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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

PAMELA MILLER, RANDY HOWARD, and DONNA PATTERSON, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

BASIC RESEARCH LLC, DYNAKOR PHARMACAL, LLC, WESTERN HOLDINGS, LLC, BY DEX MANAGEMENT, L.L.C., DENNIS GAY, DANIEL B. MOWREY, Ph.D., MITCHELL K. FRIEDLANDER, and DOES 1 through 50,

Defendants.

Civil No. 2:07-cv-00871-TS

FIRST AMENDED CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs, Pamela Miller, Randy Howard and Donna Patterson, by counsel and for their First Amended Class Action Complaint (hereinafter the "FAC"), assert federal and state law class action claims against Defendants, Basic Research, L.L.C. ("Basic Research"), Dynakor Pharmacal, L.L.C. ("Dynakor"), Western Holdings, L.L.C. ("Western Holdings"),

Bydex Management, L.L.C. ("Bydex"), Dennis Gay ("Gay"), Daniel B. Mowrey ("Mowrey"), Mitchell K. Friedlander ("Friedlander"), and Does 1-50 (collectively, the "Defendants"). Plaintiffs hereby allege, with personal knowledge as to their own actions, and upon information and belief as to those of others, as follows:

NATURE OF THE CLASS ACTION

1. This nationwide class action seeks to redress the pervasive pattern of fraudulent, deceptive and otherwise improper advertising, sales and marketing practices that Defendants have engaged in, and are currently engaged in, with respect to weight-loss dietary supplement products; specifically, "Akävar 20/50" ("Akävar"). During the Class Period (as defined in ¶ 87 of this FAC), Defendants Gay, Mowrey and Friedlander have knowingly engaged in a deliberate pattern of wrongful, illegal and fraudulent practices in conducting the affairs of Defendants Basic Research, Dynakor, Western Holdings, Bydex and affiliated entities, and have used those entities as tools or instrumentalities to carry out schemes or artifices to defraud. Defendants' schemes or artifices to defraud Plaintiffs and Class members have consisted of systematic and continuing practices of disseminating throughout the United States false and misleading information via television commercials, Internet websites and postings, point-of-purchase advertisements, national magazine advertisements and the product packaging, intended to coax unsuspecting consumers, including Plaintiffs and the members of the Class, into purchasing millions of dollars worth of Akävar, which is manufactured, marketed, advertised and sold by Defendants.

2. Plaintiffs, on behalf of themselves and the members of the Class (as defined in ¶ 87 of this FAC), assert claims against Defendants for violations of (a) the Racketeer

Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968; (b) Utah's Pattern of Unlawful Activity Act ("UPUAA"), Utah Code Ann. §§ 76-10-1601 to -1609; (c) fraud and deceit; (d) violations of the Utah Consumer Sales Practices Act ("UCSPA"), Utah Code § 13-11-1 *et seq.*; (e) similar state consumer protection statutes; and (f) and unjust enrichment.

3. With regard to Akävar and numerous other dietary supplements, during the Class Period and for a number of years Defendants have perpetrated identical or similar schemes to defraud consumers through a web of interrelated, closely-held limited liability companies that oversee the "research," publication, manufacturing, marketing, sales and distribution of such products in a willful effort to deceive the public as to the true identity and nature of those involved in the illegal business enterprise(s). At all relevant times, Defendants have operated common business enterprise(s) while engaging in the deceptive acts and practices alleged in this FAC and therefore, may be held jointly and severally liable for such acts and practices.

4. Although Defendants' common business enterprise creates new companies for the manufacture, advertisement, distribution and sale of most, if not all, of its dietary supplement products, Defendants Gay, Mowrey and Friedlander control all of the entities within the web of interrelated companies, and each company or entity is engaged in transacting the same or similar business.

5. Each of the companies described in ¶¶ 1, 3 and 4 of this FAC pulls from a pool of employees that are used interchangeably between the companies or entities. Similarly, each of these companies utilizes centralized accounting, payroll and record-keeping

functions. This results in funds routinely being transferred or commingled between the various companies or entities controlled by Defendants Gay, Mowrey and Friedlander.

6. The interrelationship of the Defendants and the entities described in ¶ 1, 3, 4 and 5 of this FAC is also evidenced by the fact that almost all of them occupy the same office address at 5742 West Harold Gatty Drive, Salt Lake City, Utah 84116.

7. As part of their pervasive pattern of wrongful conduct, during the Class Period Defendants have utilized (and continue to utilize) the U.S. mail and interstate wire facilities, including television, Internet, point-of-purchase advertisements and advertisements published in national print publications (such as *Parade* magazine) to advertise, label, offer for sale, sell and distribute Akävar by falsely claiming that Akävar is a "New! European Weight-Loss Breakthrough" product that offers a "foolproof" alternative to weight loss with "guaranteed success" and "WITHOUT GRUELING DIET AND EXERCISE REGIMENS!" (Emphasis in original.) Defendants' advertisements for Akävar also falsely and misleadingly state that "Studies have proved a virtual 100% success rate among the participants," and that by taking the product the consumer will see excess fat "PULLED FROM BULGING PARTS OF YOUR BODY." In such advertisements, Defendants also falsely assert that such so-called "results" are "scientific fact, documented by published medical findings," and that "a team of doctors working in a recognized medical university discovered the potent caloric-restricting qualities" of Akävar. In truth and in fact, Defendants know that Akävar is ***not*** a foolproof alternative to weight loss with guaranteed success and Defendants know that the product has ***not*** been subjected to clinical trials.

