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 U.S. DISTRICT COURT

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UNITED STATES DISTRICT COURT
 DISTRICT OF NEW JERSEY

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	COMPLAINT FOR CIVIL PENALTIES
)	AND INJUNCTIVE RELIEF
v.)	
)	
)	CIV. ACT. NO.
LIFESTYLE FASCINATION, INC.,)	
a corporation,)	
)	
Defendant.)	
_____)	

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("Commission"), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 5(a), 5(l), 13(b) and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(l), 53(b) and 56(a), to obtain monetary civil penalties and modified injunctive relief for violations of a final cease and desist order issued against defendant Lifestyle Fascination, Inc. ("Lifestyle"), by the Commission.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355 and under 15 U.S.C. §§ 45(a), 45(l), 53(b), and 56(a).

3. Venue in the United States District Court for the District of New Jersey is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b-c) and 1395(a).

THE DEFENDANT

4. Defendant Lifestyle is a Delaware corporation with its office and principal place of business located within the District of New Jersey, at 110 Lehigh Ave., Lakewood, New Jersey 08701. It transacts or has transacted business in the District of New Jersey.

PRIOR COMMISSION PROCEEDING

5. In a Commission proceeding bearing Docket No. C-3513, in which defendant Lifestyle was charged with violating Sections 5(a)(1) and 12 of the FTC Act, 15 U.S.C. §§ 45(a)(1) and 52, the Commission on August 4, 1994, issued against Lifestyle, its successors and assigns, and its officers, agents, representatives and employees, a consent order to cease and desist from certain practices in connection with the advertising, promotion, offering for sale, sale or distribution of various products. The Commission's Order was served upon Lifestyle on August 15, 1994, and by operation of law became final and enforceable on that date. It has remained in full force and effect ever since. Copies of the Commission's Complaint and the Commission's Order are attached to this Complaint as Exhibit A.

6. The Commission's Order contains the following provisions:

IV.

IT IS FURTHER ORDERED that . . . Lifestyle Fascination, Inc., a corporation, its successors and assigns, and its officers, . . . agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any product in or affecting commerce, as 'commerce' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test or study.

* * * *

VI.

IT IS FURTHER ORDERED that . . . Lifestyle Fascination, Inc., a corporation, its successors and assigns, and its officers, . . . agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any product in or affecting commerce, as 'commerce' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

- A. Use of such product can or will have any effect on the user's intelligence; energy levels; muscle strength or tone; weight; mental concentration; pain; depression or anxiety; sleep patterns or requirements; short or long term memory; cravings for or withdrawal symptoms from drugs or alcohol; or any other effect on health or the structure or function of the human body; . . .

unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

* * * *

VII.

IT IS FURTHER ORDERED, that . . . Lifestyle Fascination, Inc., a corporation, its successors and assigns, and its officers . . . agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection

with the advertising, promotion, offering for sale, sale or distribution of any consumer electric or electronic product in or affecting commerce, as 'commerce' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, regarding the performance, safety, attributes, benefits, or efficacy of such product, unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which, when appropriate, must be competent and reliable scientific evidence, that substantiates such representation. . . .

PRIOR DISTRICT COURT PROCEEDING

7. On March 19, 1997, the United States of America, acting upon notification and authorization to the Attorney General by the Commission, filed a complaint before the United States District Court, District of New Jersey, United States v. Lifestyle Fascination, Inc., Civ. Act. No. 97-1487 (CSF), alleging violations of the Commission's Order in connection with Lifestyle's advertising for Cystaldyne Pain Reliever, PestContro pest eliminator, and Super-Tenna television antenna ("District Court Complaint"). On March 27, 1997, Judge Clarkson S. Fisher entered judgment in favor of the United States, pursuant to the terms and conditions of a consent decree entered into by the United States and Lifestyle, and enjoined future violations of the Commission's order ("District Court Order"). Copies of the District Court Complaint and the District Court Order are attached to this Complaint as Exhibit B.

LIFESTYLE'S VIOLATIONS OF THE COMMISSION'S ORDER AND THE DISTRICT COURT ORDER

FIRST CAUSE OF ACTION

8. On numerous occasions since January 2000, Lifestyle, directly or through its representatives or agents, has disseminated or caused to be disseminated advertisements for Beverly Hills Spa Diet,

including but not necessarily limited to the print and Internet catalog advertisements attached hereto as Exhibit C-1. These advertisements contain the following statements:

Exhibit C-1

Lose up to 10 lbs. this weekend and feel great – favorite diet of America’s rich and famous is enriched with antioxidants!

