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12 ATTORNEYS FOR PLAINTIFF

13
14 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

15
16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 STEVEN PATRICK GARVEY a/ka/ STEVE
GARVEY, GARVEY MANAGEMENT GROUP,
20 INC., LARK KENDALL a/k/a KENDALL
CARSON, MARK LEVINE, individually and as
21 an officer and director of MODERN
INTERACTIVE TECHNOLOGY, INC., DAVID
22 RICHMOND, individually and as an officer and
director of MODERN INTERACTIVE
23 TECHNOLOGY, INC., and MODERN
INTERACTIVE TECHNOLOGY, INC.,

24 Defendants.
25

Civil Number

**COMPLAINT FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF**

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1 Plaintiff, the Federal Trade Commission (“FTC”), through its undersigned attorneys,
2 hereby alleges as follows:

3 1. The FTC brings this action pursuant to Section 13(b) of the Federal Trade
4 Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure a permanent injunction, rescission of
5 contracts, restitution, disgorgement, and other equitable relief against defendants for engaging in
6 deceptive acts or practices in connection with the advertising, marketing and sale of an alleged
7 weight loss product, the “Enforma System,” in violation of Sections 5(a) and 12 of the FTC Act,
8 15 U.S.C. §§ 45(a) and 52.

9 **JURISDICTION AND VENUE**

10 2. This Court has jurisdiction of this matter pursuant to 15 U.S.C. §§ 45(a), 52 and
11 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

12 3. Venue in this district is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b)
13 and (c).

14 **THE PARTIES**

15 4. Plaintiff, the FTC, is an independent agency of the United States Government
16 created by statute. 15 U.S.C. §§ 41 *et seq.* The FTC is charged, *inter alia*, with enforcement of
17 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, which respectively prohibit
18 unfair or deceptive acts or practices in or affecting commerce, and false advertisements for food,
19 drugs, devices, services, or cosmetics in or affecting commerce. The FTC is authorized to initiate
20 federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable
21 relief, including consumer redress, as may be appropriate in each case. 15 U.S.C. § 53(b).

22 5. Defendant Steven Patrick Garvey a/k/a Steve Garvey (“Garvey”) is a former
23 professional baseball player whose business services relevant to this complaint have been
24 contractually provided by defendant Garvey Management Group, Inc. Defendant Garvey,
25 individually or in concert with others, has engaged in the acts and practices alleged in this
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1 complaint. For some of the time relevant to this complaint, he resided and transacted business in
2 this District.

3 6. Defendant Garvey Management Group, Inc. (“Garvey Management”) is a California
4 corporation with its headquarters and principal place of business at 15250 Ventura Blvd., Suite
5 900, Sherman Oaks, California 91403. Garvey Management is engaged, *inter alia*, in the business
6 of providing the services of defendant Garvey in connection with the marketing, advertising, and
7 sale of consumer products and dietary supplements, including the acts and practices alleged in this
8 complaint. Garvey Management has had its principal place of business and has transacted
9 business in this District.

10 7. Defendant Lark Kendall a/k/a Kendall Carson (“Kendall”) is a former model who,
11 individually or in concert with others, has engaged in the acts and practices alleged in this
12 complaint. She resides and transacts business in this District.

13 8. Defendant Mark Levine (“Levine”) is the President and a director of the corporate
14 defendant Modern Interactive Technology, Inc. At all times relevant to this complaint, acting alone
15 or in concert with others, Levine has formulated, directed, controlled, or participated in the acts
16 and practices of defendant Modern Interactive Technology, Inc., including the acts and practices
17 set forth in this complaint. He resides and transacts business in this District.

18 9. Defendant David Richmond (“Richmond”) is an officer and director of the
19 corporate defendant Modern Interactive Technology, Inc. At all times relevant to this complaint,
20 acting alone or in concert with others, Richmond has formulated, directed, controlled, or
21 participated in the acts and practices of defendant Modern Interactive Technology, Inc., including
22 the acts and practices set forth in this complaint. He resides and transacts business in this District.

23 10. Defendant Modern Interactive Technology, Inc. (“Modern Interactive”), is a
24 California corporation with its headquarters and principal place of business at 1119 Colorado
25 Avenue, Suite 104, Santa Monica, California 90401. Since approximately 1997, Modern
26 Interactive or its predecessor corporations has been engaged in the creation and production of
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1 advertising. Modern Interactive has its principal place of business and transacts business in this
2 District.