8. As part of their pervasive pattern of wrongful conduct, during the Class Period Defendants have utilized (and continue to utilize) the U.S. mail and interstate wire facilities, including telephones, facsimile machines and Internet to receive consumer solicitations to purchase Defendants' products, and Defendants' business activities have affected interstate commerce.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this nationwide class action pursuant to 28 U.S.C. § 1331, relating to federal question jurisdiction; Section 1964(c) of RICO, 18 U.S.C. § 1964(c); and Rule 23 of the Federal Rules of Civil Procedure. Venue is properly laid in this District pursuant to 28 U.S.C. § 1391 and Section 1965 of RICO, 18 U.S.C. § 1965.

PARTIES

Plaintiffs

10. Plaintiff, Pamela Miller, is a resident of Gilbert, Arizona. During the Summer of 2007, while conducting an Internet search on nutrition, Ms. Miller observed an advertisement for Akävar which, upon information and belief, was designed, sponsored and maintained by Defendants. This Internet advertisement, adorned with a picture of the product box and prominent yellow and orange colors, represented that Akävar was scientifically proven that it was a "EUROPEAN WEIGHT LOSS BREAKTHROUGH," and professed in bold print that the user could "**EAT ALL YOU WANT & STILL LOSE WEIGHT…**" Based upon this advertising disseminated by Defendants, Ms. Miller purchased a supply of Akävar through Defendants' Internet website, www.Akävar.net. After

25 days of taking Akävar as directed on the package labeling, Ms. Miller gained 10 pounds, and she ceased taking the product. Thereafter, Ms. Miller sent several e-mail inquiries concerning Akävar to Defendant Dynakor and she also made several interstate telephone calls, leaving messages on telephone answering machines maintained by Defendants, but she received no response to her e-mail or voicemail messages.

11. Plaintiff, Randy Howard, is a resident of Morton, Illinois. In or around October 2007, Mr. Howard observed an Akävar cardboard point-of-purchase advertising display while shopping at a Wal-Mart store located in Morton, Illinois. Upon information and belief, the point-of-purchase display that Mr. Howard saw was designed and produced by Defendants and supplied by Defendants to the Wal-Mart store. This display, which stood about five feet tall and was approximately 30 inches wide, with a light-colored background and the figure of a person on it, was positioned in the middle of an aisle. The advertising display represented that users of Akävar could "**Eat All You Want and Still Lose Weight…**," and stressed that users could lose weight without changing eating habits. The advertising display also represented that the product was something new from Europe that would work. (A copy of an advertisement similar to the advertisement observed by Mr. Howard is attached hereto as Exhibit A). Based upon these representations made as part of Defendants' in-store advertising materials, Plaintiff Howard purchased two bottles of Akävar at the Wal-Mart store at a cost of approximately $40 per bottle. After two weeks of taking Akävar as directed on the package labeling, without changing his eating habits, Mr. Howard had gained five or six pounds and he ceased taking Akävar.

12. Plaintiff, Donna Patterson, is a resident of Washington, DC. In or around August 2007, Ms. Patterson observed an advertisement for Akävar published in a national women's magazine that she read while at a hair salon in Washington, DC. The advertisement, which contained the image of a female model, touted Akävar as a new "**EUROPEAN WEIGHT LOSS BREAKTHROUGH**" that had fast-acting caloric restriction. (A copy of an Akävar advertisement containing the image of a female model similar to that viewed by Ms. Patterson is attached hereto as Exhibit B). The advertisement also stated that one could "**EAT ALL YOU WANT & STILL LOSE WEIGHT…**" Based upon this advertising by Defendants, Ms. Patterson purchased a supply of Akävar from a General Nutrition Center store located in Arlington, Virginia, for approximately $40.00. After 30 days of taking Akävar as directed on the package labeling, Ms. Patterson had lost no weight, and she ceased taking the product.

Defendant Basic Research

13. Defendant Basic Research is a limited liability company established under the laws of the State of Utah with its principal place of business located at 5742 West Harold Gatty Drive, Salt Lake City, Utah 84116.

14. Basic Research claims that is one of the largest nutraceutical companies in the United States with annual sales revenues in excess of $50 million. Basic Research develops, manufactures and markets scores of cosmetics, nutritional supplements and dietary supplements that are marketed under the names of nearly a dozen limited liability companies that have been formed by Defendants. Upon information and belief, Basic Research conducts business under, or is directly affiliated with, each of these limited liability

companies and Basic Research does business under a variety of trade names, including Western Holdings, Dynakor, NutraSport, Silver Sage, Klein-Becker USA, Urban Biologies, Alpha Gen Biotech, Sovage Dermalogic and Body Innoventions, AG Waterhouse and BAN.

15. Defendant Basic Research and Defendants Mowrey, Gay and Friedlander have a pattern and practice of creating a new limited liability company for each dietary supplement product it manufactures, advertises and sells to consumers. Defendants Mowrey, Gay and Friedlander have a pattern and practice of using the "goodwill" of Basic Research to hold themselves, and their affiliated companies, out to the public as the "Basic Research Family of companies." In so doing, Defendants and their related entities make the same or similar false and misleading claims about the same or similar dietary supplement, that is merely packaged under a different name and sold by a different entity. In this case, Basic Research and the other Defendants created Dynakor for the sole purpose of serving as a conduit for the nationwide sale of Akävar to Plaintiffs and Class members.