Jump start your weight loss while you cleanse, detoxify and renew your youthful energy! Lose up to 10 lbs. in 48 hours with a diet that’s been the secret of America’s rich and famous, including Hollywood’s biggest stars. A recent study by an independent test lab confirms that ‘statistically significant weight loss occurred at the end of 2 days in each of the subjects.’ Subjects lost an average of 4% of their total body weight – up to 10 lbs! And so will you!

Fortified with the world’s most powerful antioxidant!

The citrus-flavored formula supplies 100% of the U.S. RDI of 12 essential vitamins and minerals in every serving and it’s enriched with essential oils, energy-promoting Pyruvate and age-defying antioxidant fruits and flowers including an important discovery – spinach extract – the world’s most powerful antioxidant rejuvenator.

Lose weight and feel great!

You lose weight without hunger, fatigue, stomach cramps, constipation or diarrhea. In fact, you actually feel more energetic! Knowledge of essential oils goes back 6,000 years to ancient Egypt and is still a part of the Indian Ayurvedic medicine. The Beverly Hills Spa Diet synergizes this wisdom with new knowledge about the metabolic process blending essential oils with Pyruvate, a natural by-product of glucose metabolism. In two studies at a leading medical center, Pyruvate was shown to increase muscle mass and aid fat loss by up to 48%! Mix the diet concentrate with water or juice and for best results, use 2 days on and 2 days off in conjunction with exercise and a low-fat, high-fiber diet. Your money back if you’re not completely satisfied!

[print catalog]

Lose 10 lbs. in 48 hours

* * * *

Beverly Hills Spa Diet

Lose up to 10 lbs. this weekend & feel great – favorite diet of the rich & famous with age-defying antioxidants!

Jump-start your weight loss while you cleanse, detoxify, and renew your youthful energy! You lose up to 10 pounds in 48 hours without hunger, fatigue, stomach cramps, constipation or diarrhea. In fact, you actually feel more energetic! You get 100% of the U.S. RDI of 12

essential vitamins and minerals in every serving as well as essential oils, energy-promoting Pyruvate, and antioxidant fruits and flowers including breakthrough spinach extract.

The formula is based on a combination of recent discoveries about metabolism and a knowledge of essential oils from Indian Ayurvedic medicine. In studies at a leading medical center, one of the key ingredients, Pyruvate (a natural by-product of glucose metabolism), was shown to increase muscle mass and aid fat loss by up to 48%! Mix the citrus-flavored diet concentrate with water or juice. For best results, use 2 days on and 2 days off in conjunction with exercise and a low fat, high-fiber diet. Your money back if you're not completely satisfied!

[Internet catalog]

9. Through statements contained in the advertisements referred to in paragraph 8, including but not necessarily limited to the advertisements attached as Exhibit C-1, defendant, in connection with the advertising, promotion, offering for sale, sale or distribution of Beverly Hills Spa Diet, has, on numerous occasions, represented, directly or by implication, that, in conjunction with exercise and a low-fat, high-fiber diet, use of the recommended daily dose of the product enables users to: (1) lose substantial weight in 48 hours; (2) lose 10 pounds or up to 10 pounds in 48 hours; and (3) lose an average of 4% of total body weight in 48 hours.

10. By making the representations set forth in paragraph 9, defendant has represented that use of the Beverly Hills Spa Diet can or will have an effect on the user's weight while consuming low-fat, high-fiber foods. (In contrast, an instruction sheet that Lifestyle sends only to purchasers of the Beverly Hills Spa Diet tells users to consume the entire bottle of product over the course of two days without eating any food during that period.) Defendant made such representations without possessing and relying upon competent and reliable scientific evidence substantiating such representations, thereby violating Part VI of the Commission's Order and also the District Court Order's injunction against violations of the Commission's Order.