3 **COMMERCE**

4 11. The acts and practices of defendants, as alleged herein, are in or affecting
5 commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6 **DEFENDANTS' COURSE OF CONDUCT**

7 12. In approximately the fall of 1998, defendants Levine, Richmond and Modern
8 Interactive created, wrote, edited and produced the first of two advertisements of approximately
9 30 minutes in length ("infomercials") that were designed to promote, offer for sale and sell a
10 purported weight loss product called the "Enforma System." A second Enforma System
11 infomercial was created, written, edited and produced by defendants Levine, Richmond and
12 Modern Interactive in approximately the summer and fall of 1999. The Enforma System consists
13 of two different types of capsules called, respectively, "Fat Trapper" or "Fat Trapper Plus"
14 (hereinafter "Fat Trapper") and "Exercise In A Bottle." Fat Trapper consists primarily of
15 chitosan, a form of fiber, and Exercise In A Bottle consists primarily of pyruvate, a substance
16 found in the human body. Enforma Natural Products, Inc. ("Enforma Natural"), the marketer of the
17 Enforma System, paid defendant Modern Interactive a substantial fee for producing the two
18 Enforma System infomercials and also pays defendant Modern Interactive a monthly royalty
19 payment, the amount of which is calculated on a percentage of monthly sales of the Enforma
20 System.

21 13. Defendants Garvey and Kendall appeared in both Enforma System infomercials as
22 co-hosts and made numerous statements promoting the efficacy of the Enforma System. In both
23 infomercials defendant Garvey was introduced as a baseball great and defendant Kendall was
24 represented to be a nutritionist. Enforma Natural paid defendant Garvey an appearance fee for the
25 first infomercial and pays defendant Garvey Management a monthly royalty payment, the amount of
26 which is calculated on a percentage of monthly sales of the Enforma System, for providing the

1 services of defendant Garvey. Defendant Garvey is an agent or employee of defendant Garvey
2 Management. Defendant Modern Interactive paid defendant Kendall an appearance fee for both
3 infomercials.

4 14. Beginning approximately December 1998, the first Enforma System infomercial
5 was broadcast on cable and local television stations located throughout the United States.
6 Beginning approximately the fall of 1999, the second Enforma System infomercial was broadcast
7 on cable and local television stations located throughout the United States. Together, these two
8 infomercials were broadcast more than 30,000 times, and the second infomercial was broadcast in
9 the United States until approximately April 2000. Both infomercials induced consumers to
10 purchase the Enforma System by calling a toll free telephone number. Defendants Garvey and
11 Kendall both have been depicted on the official web site for the Enforma System and on the
12 packaging of the Enforma System sold in retail stores. Defendant Garvey also appeared on radio
13 and television programs to further promote the Enforma System.

14 15. Both Enforma System infomercials contained claims and statements by defendants
15 Garvey and Kendall as well as by consumers purporting to recite their personal experiences with
16 the Enforma System (“testimonials”). Accompanying this complaint is a separately-bound set of
17 five exhibits. Exhibit 1 is a copy of a videotape of the first Enforma System infomercial and
18 Exhibit 2 is a transcript of that infomercial. Exhibit 3 is a copy of a videotape of the second
19 Enforma System infomercial and Exhibit 4 is a transcript of that infomercial. The infomercials
20 include, among others, the following statements or depictions:

- 21 a. “With Enforma, you can eat what you want and never, ever, ever, ever have
22 to diet again.” Exh. 2 at 3, 16, 26, 35 (statements by announcer).
- 23 b. The Enforma System “[w]ill help you lose weight, burn more calories and
24 even lower cholesterol by simply taking a pill.” Exh. 2 at 4-5 (statement by
25 defendant Garvey).
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- 1 c. With the Enforma System, “you can enjoy all these delicious foods like
2 fried chicken, pizza, cheeseburgers, even butter and sour cream, and stop
3 worrying about the weight.” Exh. 2 at 23 (statement by defendant Garvey).
- 4 d. “[L]ook at all these delicious supposedly forbidden foods; barbecued
5 chicken and ribs, buttered biscuits. Foods you can eat when you crave them
6 without guilt, without worry, and it’s all because of a few little capsules.”
7 Exh. 4 at 5-6 (statement by defendant Garvey).
- 8 e. “Forget all those complicated, expensive diets that deprive you. With all
9 natural Fat Trapper and Exercise In A Bottle – the Enforma System – you
10 simply take Exercise In A Bottle twice a day and Fat Trapper before any
11 meal that contains fat. Then go ahead and enjoy the foods that you love
12 without the fear of fat. It’s that easy. . . . You may never, ever, ever, ever
13 diet again.” Exh. 4 at 7-8 (statement by defendant Garvey).
- 14 f. “And there’s nothing complicated about it. Just a few capsules and you’re
15 freed forever from the endless cycles of dieting and guilt, dieting and guilt.
16 Exh. 4 at 31 (statement by defendant Garvey).
- 17 g. “The Enforma System really works.” Exh. 4 at 32 (statement by defendant
18 Garvey).
- 19 h. A consumer testimonial states that with the Enforma System, “you can eat
20 anything you want – it is unbelievable. I never would have believed that
21 there was a truly natural product that is not going to kill you that works.”
22 Exh. 2 at 4.
- 23 i. Another purported Enforma System user states that the Enforma System
24 “just grabs onto the fat and pulls it out of your system, and it works.” Exh. 2
25 at 20.
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- 1 j. Another purported Enforma System user states: “You’re able to eat
2 everything you want to eat. You don’t have to worry about, you know,
3 eating salads when you go out. You can eat whatever you want to eat and
4 you know you’re taken care of with the Enforma System.” Exh. 2 at 20.
- 5 k. Another purported Enforma System user states: “And when I sit in a
6 meeting at work, I order pizza, the women are all eating their little salads,
7 and I just eat piece after piece of pizza and they just say, ‘How do you look
8 the way you do and eat like that?’ And I say, ‘It’s the Enforma System.’”
9 Exh. 2 at 24.
- 10 l. Another purported Enforma System user states that with the Enforma
11 System, I can “eat whatever I want and not worry about it and still fit into
12 my tight pair of pants.” Exh. 2 at 31.
- 13 m. The Enforma System “helps your body to burn more calories while you’re
14 just standing or sitting around doing nothing – even while you’re sleeping.”
15 Exh. 2 at 5 (statement by defendant Kendall).
- 16 n. “So, as a system, Fat Trapper blocks new fat from entering your body and
17 Exercise In A Bottle gets rid of the old fat that already exists in your body.”
18 Exh. 2 at 9 (statement by defendant Garvey).
- 19 o. The Enforma System allows you “to enjoy all of those delicious foods that
20 you crave without the guilt while losing weight and keeping it off” without
21 participating in fad diets or engaging in a rigid exercise regime. Exh. 2 at
22 14 (statement by defendant Garvey).
- 23 p. “Lose the weight you want without giving up the food you love, naturally
24 and painlessly. Look, this is the most amazing system that I’ve ever seen. It
25 does what no other system can do. The Enforma System is what you’ve
26 been waiting for to break the diet cycle. Call now and you can experience
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1 freedom with food once and for all.” Exh. 2 at 24 (statement by defendant
2 Garvey).

3 q. “If you’re having trouble losing weight, if you’re tired of depriving yourself
4 of all those wonderful and delicious foods that you love, if you find that you
5 don’t have the time to exercise as much as you’d like, the Enforma System
6 is the miracle you’ve been waiting for. It’s all natural, it’s safe, and it
7 works.” Exh. 2 at 17, 27-28, 33; Exh. 4 at 15, 28, 35 (statements by
8 defendant Garvey).

9 r. Try the Enforma System. If you’ve been struggling with weight, if you don’t
10 want to spend your entire life in constant battle with food, then the Enforma
11 System is what you’ve been waiting for. It’s all natural, it’s safe, it’s easy,
12 and it works.” Exh. 4 at 12 (statement by defendant Garvey).

13 s. The Enforma System “literally trap[s] fat before it’s had a chance to be
14 absorbed by your system.” Exh. 2 at 5 (statement by defendant Kendall).

15 t. “[W]ith Enforma you trap the fat from food before it can go to your
16 waistline.” Exh. 4 at 5 (statement by defendant Garvey).

17 u. *Garvey*: “But the Enforma System works. Isn’t that right, Kendall?”

18 *Kendall*: “You bet Steve. The Enforma System was created using years of
19 scientific study and you will see proof that it works right here today.” Exh.
20 4 at 6.

21 v. “According to actual laboratory studies Fat Trapper safely allows you to
22 eat up to 120 grams of fat per day.” Exh. 4 at 13, 26, 33 (statements by
23 announcer).

24 w. “Fat Trapper safely allows you to eat up to 120 grams of fat per day.
25 That’s over 1,000 calories from fat per day and you can still lose weight.”
26 Exh. 2 at 15-16 (statement by announcer).