16. In 1993, Defendant Basic Research entered into a royalty agreement and/or covenant not to sue in order to resolve certain disputes with Defendant Friedlander. Under the terms of that agreement, Basic Research pays Friedlander a "royalty" payment for each sale of various dietary supplements marketed by Basic Research.

17. Defendant Basic Research is the subject of a permanent injunction entered by the U.S. Federal Trade Commission ("FTC") that, among other things, proscribes the marketing and sale of alleged weight loss products unless competent and reliable scientific evidence supports the claims made about such products. *In the Matter of Basic Research, L.L.C., A.G. Waterhouse, L.L.C., Klein-Becker USA, L.L.C., Nutrasport, L.L.C., Sovage Dermalogic Laboratories,*

L.L.C., BAN, L.L.C., d/b/a Basic Research, L.L.C., Old Basic Research, L.L.C., Basic Research, A.G. Waterhouse, Klein-Becker USA, Nutra Sport, and Sovage Dermalogic Laboratories, Dennis Gay, Daniel B. Mowrey, d/b/a American Phytotherapy Research Laboratory, and Mitchell K. Friedlander, FTC Docket No. 9318 (June 19, 2006) (hereinafter the "FTC Injunction"). (A copy of the FTC Injunction is attached hereto as Exhibit C). As alleged in this FAC, Defendant Basic Research's representations concerning Akävar constitute violations of the FTC Injunction.

Defendant Dynakor

18. Defendant Dynakor is a limited liability company established under the laws of the State of Utah with its principal place of business located at 5742 West Harold Gatty Drive, Salt Lake City, Utah 84116.

19. As alleged in ¶ 15, Dynakor, an affiliate of Defendant Basic Research, was created for the sole purpose of advertising, marketing and selling certain products, including Akävar, developed by Defendants.

20. Defendant Dynakor, under the explicit direction of Defendants Basic Research, Gay, Mowrey and Friedlander, markets, advertises and promotes Akävar as a new "European Weight Loss Breakthrough" that is scientifically proven to allow users to "**EAT ALL YOU WANT & STILL LOSE WEIGHT**" without changing eating habits due to Akävar's ability to cause "fast acting caloric restriction."

Defendant Western Holdings

21. Defendant Western Holdings is a limited liability company established under the laws of the State of Utah with its principal place of business located at 1821 Logan Avenue, Cheyenne, Wyoming 82001.

22. Defendant Western Holdings, an affiliate of Defendant Basic Research, is used by Basic Research and the other Defendants for the sole purpose of registering creative (or trade) names with the U.S. Patent and Trademark Office for licensing to Defendants in furtherance of their collective illegal activity.

23. Western Holdings customarily licenses such trademarks or trade names to Defendant Basic Research for the development and manufacturing of cosmetics, nutritional supplements and dietary supplements. The phrases or slogans "Dynakor Pharmacal," "Basic Research," "Eat All You Want & Still Lose Weight," "and we couldn't say it in print" and "and we couldn't say it in print if it wasn't true" are registered trademarks of Western Holdings. Defendant Western Holdings has licensed these various registered trademarks to Defendants for use in Defendants' scheme or artifice to defraud Plaintiffs and Class members.

Defendant Bydex

24. Bydex is a limited liability company established under the laws of the State of Utah with its principal place of business located at 5742 Harold Gatty Drive, Salt Lake City, Utah, 84116-3762.

25. Defendant Bydex serves as the employer of the principals and other employees who operate Defendants Basic Research and Dynakor. Bydex shares the same business

address as Defendants Basic Research and Dynakor, and it shares the same business address as Defendants Gay, Mowrey and Friedlander.

26. Bydex is an employee management company whose employees provide services to Defendants Basic Research and Dynakor. For example, Bydex "employs" Brad Stewart, who serves as Chief Financial Officer for both Basic Research and Dynakor. In this capacity, Mr. Stewart oversees all financial aspects of the business conducted by Defendants Basic Research, Dynakor, and Defendants' other limited liability companies, including information relating to sales of Akävar products, Akävar product advertising and expenses, product inventories, data tracking and identification of retailers.

Defendant Gay

27. Defendant Gay is a citizen and resident of the State of Utah with a residence located at 748 East 200 South, Payson, Utah 84651, and a place of business located at 5742 West Harold Gatty Drive, Salt Lake City, Utah 84116.

28. Defendant Gay is an officer and a principal shareholder of, among other companies, Defendants Basic Research and Dynakor. Individually or acting in concert with the other Defendants, Gay formulates, directs, controls, or participates in the acts and/or business practices alleged in this FAC. As an officer of Basic Research and Dynakor, Gay has final decision-making authority over work carried out in Basic Research's "Marketing Department," which is responsible for the labeling, advertising and media placement for dietary supplements sold by Defendants.

29. Defendant Gay, as an officer and principal shareholder of Defendants Basic Research and Dynakor, is personally responsible for the design, content, approval,

distribution and publication of all Akävar advertisements, including the specific advertisements viewed and relied upon by Plaintiffs and Class members, as alleged in this FAC. Within the Defendants' business enterprise, Gay is the person ultimately responsible for placing the advertisements for products, including Akävar, into the stream of commerce and for selling the products in interstate commerce. Gay makes the final decision on both the content of advertising and the final decision on product pricing. Additionally, Gay has deliberately confused consumers as to the source of various products, including Akävar, that Defendants (including Gay) manufacture, market, advertise, promote, distribute, and sell. His intentional tortious acts and personal participation in the wrongful conduct underlying this class action deprive him of any protection he might otherwise have for his personal liability under the corporate shield doctrine, or otherwise.