SECOND CAUSE OF ACTION

11. Through statements contained in the advertisements referred to in paragraph 8, including but not necessarily limited to the advertisements attached as Exhibit C-1, defendant, in connection with the advertising, promotion, offering for sale, sale or distribution of Beverly Hills Spa Diet, has, on numerous occasions, represented, directly or by implication that: (A) a study performed by an independent lab proves that, in conjunction with exercise and a low-fat, high-fiber diet, users of the product will: (1) experience statistically significant weight loss in two days; and (2) lose an average of 4% of their body weight or up to 10 pounds in two days; and (B) two studies at a leading medical center prove that a dose of pyruvate substantially equivalent to that contained in the recommended daily dose of Beverly Hills Spa Diet will increase muscle mass and aid fat loss by up to 48%.

12. In truth and in fact: (A) a study performed by an independent lab does not prove that, in conjunction with exercise and a low-fat, high-fiber diet, users of the product will: (1) experience statistically significant weight loss in two days; and (2) lose an average of 4% of their body weight or up to 10 pounds in two days; and (B) two studies at a leading medical center do not prove that a dose of pyruvate substantially equivalent to that contained in the recommended daily dose of Beverly Hills Spa Diet will increase muscle mass and aid fat loss by up to 48%. Therefore, the representations set forth in paragraph 11 misrepresent the existence, contents, validity, results, conclusions or interpretations of tests or studies, thereby violating Part IV of the Commission's Order and also the District Court Order's injunction against violations of the Commission's Order.

THIRD CAUSE OF ACTION

13. On numerous occasions since January 2000, Lifestyle, directly or through its representatives or agents, has disseminated or caused to be disseminated advertisements for FTF liquid chitosan supplement, including but not necessarily limited to the print and Internet catalog advertisements attached hereto as Exhibit C-2. These advertisements contain the following statements:

Exhibit C-2

Natural fiber absorbs fat and lowers cholesterol – proven in clinical trials!

Lose up to 10 lbs. in 1 month without giving up burgers, ice cream, doughnuts and fries, and without drugs!

FTF is a safe and all-natural liquid form of Chitosan, the most powerful known fat-absorbing supplement (derived from shellfish). Instead of winding up on your hips, thighs, stomach, rear and arteries, fat is passed out as waste. . . .

Scientific breakthrough backed by clinical studies

In a 4-week double-blind clinical trial, scientists in Helsinki, Finland, proved that participants taking Chitosan lost 10 lbs. more than those taking a placebo (and they substantially reduced their cholesterol as well)! A study in Italy contrasted participants taking Chitosan who ate everything they wanted with participants on a calorie-reduced diet. Those taking Chitosan lost 2½X more body fat!

Lose weight even without exercise

We don't recommend it, but you can lose up to 5 lbs. a month without exercising (up to 10 lbs with even light exercise). FTF is liquid Chitosan, far more potent and faster-acting than powdered capsules. Two squirts, twice daily, absorbs 30 grams of fat – or as much fat as in the typical hamburger.

[print and Internet catalogs]

* * * *

Dietary fat is a leading cause of heart attacks, and the average American consumes 81 grams of fat per day. According to Dr. Alex Duarte, D.O./nutritionist, FTF could save tens of thousands of lives by preventing fat from being absorbed by the body.

[print catalog]

14. Through statements contained in the advertisements referred to in paragraph 13, including but not necessarily limited to the advertisements attached as Exhibit C-2, defendant, in connection with

the advertising, promotion, offering for sale, sale or distribution of FTF liquid chitosan supplement, has, on numerous occasions, represented, directly or by implication, that: (1) use of the recommended daily dose of the product enables users to lose substantial weight without the need for a restricted calorie diet or exercise; (2) use of the recommended daily dose of the product enables users to lose substantial weight even if they eat substantial amounts of foods high in fat, including hamburgers, ice cream, doughnuts, and fries; (3) use of the recommended daily dose of the product enables users to lose up to 10 lbs. in one month with light exercise; (4) use of the recommended daily dose of the product enables users to lose up to 5 lbs. in one month without exercising; (5) use of the recommended daily dose of the product prevents the absorption in the human body of 30 grams of fat, or as much fat as in the typical hamburger; and (6) use of the recommended daily dose of the product substantially reduces the risk of heart attacks in users.

