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1	DEBRA VALENTINE General Counsel	BGED
2	JEFFERY A. KLURFELD ORIGINA	Kug 71
3	Regional Director	100 31 3 40 PH 100
4	DAVID P. FRANKEL	and the second sec
5	THEODORE H. HOPPOCK Federal Trade Commission	CLERK, U.S. DISTRICT COURT
6	600 Pennsylvania Avenue, NW, Room S-4002 Washington, DC 20580	UISTRICT CCUTT
7	(202) 326-2812 (voice) (202) 326-3259 (îax)	NOV 1.5 2000
8	BARBARA CHUN	TRACPISTAILET OF
9	CA Bar No. 186907 Federal Trade Commission	California California
10	10877 Wilshire Boulevard, Suite 700 Los Angeles, CA 90024	
11	(310) 824-4324 (voice) (310) 824-4380 (fax)	
12	ATTORNEYS FOR PLAINTIFF	
13		
14	UNITED STATES DISTRICT COURT	
15	CARTA .	
16	FEDERAL TRADE COMMISSION,	in-09358
17	Plaintiff,	n0-09358 Fol 131
18	V.	Civil Number
19	STEVEN PATRICK GARVEY a/ka/ STEVE	STIPULATED FINAL ORDER AND SETTLEMENT OF
20	GARVEY, GARVEY MANAGEMENT GROUP, INC., LARK KENDALL a/k/a	CLAIMS FOR MONETARY RELIEF AS TO DEFENDANT
21	KENDALL CARSON, MARK LEVINE, individually and as an officer and director of MODERN INTERACTIVE TECHNOLOGY,	LARK KENDALL A/K/A KENDALL CARSON
22	INC., DAVID RICHMOND, individually and as	
23	an officer and director of MODERN INTERACTIVE TECHNOLOGY, INC., and	
24	MODERN INTERACTIVE TECHNOLOGY, INC.,	
25	Defendants.	
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27		ENTEDED ON IONIS
28		NOV 1 6 2000
20	D	NOV 1 6 2000
	Page 1 of 1	CV A
4		- 11/ 2KX

Plaintiff, the Federal Trade Commission (the "Commission"), filed a complaint for a
 permanent injunction and other equitable relief against Steven Patrick Garvey a/k/a Steve
 Garvey, Garvey Management Group, Inc., Lark Kendall a/k/a Kendall Carson, Mark Levine,
 individually and as an officer and director of Modern Interactive Technology, Inc., and Modern
 Interactive Technology, Inc., and against relief defendant David Richmond, 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.

8 The Commission and defendant Lark Kendall a/k/a Kendall Carson, hereinafter referred 9 to as "defendant" have stipulated to the entry of the following Stipulated Final Order for 10 Permanent Injunction and Settlement of Claims for Monetary Relief as to Defendant Lark 11 Kendall a/k/a Kendall Carson ("Order") in settlement of the Commission's complaint against 12 her. The Court, being duly advised in the premises, finds:

## FINDINGS

This Court has jurisdiction of the subject matter of this action and of the
 defendant. Venue in the Central District of California is proper.

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 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 waives all rights to seek judicial review of, or otherwise challenge or
contest the validity of, this Order. Defendant also waives any claim that she 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.

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

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

Page 2 of 12

7. Defendant, 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).

Entry of this Order is in the public interest.

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## DEFINITIONS

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.

Unless otherwise specified, "defendant" shall mean Lark Kendall a/k/a Kendall
 Carson 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.

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

4. "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 defendant performs services as an employee, consultant, or
 independent contractor.

5. A requirement that any defendant "notify the Commission" or "file with the
Commission" shall mean that the defendant 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: <u>FTC v. Steve</u>
Garvey, et al., (C.D. Cal.).

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

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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

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 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

Page 4 of 12

persons or entities in active concert or participation with them who receive actual notice of this 1 Order, by personal service or otherwise, in connection with the endorsing, advertising, 2 promotion, offering for sale, sale or distribution of the Enforma System, Fat Trapper, Fat Trapper 3 Plus, or Exercise In A Bottle, or any other product, service, or program, in or affecting 4 commerce, shall not make any representation in any manner, directly or by implication, that she 5 is a nutritionist or that she has any other professional title or expertise unless, at the time the 6 7 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 8 profession. 9

## III.

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12 IT IS FURTHER ORDERED that defendant, directly or through any corporation, 13 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 14 Order, by personal service or otherwise, in connection with the endorsing, advertising, 15 promotion, offering for sale, sale or distribution of the Enforma System, Fat Trapper, Fat Trapper 16 Plus, or Exercise In A Bottle, or any other product, service, or program, in or affecting 17 commerce, shall not misrepresent her profession, expertise, training, education, experience or 18 qualifications. 19

#### IV.

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 the Enforma System, Fat Trapper, Fat Trapper Plus, or Exercise In A Bottle; or any other food, dietary supplement, drug, or 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 possesses and relies upon competent and reliable
 scientific evidence that substantiates the representation.