30. In connection with the manufacture, marketing, advertising, promotion, distribution and sale of Akävar, Defendant Gay has exercised complete dominion and control over Basic Research, Dynakor, Bydex and Western Holdings, such that these companies are his alter ego, a sham, facade, and mere instrumentality for his personal benefit, and he has disregarded and abused the corporate form and structure of these companies.

31. Defendant Gay has misused the corporate form of Basic Research, Dynakor, Bydex and Western Holdings to commit an intentional fraud upon the public, in an effort to defeat the ends of justice and otherwise evade the law, including with respect to the manufacture, marketing, advertisement, promotion, distribution and sale of Akävar.

32. In addition, Defendant Gay has fraudulently created trademarks and the above-mentioned multiple corporations in order to evade detection of his true identity as the

individual with dominion and control, also in order to defeat the ends of justice and otherwise evade the law, including with respect to the marketing, advertisement, promotion, distribution, and sale of Akävar.

33. Defendant Gay is the subject of the FTC Injunction described in ¶ 17 of this FAC. Defendant Gay's activities with regard to the marketing, advertising and sales of Akävar constitute a violation of the FTC Injunction, and such violation is evidence of Defendants' scheme or artifice to defraud Plaintiffs and Class members.

Defendant Mowrey

34. Defendant Mowrey is a citizen and resident of the State of Utah with a place of business located at 5742 West Harold Gatty Drive, Salt Lake City, Utah 84116.

35. Defendant Mowrey is a principal shareholder of and maintains the title of "Director of Scientific Affairs" at Defendant Basic Research. Mowrey also serves as a "consultant" to Defendant Dynakor.

36. As alleged in ¶ 17 (describing the FTC Injunction), at all relevant times Defendant Mowrey also did business as "American Phytotherapy Research Laboratory," a business organization of which he is the sole employee and which is used as an instrumentality to develop, market, endorse and promote products – including Akävar – for Defendants Basic Research and Dynakor. In 2002, the name of American Phytotherapy Research Laboratory was changed to "DBM Enterprisers." Through DBM Enterprises, Mowrey performs work solely for Defendants Gay, Friedlander, Basic Research and their affiliated entities.

37. Defendant Mowrey is responsible for developing the products illegally marketed, advertised and sold by Defendants, including Akävar. Within Defendants' business enterprise, Mowrey researchers and develops products ideas, concepts and formulations, performs "substantiation research," and reviews advertisements for substantiation.

38. In various nationwide advertisements for dietary supplements marketed and sold by Defendant Basic Research, Defendants have often represented, expressly or by implication, that Defendant Mowrey is a medical doctor when, in truth and in fact, he is not.

39. Defendant Mowrey, as the "Director of Scientific Affairs" for Defendant Basic Research, and as a "consultant" to Defendant Dynakor, is responsible for the design, content, approval, distribution and publication of all Akävar advertisements disseminated during the Class Period, including the specific advertisements viewed by Plaintiffs, as alleged in this FAC.

40. Even though he bears the title of "consultant," Defendant Mowrey is an insider to Defendants' business enterprise and he has access to Defendants' computer networks and records.

41. Defendant Mowrey's intentional tortious acts and personal participation in the wrongful conduct underlying this class action deprive him of any protection he might otherwise have for his personal liability under the corporate shield doctrine, or otherwise.

42. Defendant Mowrey is the subject of the FTC Injunction described in ¶ 17 of this FAC. Defendant Mowrey's activities with regard to the marketing, advertising and sales of Akävar constitute a violation of the FTC Injunction, and such violation is evidence of Defendants' scheme or artifice to defraud Plaintiffs and Class members.

Defendant Friedlander

43. Defendant Friedlander, the self-proclaimed "marketing guru" of Defendant Basic Research, is a citizen and resident of the State of Utah with a place of business located at 5742 West Harold Gatty Drive, Salt Lake City, Utah 84116. Defendant Friedlander has been publicly described as the "idea man" behind the numerous advertising campaigns for dietary supplements carried out by Defendants and their affiliated companies.

44. Defendant Friedlander is a "marketing consultant" to, among others, Defendants Gay, Mowrey, Basic Research and Dynakor. Friedlander is directly involved in the development, endorsement, advertising, marketing and promotion of Basic Research products, including Akävar. Friedlander is responsible for the design, content, approval, distribution and publication of Defendants' advertisements, including the above-referenced Akävar advertisements viewed by Plaintiffs.

45. Although he is not an employee of either Basic Research or Dynakor, Defendant Friedlander maintains his offices at the corporate headquarters of Defendant Basic Research.

46. In 1993, Defendants Friedlander and Basic Research entered into a royalty agreement and/or covenant not to sue, pursuant to which Friedlander is entitled to receive a "royalty" payment for each sale of various products marketed by Basic Research.

47. Defendant Friedlander is the subject of the FTC Injunction in ¶ 17 of this FAC. Friedlander's activities with regard to the marketing, advertising and sales of Akävar constitute a violation of the FTC Injunction, and such violation is evidence of Defendants' scheme or artifice to defraud Plaintiffs and Class members.

