) his residence address and mailing address; (2) his telephone number(s); (3) the name, address, and telephone number of his employer; (4) the full names of his employer's principals; (5) if applicable, the names of his supervisors, and (6) a description of his employer's activities, and the defendant's duties and responsibilities.

IX.

IT IS FURTHER ORDERED that defendant Zinos, for a period of ten (10) years after the date of entry 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) the full names of the employer's principals; (3) if applicable, the names of defendant's supervisors, and (4) a description of the employer's activities, and defendant's duties and responsibilities.

X.

IT IS FURTHER ORDERED that defendant Zinos shall, within sixty (60) calendar days after the date of entry of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this Order.

XI.

IT IS FURTHER ORDERED that the Commission is authorized to monitor the compliance of defendant Zinos with this Order by all lawful means, including but not limited to the following means:

A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including but not limited to the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating the compliance of defendants with this Order.

B. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether defendant Zinos has violated any provision of this Order or Sections 5 or 12 of the FTC Act, 15 U.S.C. §§ 45, 55.

C. For the purposes of the compliance reporting required by this Order, the Commission is authorized to communicate directly with defendant Zinos.

RIGHT TO REOPEN

XII.

IT IS FURTHER STIPULATED AND ORDERED that, within fifteen days after entry of this Order, defendant Zinos shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order and shall reaffirm and attest to the truth, accuracy and completeness of the financial statement previously submitted to the Commission. The Commission's agreement to this Order is expressly premised on the truthfulness, accuracy and completeness of such financial statement. If, upon motion by the Commission, the Court finds that the such financial statement contains any material misrepresentation or omission, the Commission may request that this Order be reopened to allow the Commission to modify the monetary liability of the defendant; *provided, however*, that in all other respect this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further*, that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the Commission may initiate to enforce this Order. For purposes of this Paragraph XII, defendant Zinos waives any right to contest any of the allegations in the Complaint.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

XIII.

IT IS FURTHER ORDERED that within five (5) business days from the date of entry of this Order, defendant Zinos shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order.

RETENTION OF JURISDICTION

XIV.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO STIPULATED:

DAVID P. FRANKEL
THEODORE H. HOPPOCK

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

FRED ZINOS

EDWARD J. NOWAKOSKI, ESQ.
27710 Jefferson Ave., Suite 305
Temecula, CA 92590-1424
(909) 676-1424
(909) 676-4796 (facsimile)

Attorney for Defendant Zinos

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

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 FRED ZINOS

Fred Zinos, being duly sworn, hereby states and affirms:

1. My name is Fred Zinos. 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 declaration, and if called as a witness, I could and would competently testify as to the matters stated herein. I am a defendant in the above captioned action.

2. My current business address is _____. My current business telephone number is _____. My current residential address is _____. My current residential telephone number is _____.

3. On (date) _____, I received a copy of the Stipulated Final Order and Settlement of Claims for Monetary Relief, which was signed by the Honorable _____, United States District Court Judge for the Central District of California. A true and correct copy of the Order that I received is appended to this Affidavit.

4. I reaffirm and attest to the truthfulness, accuracy and completeness of the financial statement that I submitted 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) _____, _____.

(Name of Defendant)

STATE OF _____
COUNTY OF _____

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

SUBSCRIBED AND SWORN TO before me this day of , 199_, by . S/he is personally known to me or has presented (state identification) as identification.

Print Name

NOTARY PUBLIC,
STATE OF _____

Commission Number
Affix Seal