- 1 x. “Fat Trapper can trap up to 120 grams of fat per day. That’s over 1,000
2 calories from fat, and that’s a lot of fat.” Exh. 2 at 7; Exh. 4 at 11
3 (statements by defendant Kendall).
- 4 y. “Fat Trapper blocks fat from foods that we eat, it grabs hold of the fat, it
5 wraps it up, ties it in a bundle which is then too large to pass through the gut
6 wall. As a result, that fat cannot stay in the human body, it has to be
7 expelled.” Exh. 4 at 10 (statement by defendant Kendall).
- 8 z. Fat Trapper “permanently” blocks fat “so that it can never be absorbed by
9 your body -- never.” Exh. 2 at 11-12 (statement by defendant Kendall).
- 10 aa. The advertisements (Exhibits 1 and 3) depict Fat Trapper being added to a
11 glass of water and blocking bacon and hamburger grease in the water. Exh.
12 2 at 10-14; Exh. 4 at 17-22 (demonstrations performed by defendants
13 Garvey and Kendall).
- 14 bb. *Kendall*: “Exercise In A Bottle works on a cellular level, forcing every
15 cell in your body to work, whether you’re exercising or not. And when
16 your cells are working, you are burning calories or losing fat.”
17 *Garvey*: “And, of course, all this happens without exercise, right?”
18 *Kendall*: “Absolutely. In fact, lab studies have proven it, Steve.” Exh. 2 at
19 21.
- 20 cc. “Exercise In A Bottle can actually increase your metabolism at the cellular
21 level and burn off the fat already in your body.” Exh. 2 at 16 (statement by
22 announcer).
- 23 dd. “Exercise In A Bottle helps your body burn sugary carbohydrates before”
24 they turn to fat. Exh. 2 at 16 (statement by announcer).

25 16. All or parts of the first Enforma System infomercial, depicting defendants Garvey
26 and Kendall, and including some or all of the statements contained in Paragraph 15 above, were
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1 placed onto an Internet Web site at www.fivestaradvantage.com/enforma/enfvideo.html, which
2 was sponsored by or affiliated with Enforma Natural Products, Inc. Exhibit 5 is a copy of this
3 Internet advertisement from approximately September 1999.

4 17. The Enforma System was sold via the infomercials and the Internet Web site for
5 approximately \$69.90, plus approximately \$9.95 for shipping and handling, for 240 capsules of
6 Fat Trapper and 120 capsules of Exercise In A Bottle. Both infomercials and the Web site
7 represented that these capsules constituted a two-month supply of the Enforma System.

8 18. In April 2000, the FTC filed a complaint in the United States District Court for the
9 Central District of California against Enforma Natural, Andrew Grey, and Fred Zinos. *FTC v.*
10 *Enforma Natural Products, Inc., et al.*, Case No. 00-04376-JSL (CWx) (C.D. Cal.) (the
11 “*Enforma*” case). This complaint arises from the same or substantially identical events as the
12 *Enforma* case. The *Enforma* case was resolved with respect to all parties through two stipulated
13 final orders signed by Judge Spencer Letts on May 9, 2000. In the final orders, all defendants
14 agreed to the entry of injunctive relief and monitoring provisions against them, and two defendants
15 (Enforma Natural and Andrew Grey) agreed, jointly and severally, to pay \$10 million in consumer
16 redress.

17 **DEFENDANTS’ VIOLATIONS OF THE FTC ACT**

18 19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts
19 or practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits
20 the dissemination of any false advertisement in or affecting commerce for the purpose of inducing,
21 or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. As set
22 forth below, the defendants have engaged in such unlawful practices in connection with the
23 marketing and sale of the “Enforma System.”

24 20. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, the “Enforma
25 System” is either a “food” or a “drug” pursuant to Section 15(b) and (c) of the FTC Act, 15 U.S.C.
26 § 55(b) and (c).

1 **COUNT ONE**

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

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

23 22. Defendants did not possess and rely upon a reasonable basis that substantiated the
24 representations set forth in Paragraph 21 above, at the time the representations were made.

1 29. Therefore, the making of the representations set forth in Paragraph 27 above was,
2 and is, a deceptive act or practice in or affecting commerce by defendants Kendall, Levine,
3 Richmond and Modern Interactive, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

4
5 **CONSUMER INJURY**

6 30. Consumers throughout the United States have suffered and continue to suffer
7 substantial monetary loss as a result of defendants’ unlawful acts or practices. In addition,
8 defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive
9 relief by this Court, defendants are likely to continue to injure consumers, reap unjust enrichment,
10 and harm the public interest.

11 **THIS COURT’S POWER TO GRANT RELIEF**

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

15 **PRAYER FOR RELIEF**

16 WHEREFORE, plaintiff requests that this Court, as authorized by Section 13(b) of the
17 FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

18 (a) Permanently enjoin defendants from violating Sections 5 and 12 of the FTC Act, as
19 alleged herein, in connection with the advertising or sale of food, drugs, devices, cosmetics or
20 other products, services or programs;

21 (b) Award such equitable relief as the Court finds necessary to redress injury to
22 consumers resulting from defendants’ violations of the FTC Act, including, but not limited to,
23 rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains; and
24

1 (c) Award plaintiff the costs of bringing this action, as well as such other and
2 additional equitable relief as the Court may deem just and proper.

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4 Dated: August 31, 2000

Respectfully Submitted,

5 DEBRA A. VALENTINE
6 General Counsel

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