48. Previously, Defendant Friedlander has been the subject of "Cease and Desist" Orders and "False Representation" Orders issued by the U.S. Postal Service in connection with his activities concerning the marketing and sale of weight-loss dietary supplements called "Intercal-SX" and "Metabolite-2050," both of which were falsely advertised as causing weight loss in virtually all users, as causing weight loss without willpower or caloric restricting diets or exercise, as preventing foods from being converted into stored fat, as being supported by scientifically sound clinical studies, and as allowing obese persons to lose weight while continuing to eat all the food that such persons wanted. *In the Matter of the Complaint Against W.G. Charles Company, Customer Service Distribution Center, Inc., Mitchell K. Friedlander, Harris Friedlander, and Michael Meade,* U.S. Postal Service Docket No. 19/10 (Sept. 10, 1985) & *In the Matter of the Complaint Against The Robertson-Taylor Company, Intra-Medic Formulations, Inc., Customer Service Distribution Center, Inc., Mitchell K. Friedlander, Harris Friedlander, and Michael Meade,* U.S. Postal Service Docket Nos. 19/104 and 19/162 (Sept. 10, 1985). (A copy of the September 10, 1985 Order is attached hereto as Exhibit D).

Doe Defendants

49. Doe Defendant Nos. 1-50 are other individuals and entities who are part of, or have aided and abetted, the fraudulent activities and conspiracy alleged in this FAC. The identities of Does Defendant Nos. 1-50 are unknown to Plaintiffs at this time.

STATEMENT OF FACTS

50. Fraudulent weight loss products are an enormous problem in the United States. In an October 2007 Federal Trade Commission ("FTC") study entitled *Consumer Fraud in the United States: The Second FTC Survey* (the "FTC Study"), the FTC stated that an estimated

2.1% of all consumers nationwide - representing a total of 4.8 million U.S. adults - purchased and used fraudulent weight-loss products during the preceding year. The FTC Study found that "[m]ore consumers were victims of fraudulent weight-loss products than of any of the other specific frauds covered in the survey." The FTC study describes the prototypical fraudulent weight-loss claim as products that were promoted "as making it easy to lose weight or allowing one to lose weight without diet or exercise." As alleged in this FAC, the Akävar dietary supplement marketed, advertised and sold by Defendants during the Class Period is a prototypical fraudulent weight-loss product.

History of Defendants' Enterprises

51. Defendants are all well experienced in the promotion, marketing and sale of alleged weight-loss products through false and deceptive advertising. As alleged in ¶ 17 of this FAC, Defendants Gay, Mowrey and Friedlander are each the subject of the FTC Injunction. These Defendants' activities with regard to the marketing, advertising and sales of Akävar during the class period constitute a violation of the FTC Injunction, and such violation is evidence of Defendants' scheme or artifice to defraud Plaintiffs and Class members. As a result, every act that each of the Defendants undertook, or caused the other Defendants to undertake, to market, advertise and sell Akävar in the United States was part of a scheme or artifice to defraud Plaintiffs and Class members.

52. At the center of Defendants' interrelated business enterprises lies Basic Research, which was created to capitalize on the above-referenced obesity and overweight epidemic and resulting interest in weight-loss products. It is reportedly one of the largest nutraceutical companies in the U.S. with over $50 million in annual sales revenues. Basic Research

markets, advertises and sells scores of products, which are marketed under the names of nearly a dozen companies – a practice that Defendant Gay has publicly stated is intended to confuse competitors by creating a convoluted and complex web of organizations and "protect our brands in the Wild West atmosphere that exists today in the supplement industry." In fact, this web of interlocking entities was created by Defendants in order to confuse Defendants' competitors ***and*** consumers.

53. Defendant Dynakor was created by Defendants with the intent to mislead consumers into believing there was a real, independent "laboratory" behind Akävar. This fiction was openly acknowledged in internal corporate meetings conducted by Basic Research's management, including Defendants Gay, Mowrey, and Friedlander.

54. Defendant Gay, as a principal of Defendant Basic Research and all affiliated companies created by Defendants for the sole purpose of illegally marketing weight loss products, is responsible for, among other things, the oversight and conduct of Defendants' illegal corporate enterprise.

55. Defendant Mowrey, a psychologist who has previously (and unlawfully) held himself out to be a medical doctor, is responsible for, among other things, working with other persons to formulate "new" compounds comprised of the same "core ingredients," in order to create new opportunities for Defendants to illegally market their dietary supplements, which are nothing more than modern-day "snake oil."

56. After a new compound has been formulated by Defendant Mowrey, typically Defendant Western Holdings is tasked with, among other things, developing and obtaining trademarks for product names and the names of different limited liability companies that give

consumers the false and misleading impression that a real "laboratory" stands behind the "new" dietary supplement product.

57. Defendant Friedlander, who is the self-proclaimed "marketing guru" behind Defendants' business enterprises and products, has a long history of unlawful activity involving the marketing, advertising, promotion and sale of alleged weight-loss products. (Some of Defendant Friedlander's lengthy history of wrongdoing is alleged in ¶¶ 17 and 48 of this FAC.) Despite his record of wrongdoing and violations of federal and state laws, Friedlander remains responsible for, among other things, developing the marketing and advertising "platform" for Defendants' dietary supplement products.

Defendants' Pattern and Practice of Illegal Marketing and Advertising

58. For a number of years, Defendants have used the U.S. mails, interstate wire facilities (including Internet websites and television commercials), print advertising (including newspapers and magazines), and point-of-purchase advertising displays, in order to fraudulently misrepresent and illegally market weight-loss products. Defendants' "track record" of disseminating false and misleading advertisements for dietary supplement products is relevant to show their scheme or artifice to defraud Plaintiffs and Class members in this case, and is relevant to demonstrate that Defendants have knowingly engaged in a "pattern of racketeering activity" in violation of Federal and Utah anti-racketeering statutes. Defendants' pervasive pattern of false and misleading advertising has, at times, featured Defendant Mowrey in a variety of roles, although he is invariably pictured in some of their advertisements in a scientific-looking white laboratory coat. In advertisements for dietary supplements, Defendants have identified Mowrey as having an advanced degree in

psychopharmacology. Mowrey's purported academic credentials are false; in fact, Mowrey has a degree in psychology, and his trumped-up titles of "Director of Scientific Affairs" of Defendant Basic Research and "President and Director" of American Phytotherapy Research Laboratory (a/k/a DBM Enterprises) are nothing more than sham credentials intended to mislead consumers into believing that such entities are reputable and independent entities.