15. By making the representations set forth in paragraph 14, defendant has represented that use of FTF liquid chitosan supplement can or will have an effect on the user's weight or on health or the structure or function of the human body. Defendant made such representations without possessing and relying upon competent and reliable scientific evidence substantiating such representations, thereby violating Part VI of the Commission's Order and also the District Court Order's injunction against violations of the Commission's Order.

FOURTH CAUSE OF ACTION

16. Through statements contained in the advertisements referred to in paragraph 13, including but not necessarily limited to the advertisements attached as Exhibit C-2, defendant, in connection with

the advertising, promotion, offering for sale, sale or distribution of FTF liquid chitosan supplement, has, on numerous occasions, represented, directly or by implication, that: (A) a study performed in Helsinki, Finland, proves that a dose of chitosan substantially equivalent to that contained in the recommended daily dose of FTF will enable users to: (1) lose 10 lbs. in 4 weeks, and (2) substantially reduce their cholesterol level; and (B) a study performed in Italy proves that a dose of chitosan substantially equivalent to that contained in the recommended daily dose of FTF will enable users to eat everything they want and lose 2½ times more body fat than dieters.

17. In truth and in fact: (A) a study performed in Helsinki, Finland, does not prove that a dose of chitosan substantially equivalent to that contained in the recommended daily dose of FTF will enable users to: (1) lose 10 lbs. in 4 weeks, and (2) substantially reduce their cholesterol level; and (B) a study performed in Italy does not prove that a dose of chitosan substantially equivalent to that contained in the recommended daily dose of FTF will enable users to eat everything they want and lose 2½ times more body fat than dieters. Therefore, the representations set forth in paragraph 16 misrepresent the existence, contents, validity, results, conclusions or interpretations of tests or studies, thereby violating Part IV of the Commission's Order and also the District Court Order's injunction against violations of the Commission's Order.

FIFTH CAUSE OF ACTION

18. On numerous occasions since January 2000, Lifestyle, directly or through its representatives or agents, has disseminated or caused to be disseminated advertisements for Carni Q-

Gel, including but not necessarily limited to the print and Internet catalog advertisements attached hereto as Exhibit C-3. These advertisements contain the following statements:

Exhibit C-3

Scientific breakthrough in heart conditioning! Keys to a healthy heart & energy for every cell in your body – praised by cardiologists!

‘I have found it to be one of the most energy enhancing supplements currently available.’- Frederic J. Vagnini, M.D. (Cardiovascular Wellness Center). ‘Your new Q-Gel has literally made the difference in the quality of life in many of my patients.’-Stephen T. Sinatra, M.D. (New England Heart Center).

Why are so many cardiologists recommending Q-Gel for a healthy heart and for patients with angina and arrhythmia? Because it contains the most potent and stable combination of L-Carnine [*sic*] Fumarate and Coenzyme Q10. These two nutrients have been documented in medical studies as critical to the delivery of energy and essential nutrients on the cellular level, to burning fat and preventing LDL [*sic*] (good cholesterol) oxidation. Research has also been exploring the use of L-Carnine [*sic*] in weight reduction, Alzheimer’s, kidney disease, chronic fatigue syndrome, neuromuscular diseases and immune system problems – even sperm motility! Patented Carni Q-Gel is proven to achieve therapeutic levels in three weeks or less.

[print and Internet catalogs]

19. Through statements contained in the advertisements referred to in paragraph 18, including but not necessarily limited to the advertisements attached as Exhibit C-3, defendant, in connection with the advertising, promotion, offering for sale, sale or distribution of Carni Q-Gel, has, on numerous occasions, represented, directly or by implication, that use of the recommended daily dose of the product: (1) will maintain healthy heart function in users; (2) will improve heart function in users with angina, arrhythmia, or other heart problems; (3) may promote weight loss and sperm motility; and (4) may provide benefit to people suffering from Alzheimer’s, kidney disease, chronic fatigue syndrome, neuromuscular disease, or immune system problems.

20. By making the representations set forth in paragraph 19, defendant has represented that use of Carni Q-Gel can or will have an effect on health or the structure or function of the human body. Defendant made such representations without possessing and relying upon competent and reliable scientific evidence substantiating such representations, thereby violating Part VI of the Commission's Order and also the District Court Order's injunction against violations of the Commission's Order.

