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13	UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA		
14	WESTERN DIVISION		
15	FEDERAL TRADE COMMISSION,		
15 16	FEDERAL TRADE COMMISSION,  Plaintiff,  v.  Civil Action No.		
	Plaintiff, Civil Action No.		
16	Plaintiff, v.  Plaintiff, Civil Action No.  VITAL DYNAMICS, INC. d/b/a ISIS, GEOFFREY V KNIGHT  Plaintiff, Sivil Action No.  INJUNCTION AND		
16 17	Plaintiff, v.  VITAL DYNAMICS, INC. d/b/a ISIS,  Plaintiff, )  Civil Action No. )  FORMULAENTFOR		
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1. Plaintiff FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a permanent injunction, restitution, disgorgement, and other equitable relief against Defendants for engaging in unfair or deceptive acts or practices and false advertising in connection with the advertising, marketing, and sale of an alleged breast enhancement product, The Isis System, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

# JURISDICTION AND VENUE

- 2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 52, 53(b) and 28 U.S.C. §§ 1331, 1337(a) and 1345.
- 3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

# THE PARTIES

- 4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce. The Commission may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief, including consumer redress, as may be appropriate in each case. 15 U.S.C. § 53(b).
- 5. Defendant Vital Dynamics, Inc. ("VDI") is a California corporation with its principal office or place of business at 7950 Deering Avenue, Canoga Park,

California 91304. VDI sometimes does business as "Isis." VDI transacts business in the Central District of California.

- 6. Defendant Geoffrey Knight is President, Treasurer, and a director of VDI. At all times relevant to the complaint, acting individually or in concert with others, he has formulated, directed, or controlled the policies, acts, or practices of VDI, including the acts or practices alleged in this complaint. He resides or transacts business in this district.
- 7. On September 24, 2002, Defendant Geoffrey V. Knight filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq., in the United States Bankruptcy Court for the Central District of California, Case No. SV 02-18543-KL. Amy L. Goldman was appointed the Chapter 7 trustee for Defendant Knight. The Commission's action against Defendant Knight is not stayed by 11 U.S.C. § 362(a) because it is an exercise of the Commission's police or regulatory power as a governmental unit pursuant to 11 U.S.C. § 362(b)(4) and thus falls within an exception to the automatic stay.
- 8. Defendant Mark D. Berman is Vice President, Secretary, and a director of VDI. At all times relevant to the complaint, acting individually or in concert with others, he has formulated, directed, or controlled the policies, acts, or practices of VDI, including the acts or practices alleged in this complaint. He resides or transacts business in this district.
- 9. Defendant Allen Smith is Vice President of VDI. At all times relevant to the complaint, acting individually or in concert with others, he has formulated, directed, or controlled the policies, acts, or practices of VDI, including the acts or practices alleged in this complaint. He resides or transacts business in this district.

**COMMERCE** 

10. The acts and practices of Defendants alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

# **DEFENDANTS' COURSE OF CONDUCT**

- 11. Since at least 1999, Defendants have manufactured, labeled, advertised, offered for sale, sold, and distributed products to the public, including The Isis System, consisting of the Isis Breast Enhancement Herbal Cream and Isis Breast Enhancement Herbal Supplement.
- 12. The Isis System contains various herbal oils and extracts as well as other ingredients. The Isis Breast Enhancement herbal supplement is a capsule containing blessed thistle, hops, wild yam, saw palmetto, chaste tree, fenugreek, fennel, black cohosh, damiana, dong quai, methylsulfonylmethane, royal jelly, scullcap, curcubita pepo pumpkin seed and lycium chinese herb extract. The Isis Breast Enhancement herbal cream contains pueraria mirifica, saw palmetto, chaste tree berry, fenugreek, fennel, comfrey, white willow bark, ma huang, black cohosh, guarana, passion flower, bilberry, horsetail, cayenne, and other ingredients.
- 13. To induce consumers to purchase The Isis System, Defendants have widely disseminated, or caused to be widely disseminated, radio, television, magazine, and Internet advertisements, including but not limited to the attached Exhibits A through F. These advertisements contain, among other things, the following statements or depictions:

### a. Voice 1:

Dear ISIS, I am so tired of being small breasted. I would give anything to fill out my dress, but I don't want that implant look. Can the ISIS Breast Enhancement System give me full and natural looking breasts? Signed, Flat & Fretful Jane:

Dear Flat & Fretful, ISIS is perfect for you. First of all, ISIS gives you 1 fuller, firmer, shapelier breasts naturally – no surgery, no big medical bills. Many women see their bust increase by one cup size. It's 2 natural, and it's backed by a no-risk money back guarantee. Get those 3 fuller, firmer breasts you've always dreamed of now. -Exhibit A, radio ad 4 5 FEMALE ANNOUNCER: The Isis Breast Enhancement System 6 can give you a beautiful bustline and a tremendous boost in selfesteem. ON SCREEN: Before and after photographs. Results are not typical Your results may vary and you may need to 8 use the product longer.
UNIDENTIFIED FEMALE: I saw results within the first two weeks. I 9 grew an entire cup size within one month. . . . FEMALE ANNOUNCER: Call the number on your screen right now to speak to an Isis consultant. It's completely confidential and there is no obligation. The results from Isis are guaranteed or your money back. . . . 12 -Exhibit B, infomercial 13 c. Fuller, Firmer Breasts in as Little as a Few Weeks 14 .Guaranteed! More than 50,000 women have traded in their padded bras and chosen 15 a fuller, firmer bustline with the all-natural ISIS Breast Enhancement System. And for good reason. ISIS is the original name in all-natural 16 breast enhancement and the only non-surgical approach that is both patented and doctor approved. . . . ISIS comes with a complete 90-day money back guarantee, so you have nothing to lose! . . . 17 As prominent Beverly Hill's physician, Dr. F. I. Ghaly says, 'ISIS is 19 the safest and most effective method for enhancing the bustline. I have witnessed many women increase their breast size and their confidence 20 with the ISIS system.' 21 -Exhibit C, magazine ad 22 23 d. 'I went from wearing an 'A' cup to a 'B' Cup - - without surgery!" 24 – C.H., Santa Cruz, CA. 25 *Finally . . . the natural alternative for breast enhancement.* 26 27

I've been self-conscious about my small breasts ever since I was a teenager. I tried push-up bras and silicone inserts, but they just didn't look or feel right. I also considered surgery, but wanted something safer and more affordable.

Then I heard a commercial for the ISIS Breast Enhancement System, developed by a renowned herbalist and scientist. At first I was skeptical, but I called and spoke with one of the ISIS consultants. She explained how the natural properties in ISIS help support the mammary glands and promote the growth of breast tissue. In addition, they firm and tone the bustline by strengthening connective tissues.

I was also told that ISIS has an extremely high success rate and comes with a money-back guarantee in the event I'm not happy with the results.

I figured I had nothing to lose, so I began the program. After a few weeks, my husband started noticing the results. That's when I measured myself and discovered my bust had grown two inches! . . .

Many women see their bustline increase by one cup size after using the patent-pending ISIS Breast Enhancement System. . . .

- Exhibit D, magazine ad

### e. ISIS Breast Enhancement

## How ISIS works for you:

... ISIS blends age-old herbs into a patent pending formula that works internally and externally to deliver the desired results to your breast. The system works in the following ways:

#### **Completes Your Natural Growth**

ISIS awakens estrogen receptor sites which may have been dormant since puberty. This is the largest cause of underdeveloped breasts. Many women have never attained their full genetic potential.\*

The mastogenic (breast enlarging) properties in ISIS are like magnets which draw growth inducing characteristics to your receptor sites and in effect, cleanse the body and allow your growth to continue. This is accomplished through the use of phytoestrogens (derived from plants).\*

### **Stimulates Additional Growth**

Once your natural growth cycle is complete, ISIS pushes beyond your inherited potential by helping stimulate the pituitary gland which is