59. Defendants have previously caused advertisements to be sent through the U.S. mail and published in national magazines, and sold in interstate commerce a product known as "Zotrin." Similar to the illegal marketing of Akävar to Plaintiffs and Class members during the Class Period, among the claims contained in Defendants' advertisements for that dietary supplement were proclamations that "Zotrin" was a "European 'Miracle Pill'" that "Restricts caloric intake automatically," and that "you cannot fail … because you don't have to do anything more than remember to take your easy-to-swallow Zotrin," and that "Published Clinical Studies Prove 100% Success."

60. Each of the above-referenced public statements made by Defendants in marketing "Zotrin" was false and misleading. In fact, that dietary supplement was not from Europe but was, instead, contrived and developed by Defendants in their Utah facility. Further, Defendants' other claims were not supported by clinical studies because "Zotrin" was never clinically tested before being sold to the consuming public.

61. Defendants have also previously caused advertisements to be sent through the U.S. mail and published in national magazines for a product known as "Automatic Weight Loss Compound." Similar to the illegal marketing of Akävar during the Class Period, among the claims contained in Defendants' "Automatic Weight Loss Compound" advertisements

were the assertion that "Automatic Weight Loss Compound" was a "European Breakthrough" that "Reduces Caloric Intake Automatically" and that you "lose weight … without 'dieting'" and that "Groundbreaking Study Proves 100% Success."

62. Each of the above-referenced statements made and disseminated by Defendants in marketing "Automatic Weight Loss Compound" was false and misleading. In particular, the product was not from Europe but was, instead, contrived and developed by Defendants in their Utah facility. Further, the other claims were not supported by clinical studies because "Automatic Weight Loss Compound" had never been clinically tested before being sold to the consuming public.

63. One of the products at issue in the enforcement proceeding that resulted in the FTC Injunction (as alleged in ¶ 17 of this FAC), and involving Defendants Gay, Mowrey and Friedlander, was marketed and sold as "Anorex." "Anorex" is a trade name registered by Basic Research. Like Akävar, "Anorex" was marketed, advertised, and sold as a weight-loss product that was "clinically established" and specifically designed to "overcome your genetic predisposition" to be overweight, despite Anorex never having been tested in any clinical study.

64. At relevant times, Defendants also marketed a variety of topically-applied gels which they falsely claimed to be "patented spot reducing gels" that "emulsifies fat on contact," which were the "first clinically proven anorectic agents developed specifically for" "pear-shaped women," "apple-shaped women," and to "reduce tummy fat." Defendants' false and misleading advertisements advised that consumers should not rub too much of the gel on the body at the same time because there was no way for the body to utilize the fat

released from the topically applied gel. These advertisements, like the advertisements for Akävar disseminated during the Class Period, merely echoed those of Defendants' other advertisements, which made virtually identical claims, but which were found by the FTC to be unsubstantiated and led to the entry of the FTC Injunction, as described in ¶ 17 of this FAC.

65. Many of Defendants' weight loss products have been marketed to consumers as being "clinically proven," despite the fact that Defendants use the same so-called "studies" to support their claims of clinical efficacy for the multiple, discrete products. Defendants hide the fact that neither they nor anyone else has ever studied the effect of the various ***combinations*** of ingredients they indiscriminately mix together in their dietary supplements. Instead, all of the claims for the products marketed by Defendants rely on the same preliminary Danish study, reported in 2001, on the effect of three South American herbs (guarana, yerba mate and damiana) on gastric emptying rates to support the claim that the same pill will result in "weight loss without exercise." Sometimes, Defendants also purport to rely on a study of the effects of caffeine on Navy Seals in training; however, that study provides no basis for Defendants' claims regarding their dietary supplements.

Defendants' False and Misleading Advertising of Akävar

66. As they had done many times over the past twenty years or more, Defendants created Akävar as a means of fraudulently capitalizing on America's obesity and overweight epidemic and resulting interest in weight-loss products.

67. Under the direction and control of Defendants Basic Research and Gay, Defendant Mowrey formulated a compound comprised of "core ingredients" that

Defendants had used in previous dietary supplement products they collectively and fraudulently marketed for the purpose of creating a "new" product that they could fraudulently promote and sell to consumers, including Plaintiffs and Class members. That product would become Akävar.

68. In and around the same time, and acting in concert with Defendants Gay, Mowrey, Basic Research and Dynakor, Defendant Friedlander developed the marketing and advertising campaign for Akävar, and Defendant Western Holdings licensed the trademark rights for "Dynakor" in order to give the impression that a real "laboratory" stood behind the bogus product.

69. The result of Defendants' concerted efforts was the formation of the limited liability company known as "Dynakor Pharmacal," an affiliate of Basic Research that was created for the purpose of fraudulently marketing, advertising and selling Akävar to Plaintiffs and Class members.

70. In support of these wrongful activities, Defendant Bydex provided employees to the other Defendants for sales and administrative services associated with the fraudulent marketing, advertising and sales of Akävar.