SIXTH CAUSE OF ACTION

21. On numerous occasions since January 2000, Lifestyle, directly or through its representatives or agents, has disseminated or caused to be disseminated advertisements for the Sani-Mate Plug-In Sterilizer, including but not necessarily limited to the print and Internet catalog advertisements attached hereto as Exhibit C-4. These advertisements contain the following statements:

Exhibit C-4

Sani-Mate Plug-In Sterilizer

Sani-Mate plugged in each day keeps the doctor away!

Science doesn't support the old adage, 'An apple a day keeps the doctor away.' But scientific studies at the University of California School of Microbiology suggest there's something else that could keep the doctor away – a simple plug-in air purifier that requires no filters and absolutely no maintenance!

The patented U.S.A-made Sani-Mate Plug-In sterilizes, deodorizes and sanitizes, reducing airborne bacteria by up to 90%, as well as surface bacteria, viruses, molds, chemicals, odors and smoke. Air is drawn into a corona discharge chamber at the rate of 70 feet per minute, where it's bombarded with 'lightning strikes' of ionized electrons that destroy pollutant molecules, and has ozone to deodorize nasty odors. Air is left as clean and fresh as after a springtime thunderstorm.

The tiny plug-in (2 7/8" x 3 3/8" x 1 7/8") is great for any room and particularly important in a bathroom, where invisible bacteria are released every time you flush. Order this proven disease fighter at half off list price!

[print and Internet catalogs]

22. Through statements contained in the advertisements referred to in paragraph 21, including but not necessarily limited to the advertisements attached as Exhibit C-4, defendant, in connection with the advertising, promotion, offering for sale, sale or distribution of the Sani-Mate Plug-In Sterilizer, has, on numerous occasions, represented, directly or by implication, that use of the product will reduce the incidence of disease or infection in users.

23. By making the representation set forth in paragraph 22, defendant has represented that use of the Sani-Mate Plug-In Sterilizer can or will have an effect on health or the structure or function of the human body. Defendant made such representations without possessing and relying upon competent and reliable scientific evidence substantiating such representations, thereby violating Part VI of the Commission's Order and also the District Court Order's injunction against violations of the Commission's Order.

SEVENTH CAUSE OF ACTION

24. Through statements contained in the advertisements referred to in paragraph 21, including but not necessarily limited to the advertisements attached as Exhibit C-4, defendant, in connection with the advertising, promotion, offering for sale, sale or distribution of the Sani-Mate Plug-In Sterilizer, has, on numerous occasions, represented, directly or by implication, that use of the product will: (1) sanitize, sterilize, and deodorize a room; (2) eliminate, remove, clear, clean, or reduce bacteria, viruses, molds, chemicals, odors and smoke in an indoor environment; and (3) reduce airborne bacteria in a room by up to 90%.

25. By making the representations set forth in paragraph 24, defendant has made representations, directly or by implication, regarding the performance, safety, attributes, benefits, or efficacy of the Sani-Mate Plug-In Sterilizer, a consumer electric or electronic product. Defendant made such representations without possessing and relying upon competent and reliable scientific evidence substantiating such representations, thereby violating Part VII of the Commission's Order and also the District Court Order's injunction against violations of the Commission's Order.

EIGHTH CAUSE OF ACTION

26. Through statements contained in the advertisements referred to in paragraph 21, including but not necessarily limited to the advertisements attached as Exhibit C-4, defendant, in connection with the advertising, promotion, offering for sale, sale or distribution of the Sani-Mate Plug-In Sterilizer, has, on numerous occasions, represented, directly or by implication, that studies performed at the University of California School of Microbiology prove that use of the product will reduce the incidence of disease or infection in users.

27. In truth and in fact, studies performed at the University of California School of Microbiology do not prove that use of the product will reduce the incidence of disease or infection in users. Therefore, the representation set forth in paragraph 26 misrepresents the existence, contents, validity, results, conclusions or interpretations of a test or study, thereby violating Part IV of the Commission's Order and also the District Court Order's injunction against violations of the Commission's order.

LIFESTYLE’S VIOLATIONS OF SECTION 5 OF THE FTC ACT

28. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that “unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful.”

NINTH CAUSE OF ACTION

29. Through statements contained in the advertisements referred to in paragraph 18, including but not necessarily limited to the advertisements attached as Exhibit C-3, defendant, in connection with the advertising, promotion, offering for sale, sale or distribution of Carni Q-Gel, has, on numerous occasions, represented, directly or by implication that a substantial number of cardiologists recommend use of the product for heart health and for patients with angina or arrhythmia.