2 **Shaping, Toning and Lifting** 3 ISIS assists in firming and toning the breasts by strengthening connective tissues and encouraging the growth of new cells. 4 Additionally several of the properties are known to strengthen the 5 Cooper's Ligaments (connective tissues), which will assist in lifting the These statements have not been evaluated by the Food and Drug 6 Administration. This product is not intended to diagnose, treat, cure or 7 prevent any disease. faq's 8 Q: Are there any side effects? 9 There have been no reported side effects to the active ingredients in ISIS. Many women report stronger growth of hair and nails in addition to an improvement in skin tone and complexion. 12 Q: Do I need to stay on ISIS for the rest of my life? 13 Most women do not lose any size or shape, but if you experience a consistent loss after a couple of months, you may need to stay on a 14 light maintenance program. 15 before & after photo testimonials 16 [Before and after photos bear these descriptions:] 17 'Carolyn grew a full cup size!' . . . . 'Cherise went from a 34B to a 34C' . . . 'Melissa went from a B cup to a C cup' . . . 'Valentino went from a B cup to a C cup!'...
'Melanie went from a B cup to a C cup!'... 19 20 Results are not typical. Your results may vary! 21 testimonials 1. F. I. Ghaly, M.D. 22 As a medical doctor, I'm concerned with how popular breast enlargement has become. . . .I don't believe surgery is always the best 23 Recently, I had been introduced to a product called the ISIS Breast 24 Enhancement System. . . . I have examined the ISIS Breast Enhancement System thoroughly and find it to be an exceptional product. . . .ISIS has had amazing success in designing a formula that 25 is specific to enlarging and firming the bustline. . . . I have witnessed 26 27

responsible for the production and release of growth hormones that

help promote the growth of breast cells and tissue.\*

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hundreds of testimonials from women who have increased their breast 1 size with the ISIS system. 2 2. J. Michael Ernest (From Interview) ...It's absolutely [a] wonderful feeling to know that you've developed 3 a formula that not only provides the type of results that women really need and want but it gives them a two-fold process. They get the larger breast that makes them more beautiful, but it also addresses their 4 5 self-esteem. It is the safest the most effective formulation that I know of on the market. 6 - Exhibit E, Internet site 7 f. **ISIS In the News!** 8 "Hi guys, you remember that old school rhyme, we must,...we must 9 increase our bust. You know the rest of it." 10 Well, one local company says no need for strenuous exercise or even plastic surgery. They've got an herbal product that will increase the breast size for 80% of the women who use it by one or two cup sizes. Sound farfetched? We decided to check it out ourselves. . . . 11 12 A bigger bust line, it's what millions of women want, including Leara 13 Marshall. 'And I though[t] of the implants and I was like I don't have the money for that.' 14 So she used a \$600 breast-building product called ISIS. 15 "Within the first month I'd grown like two inches around." 16 Her bra size jumped form a 34b to a 34c."... 17 This is the man behind ISIS, Michael Ernest. He says small breasts are the result of a stunted puberty. Using his background in [herbology] 19 and biology, he developed a formula that releases chemicals called phytoestrogens or plant-type estrogens into the breast. 20 'What you do is reawaken those receptor sites, reestablish the 21 metabolic processes through the herbs, and the breast will continue to develop and finish developing.' 22 Exhibit F, transcript of video sidebar 23 on Internet site 24 14. Consumers may order Isis only by calling a toll-free telephone number. 25 When consumers call the Isis toll-free number, the telemarketing sales 26 27

representative makes a presentation based upon a prepared script, such as the one attached as Exhibit G. This script contains, among other things, the following statements:

... LET ME EXPLAIN HOW THE SYSTEM IS GOING TO WORK FOR MAKE THE ISLESS SYSTEM CONSISTS OF HERDRAL GARSHIESS AND

... LET ME EXPLAIN HOW THE SYSTEM IS GOING TO WORK FOR YOU. THE ISIS SYSTEM CONSISTS OF HERBAL CAPSULES AND AN HERBAL CREAM. NOW THE RESULTS THAT YOU SAID YOU WANTED TO ACHIEVE ARE VERY POSSIBLE WITH THE PROGRAM. MOST WOMEN WHO USE THE PROGRAM REPORT AN AVERAGE GROWTH OF ONE CUP SIZE... THOUGH SOME WOMEN HAVE REPORTED AS MUCH AS TWO CUP SIZES...