71. On December 12, 2006, the U.S. Patent and Trademark Office ("USPTO") listed an application for the trademark "Akävar 20/50" by Dynakor Pharmacal IP Holdings, an affiliate of Defendants that was acting on behalf of Defendants. Subsequently, on May 3, 2007, the USPTO listed a trademark application for Akävar to Defendant Dynakor. Starting on or about this date, Defendants began marketing Akävar to Plaintiffs and Class members

throughout the United States. Such sales of the product to consumers have continued to date.

72. Since May 2007, Defendants have caused false and misleading advertisements for Akävar to be sent through the U.S. mail, published in national magazines, posted on the Internet, displayed in retail stores across the country ("point-of-purchase"), and broadcast on television. The acts and practices of Defendants as alleged have been in or affecting interstate commerce. (Copies of certain of the print and Internet advertisements disseminated by Defendants are attached hereto as Exhibit E.)

73. Defendants' marketing blitz, engineered by Defendant Friedlander and approved and endorsed by Defendants Gay, Mowrey, Basic Research and Dynakor, was designed to saturate television, Internet, point-of-purchase and print media with Defendants' false and misleading claims concerning Akävar.

74. The core of Defendants' fraudulent representations regarding Akävar consists of the following statements which were presented in most, if not all, of Defendants' television, Internet, point-of-purchase and print advertisements, including those advertisements viewed by Plaintiffs:

"Eat all you want & still lose weight."

"European Weight-Loss Breakthrough"

"Automatic Caloric Restriction"

75. Defendants' false and misleading advertising for Akävar also asserts a number of other so-called "facts," including the following:

> Akävar-20/50 ***literally causes excess fat to be pulled from bulging parts of your body!***

As Akävar-20/50 restricts caloric intake to below your daily caloric requirement, you literally pull excess fat from all over your body, including your waist, hips, thighs and buttocks. . . leaving your body thinner, trimmer and sexier than you ever thought possible. Akävar-20/50 ***helps draw out bulging pockets of fat and prevents the further conversion and storage of excess fat all over your body***. This remarkably effective formula works so fast and is so easy to use that before you have time to be discouraged you will have lost pounds and inches of ugly, hard-to-get-at, figure-destroying fat.

Akävar-20/50 will produce an extraordinary, unparalleled loss of body weight! Akävar–20/50 is the perfect weight-loss compound for tough weight-loss problems. This amazing ***formulation is the result of years of intensive research and scientific evaluation. Not one, but a team of doctors working in a recognized medical university discovered the potent caloric-restricting qualities*** of the Akävar-20/50 formulation, and the research team at Dynakor Pharmacal is proud to have played a major role in bringing this new generation of fast-acting caloric restrictors to the general public. . . at an affordable price.

An entirely new generation of "diet pills"

An entirely ***new generation of powerful, foolproof, bio-active weight-loss compounds that automatically reduce caloric intake***. . . eliminating traditional dieting, calorie counting, strenuous exercise, fad diets, supermarket "miracle" pills, Japanese wonder diets, rubber suits, belts, creams or anything else you have ever tried before.

The only thing you have to do is remember to take your easy-to-swallow Akävar-20/50 tablets each and every day. That's it!

Akävar-20/50 is the only weight-loss compound that works automatically. There is absolutely no need to count calories, no need to consciously lower your caloric intake, no need for expensive, pre-measured meals. . . and no need to give up your favorite foods! Why? Because Akävar-20/50 reduces caloric intake. . . automatically.

76. In fact, Defendants' above-referenced advertising claims – claims that are common to all Akävar advertisements, whether they are disseminated by U.S. mail or interstate wire facilities (including via the Internet and television) – are false, misleading,

deceptive and inaccurate. Further, Defendants, and each of them, knew at the time of dissemination that the above-referenced advertising claims were false, misleading, deceptive and inaccurate.

77. Contrary to Defendants' advertising claims, Akävar was neither developed "in Europe," nor was it available for purchase in Europe prior to its introduction in the United States; in fact, the product was developed by Defendants at their Salt Lake City, Utah, headquarters.

78. Akävar's formulation was not the result of "years" of "intensive research." Nor does Akävar represent a "new generation of powerful, foolproof, bio-active weight-loss compounds." To the contrary, for years Defendants have been falsely marketing the same active ingredients found in Akävar under different product names and company names.

79. Contrary to Defendants' representations, Akävar has not undergone "scientific evaluation" by a "team of doctors;" nor has Akävar been tested in controlled random clinical trials. In fact, no reliable scientific evidence supports any of Defendants' claims about the purported weight-loss effects of Akävar .

80. Contrary to Defendants' representations, Akävar has not been tested for safety or efficacy, it is not a part of a "new generation of fast-acting caloric restrictors," and there are no "tests prov[ing] virtually 100% success."

81. Contrary to Defendants' representations, a person cannot eat all the food that he or she wants and still lose weight. Akävar does not "pull fat from bulging body parts."

82. Defendants' false and misleading claims have not been limited to Akävar advertisements. For example, in an article written for dissemination via the Business Wire on

February 7, 2007, Defendants intentionally misled consumers as to the evaluation and testing of the product, claiming that Defendant Mowrey (a psychologist) had "reviewed the substantiation for [Akävar's claims]" on behalf of Defendant Dynakor. In the same interview/press release for Business Wire, Defendants presented Mowrey as an "independent reviewer" who was not involved with the development of the product. To falsely portray Mowrey as "independent," Mowrey was even presented as questioning the "flamboyant" advertising for Akävar, even though he personally approved the advertisement(s) in question. In addition to falsely presenting Mowrey as an "independent reviewer" and someone "not involved with the development of the product," Defendants purposefully misled consumers who saw the interview/press release by presenting Mowrey as a "Doctor."