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

#### V.

IT IS FURTHER ORDERED that defendant, directly or through any corporation, 8 9 partnership, subsidiary, division, or other device, and her agents, servants, employees, and 10 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 11 endorsing, advertising, promotion, offering for sale, sale, or distribution of any product, service 12 or program, in or affecting commerce, shall not misrepresent, in any manner, expressly or by 13 implication, the existence, contents, validity, results, conclusions or interpretations of any test, 14 15 study, or research.

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# 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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1	ASSIGNMENT	
2	VII.	
3	IT IS FURTHER ORDERED that within five (5) business days from the date of entry of	
4	this Order, defendant shall execute a written assignment to the Commission in a form	
5	substantially similar to the form attached to this Order as Appendix B.	
6		
7	RECORD KEEPING	
8	VIII.	
9	IT IS FURTHER ORDERED that defendant, for a period of five (5) years after the last	
10	date of dissemination of any representation covered by this Order, shall maintain and upon	
11	request make available to the Commission for inspection and copying:	
12	A. All advertisements and promotional materials containing the representation;	
13	B. All materials that were relied upon in disseminating the representation; and	
14	C. All tests, reports, studies, surveys, demonstrations, or other evidence in their	
15	possession, custody, or control that contradict, qualify, or call into question the	
16	representation, or the basis relied upon for the representation, including	
17	complaints and other communications with consumers or with governmental	
18	entities or consumer protection organizations.	
19		
20	MONITORING	
21	IX.	
22	IT IS FURTHER ORDERED that defendant, within five (5) business days of entry of this	
23	Order, shall notify the Commission of (1) her residence address and mailing address; (2) the	
24	name, address, and telephone number of her employer(s); (3) if applicable, the names of her	
25	supervisors, and (4) a description of her employer's activities, and her duties and responsibilities.	
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	Page 7 of 12	

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IT IS FURTHER ORDERED that defendant, for a period of five (5) years after the date of entry of this Order, shall notify the Commission of any changes in her 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 her supervisors and the people to whom she reports; and, (3) a description of the employer's activities, and defendant's duties and responsibilities.

#### XI.

IT IS FURTHER ORDERED that defendant 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 she has complied with this Order.

## XII.

IT IS FURTHER ORDERED that the Commission is authorized to monitor the compliance of defendant 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 defendant 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 has violated any provision of this Order or Sections 5 or 12 of the FTC Act, 15 U.S.C. §§ 45, 55.

Page 8 of 12

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#### RETENTION OF JURISDICTION

#### XOUT.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this marter for

purposes of construction, modification, and enforcement of this Order.

SO STIPULATED: 6

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7 3 DAVID P. FRANKE THEODORE H. HOPPOCK 9 Federal Trade Commission 600 Pennsylvania Ave., N.W., Rm. S-4002 Washington, D.C. 20580 (202) 326-2812, -3087 (voice) (202) 326-3259 (facsimile) 10 11 Auomeys for Plaintiff FEDERAL TRADE COMMISSION 12 13 14 15 10 17 SO ORDERED 18 19 20 DATED: 21 22 23 24 25 26

RSON EDWARD F. GLY GARY D. HAILEY Venable, Baetjer, Howard & Civilerri, LLP 1201 Now York Avenue, N.W. Suite 1000 Washington, D.C. 20005-8300 (202) 962-4800 (voice) (202) 962-8300 (facsimile)

KENDALL 2/k/3 KENDALL

Attorneys for Defendant LARK KENDALL 2/k/a KENDALL CARSON

UNITED DISTRICT JUDGE

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08/09/00 WED 11:43 [TX/RI NO 6561]