30. In truth and in fact, a substantial number of cardiologists do not recommend use of Carni Q-Gel for heart health or for patients with angina or arrhythmia. Therefore, the representation set forth in Paragraph 29 was, and is, false or misleading and constitutes an unfair or deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

31. On numerous occasions since January 1999, Lifestyle, directly or through its representatives or agents, has disseminated or caused to be disseminated advertisements stating a satisfaction or quality guarantee, including but not necessarily limited to the advertisement attached hereto as Exhibit C-5. These advertisements contain the following statements:

Exhibit C-5

Absolutely the STRONGEST guarantee of any catalog today!

When we insist you be pleased, we mean it. LIFESTYLE FASCINATION gives you the most thorough, all-inclusive guarantee in the catalog industry!

1. Guarantee of satisfaction: If for any reason you aren’t happy with your purchase, send it back for a 100% refund.

2. Guarantee of quality: If you think an item isn't exactly as described, send it back for a 100% refund.

3. Guarantee for one month: At any time within one full month, if you decide not to keep something you bought from us, send it back for a 100% refund. . . .

We challenge *any* catalog or *any* store: Do you dare match this guarantee?

32. Through the use of the statements contained in the advertisements referred to in paragraph 31, including but not necessarily limited to the advertisement attached as Exhibit C-5, defendant has represented, expressly or by implication, that purchasers may return merchandise to the defendant for any reason, within one month following purchase, and obtain a full refund of all money paid to defendant to obtain the merchandise.

33. In truth and in fact, when defendant refunds money to consumers for returned merchandise, its policy and practice is to refund only the purchase price of the item, excluding the shipping and handling fee paid by the consumer; thus, consumers who returned merchandise to the defendant have not obtained a full refund of all money paid to defendant to obtain the purchased merchandise.

Therefore, the representation set forth in Paragraph 32 was, and is, false or misleading and constitutes an unfair or deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CIVIL PENALTIES AND INJUNCTION

34. Each dissemination of a representation in violation of Parts IV, VI, or VII of the Commission's Order, as set forth in Paragraphs 8 through 27 above, constitutes a separate violation of the Commission's Order for which plaintiff seeks monetary civil penalties.

35. Section 5(l) of the FTC Act, 15 U.S.C. § 45(l), and Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorize the Court to

award monetary civil penalties of not more than \$11,000 for each such violation of the Commission's order.

36. Under Sections 5(l) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(l) and 53(b), this Court is authorized to issue permanent injunctive relief to enjoin the defendant from violating the FTC Act and the Commission's Order, as well as ancillary relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(l), 49, and 53(b), and the Court's own equitable powers, to:

- (1) Enter judgment against the defendant and in favor of the plaintiff for each violation alleged in this Complaint;
- (2) Award plaintiff monetary civil penalties from defendant for each violation of the Commission's Order alleged in this Complaint;
- (3) Modify the District Court Order's injunction to: (a) permanently enjoin defendant against making representations that tests or studies prove or establish the efficacy of any food, drug, dietary supplement or medical device, unless the representation is true and the tests or studies have been conducted in an objective manner by persons qualified by training and experience to do so, using procedures generally accepted in the profession to yield accurate and reliable results; and (b) permanently enjoin defendant against failing to provide a full refund of the cost, including any shipping, insurance, handling, or other fee paid by the purchaser, of any product returned pursuant to a satisfaction, quality, or money-back guarantee offer, unless defendant has disclosed that the guarantee is for the purchase price of the product; and

(4) Award plaintiff such other additional relief as the Court may deem just and proper.

DATED:

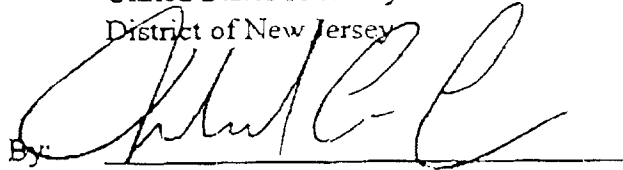
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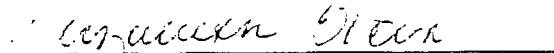
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