WE HAVE AN EXTREMELY HIGH SUCCESS RATE FOR THE WOMEN WHO HAVE USED THE PROGRAM. BUT, IF YOU'RE CONCERNED THAT ISIS MIGHT NOT WORK FOR YOU, WE OFFER A COMPLETE 90-DAY MONEY-BACK GUARANTEE. THAT'S 3-MONTHS TO TRY ISIS AND SEE IF IT'S RIGHT FOR YOU. WE HAVE A VERY LOW RETURN RATE, THAT'S WHY WE HAVE THE CONFIDENCE TO OFFER SUCH A GENEROUS GUARANTEE. . .

– Exhibit G, Isis Telemarketing Sales Script

- 15. VDI charges anywhere from \$199 to \$599 for a six-month supply of Isis. From 1999 to 2002, its gross revenues from sales of Isis, minus refunds, have exceeded \$ 22 million; however, VDI expended nearly the same amount, in the ordinary course of business, over that period of time.
- 16. Although VDI offered a complete 90-day risk-free guarantee, it placed impediments in the path of those seeking to obtain such a refund. For example, VDI directs consumers seeking a refund to first obtain a return authorization number from the company; however, many consumers seeking to contact the company for a return authorization are unable to get through to the company to obtain such an authorization number. These practices prevent or deter many consumers from requesting and/or obtaining a full refund. Many consumers who are able to obtain refunds from VDI have done so only after complaining to a Better Business Bureau or a state governmental agency.

### **DEFENDANTS' VIOLATIONS OF THE FTC ACT**

17. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, Isis is either a "food" or a "drug" pursuant to Section 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b) and (c). As set forth below, the Defendants have engaged and are continuing to engage in such unlawful practices in connection with the marketing and sale of the Isis system.

**COUNT I (Unsubstantiated Claims)** 

- 18. Through the means described in Paragraphs 13 and 14, Defendants have represented, expressly or by implication, that:
  - a. Isis will enlarge a woman's breasts by one cup size or more;
  - Isis works by stimulating breast cells to regenerate the growth process;
  - c. Isis strengthens connective tissue to lift the breast;
  - d. Isis tones and firms the breast;
  - e. After six months, most women will maintain their increased breast size without continued use of Isis and the remainder of women will maintain the increase in size by taking Isis on a light maintenance program;
  - f. Isis has a high success rate; and
  - g. Isis is safe and has no negative side effects.
- 19. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraphs 18 (a) through (g) at the

time the representations were made. Therefore, the making of the representations set forth in Paragraph 18, above, constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

# **COUNT II (False claims regarding side effects)**

- 20. Through the means described in Paragraph 13 and 14, Defendants have represented, expressly or by implication, that there are no reported side effects for the Isis system.
- 21. In truth and in fact, there are reported side effects for the Isis system. Indeed, VDI has received hundreds of reports of negative side effects from use of Isis, including reports of allergic reactions, nausea and headache. Therefore, the making of the representations set forth in Paragraph 20, above, constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

**COUNT III (False claims regarding refunds)** 

21. Through the means described in Paragraphs 13 and 14, Defendants have represented, expressly or by implication, that the Isis guarantee permits consumers to readily obtain a full refund of all money paid to Defendants if they are dissatisfied with the product.

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In truth and in fact, the Isis guarantee does not permit consumers to 22. readily obtain a full refund of all money paid to Defendants if they are dissatisfied with the product. Therefore, the making of the representations set forth in Paragraph 21, above, constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

#### **INJURY**

Consumers throughout the United States have suffered and continue to 23. suffer substantial monetary loss as a result of Defendants' unlawful acts or practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

# THIS COURT'S POWER TO GRANT RELIEF

24. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy injury caused by Defendants' law violations.

### PRAYER FOR RELIEF

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

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- (1) Enjoin Defendants permanently from violating Sections 5 and 12 of the FTC Act, in connection with the advertising or sale of food, drugs, devices, cosmetics or other products, services or programs;
- (2) Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including but not limited to redress, refund of monies paid, or disgorgement of ill-gotten gains; and
- (3) Award plaintiff the costs of bringing this action and any other equitable relief the Court may determine to be just and proper.

Respectfully submitted,

WILLIAM E. KOVACIC General Counsel

JANET M. EVANS Federal Trade Commission

RAY MCKOWN
Federal Trade Commission
Attorneys for PLAINTIFF
FEDERAL TRADE COMMISSION