APPENDIX A			
UNITED STATES DISTRICT COURT			
CENTRAL DISTRICT OF CALIFORNIA			
FEDERAL TRADE COMMISSION			
Civil Number			
GARVEY, GARVEY MANAGEMENT			
KENDALL CARSON, MARK LEVINE, individually and as an officer and director of			
MODERN INTERACTIVE TECHNOLOGY,			
an officer and director of MÓDERN INTERACTIVE TECHNOLOGY, INC., and			
MODERN INTERACTIVE TECHNOLÓGY, INC.,			
Defendants.			
AFFIDAVIT OF LARK KENDALL			
Lark Kendall a/k/a Kendall Carson, being duly sworn, hereby states and affirms:			
1. My name is Lark Kendall and I am also know as Kendall Carson. 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 address is	1		
3. On (date), 2000, I received a copy of the Stipulated Final	l		
Order and Settlement of Claims for Monetary Relief as to Defendant Lark Kendall a/k/a Kendall			
Carson, which was signed by the Honorable, United States District Court			
Page 10 of 12			
	UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA FEDERAL TRADE COMMISSION, Plaintiff, v. STEVEN PATRICK GARVEY a/ka/ STEVE GARVEY, GARVEY MANAGEMENT GROUP, INC, LARK KENDALL a/ka KENDALL CARSON, MARK LEVINE, individually and as an officer and director of MODERN INTERACTIVE TECHNOLOGY, INC, DAVID RICHMOND, individually and as an officer and director of MODERN INTERACTIVE TECHNOLOGY, INC, DUBLICHNOND, individually and as an officer and director of MODERN INTERACTIVE TECHNOLOGY, INC, Defendants.		

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. 1	Judge for the Central District of California. A true and correct copy of the Order that I received		
2	is appended to this Affidavit.		
3	I hereby declare under penalty of perjury under the laws of the United States of America		
4	that the foregoing is true and correct. Executed on (date), at (city,		
5	state)		
6			
7	Lark Kendall a/k/a Kendall Carson		
8	•		
9	STATE OF CALIFORNIA		
10	COUNTY OF		
11	BEFORE ME this day personally appeared Lark Kendall a/k/a Kendall Carson, who		
12 13	being first duly sworn, deposes and says that she has read and understands the foregoing		
13	statement and that she has executed the same for the purposes contained therein.		
14	SUBSCRIBED AND SWORN TO before me thisday of,		
16	2000, by Lark Kendall a/k/a Kendall Carson. She is personally known to me or has presented		
17	(state identification)as identification.		
18			
19			
20	Print Name		
21	NOTARY PUBLIC STATE OF CALIFORNIA		
22	Commission Number		
23	Affix Seal		
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	Page 11 of 12		

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.1	APPENDIX B			
2	Assignment			
3 4	This assignment is hereby made by Lark Kendall a/k/a Kendall Carson ("Kendall"), of 257 North Almont Drive, Beverly Hills, California 90211. The Federal Trade Commission ("FTC") is the assignee of this assignment.			
5	Kendall, in consideration of the FTC's agreement to enter into a Stipulated Final Order			
6 7	for Permanent Injunction and Settlement of Claims for Monetary Relief as to Defendant Lark Kendall a/k/a Kendall Carson, in <u>FTC v. Steven Patrick Garvey a/k/a Steve Garvey, et al.</u> , (C.D. Cal.), and of other good, valuable, and sufficient considerations, the receipt of which is acknowledged, sells, assigns, transfers, sets over and delivers to the FTC, its successors and			
8	assigns, any and all claims, demands, and cause or causes of action of whatsoever kind and nature Kendall may have to payment or collection of any judgments, monies, fees, commissions, salary, due to Kendall from Ronnell Raganas or Christian Alexander Models in connection with Kendall's appearance in or work with respect to any advertisements or infomercials for the			
9				
10	Enforma System, Fat Trapper, Fat Trapper Plus, or Exercise In A Bottle.			
11	Kendall constitutes and appoints the FTC, and the FTC's successors and assigns, its true and lawful attorney-in-fact and attorneys-in-fact, irrevocably, with full power of substitution and			
12	revocation, for Kendall and in Kendall's name, or otherwise, but for the sole use and benefit of the FTC, the FTC's successors and assigns, to ask, demand, sue for, collect, receive, compound, and give acquittances for such claim or claims, or any part of such claim or claims.			
13	In witness whereof, Kendall has executed this assignment at,			
14	California on, 2000.			
15				
16	Lark Kendall a/k/a Kendall Carson			
17				
18	Notary Public			
19	My Commission Expires:			
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	Page 12 of 12			