83. In fact, Defendant Mowrey is not a medical doctor. Nor is he even remotely "independent." As previously alleged, Mowrey is a principal shareholder of Defendant Basic Research, he is a paid "consultant" to Defendant Dynakor, and is a key figure in Defendants' illegal enterprise.

84. The above-referenced interview/press release quoted Mowrey, who was speaking on behalf of all Defendants, as saying:

> Frankly I don't like the way the ad looks, either, and I certainly wouldn't be as flamboyant with the headlines. . . . But forget about the way the ad looks. The real question is whether or not a diet pill can really let you eat all you want and still lose weight? In regards to Akävar-20/50, the facts are the facts and scientific documentation has confirmed that virtually everyone in the study who used Akävar's active compound -- 23 out of 24 participants, to be exact -- lost weight. That's the bottom line."

85. The February 7, 2007 press release goes on to quote "Dr. Mowrey" as saying that after the supposed first "study" of Akävar: "I suggested a second clinical trial, which has yet

to be published, to examine whether Akävar could have altered the hunger hormone. It did." In fact, neither a "first" nor a "second" "study" or clinical trial of Akävar has ever been conducted by Defendants or anyone acting on their behalf.

86. Finally, there is no clinical or scientific support for Defendants' representations that Akävar has the ability to cause pockets of fat to be pulled from bulging parts of consumers' bodies, working automatically if the consumer simply remembers to take an easy-to-swallow tablet. To the contrary, there is no reliable scientific evidence that the product works at all.

CLASS ACTION ALLEGATIONS

87. Plaintiffs bring this lawsuit as a nationwide class action on behalf of themselves and all other similarly situated members of the Class, as defined below, pursuant to the Federal Rule of Civil Procedure 23(a) and (b) (3). This class action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of those provisions. The Class is defined as follows:

> All persons or entities who or that purchased within the United States, not for resale or assignment, an Akävar 20/50 Fast Acting Caloric Restricting Compound.

88. Excluded from the Class are (a) Defendants, any entity or division in which any of the Defendants has a controlling interest, and its/their legal representatives, officers, directors, assigns and successors; and (b) this Court and any member of the Your Honor's immediate family and courthouse staff.

89. The Class is so numerous that joinder of all members is impracticable. While the exact number of Class members is presently unknown, and can only be ascertained from

records maintained by, and in the possession and control of, Defendants, they have acknowledged that as of January 25, 20008: (a) sales of Akävar in the State of California exceeded $2 million; (b) more than $10 million of product inventory was located on retail store shelves throughout the country; (c) Defendants had spent over $5 million on Akävar print advertising; and (d) in California alone, Defendants had spent over $450,000 on television advertising. Accordingly, the Class consists of many thousands of Class members.

90. The claims of the representative Plaintiffs are typical of the claims of the Class because the representative Plaintiffs, like all Class members, purchased Akävar and have suffered injury as a result.

91. Moreover, the factual bases of Defendants' misconduct are common to all Class members, and Defendants' misrepresentations, omissions and acts of concealment resulted in injury to all members of the Class.

92. There are numerous questions of law and fact common to all Class members and those questions predominate over any questions that may affect only individual Class members, including, but not limited to the following:

a. Whether Defendants engaged in a pattern of fraudulent, deceptive and misleading conduct targeting the public through their marketing, advertising, promotion and sale of Akävar;

b. Whether Defendants misrepresented the efficacy of Akävar;

c. Whether the acts and omissions of Defendants violated RICO;

d. Whether the acts and omissions of Defendants violated Section 76-10-1603(3) and (4) of UPUAA, Utah Code Ann. § 76-10(3) and (4);

e. Whether Defendants should be enjoined from the continued unlawful marketing, advertising, promotion, distribution and sale of Akävar;

f. Whether Defendants were unjustly enriched by their acts and omissions, at the expense of Plaintiffs and the Class;

g. Whether Defendants made material misrepresentations of fact, or omitted to state material facts to Plaintiffs and the Class regarding the marketing, promotion and advertising of Akävar, which material misrepresentations or omissions operated as fraud and deceit upon Plaintiffs and the Class;

h. Whether Plaintiffs and the Class have sustained damages and loss as a result of Defendants' actions; and

i. Whether the actions of Defendants were willful and malicious, or manifested knowing and reckless indifference and disregard toward the rights of Plaintiffs and the Class.

93. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have retained counsel highly experienced in prosecuting class actions, including actions involving defective consumer goods and dietary supplements.

94. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of Class members and have the resources to do so. Neither Plaintiffs nor their counsel have any interests adverse to those of the Class. In fact, after Plaintiffs commenced this class action, Defendants sent to each of the Plaintiffs checks purportedly representing refunds of the amounts of money each Plaintiff had spent for Akävar . By filing this class action, Plaintiffs had accepted a duty to act in the best interests of the Class; as a result, each of them insisted that Defendants create a fund to reimburse other defrauded consumers, and cease the deceptive advertising. Defendants refused to do so. Plaintiffs, acting solely in the interests of the Class, refused to accept this personal benefit and returned the checks to Defendants.

95. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Because of the relatively small size of the individual Class

members' claims, absent a class action most Class members would likely find the cost of litigating their claims against Defendants to be prohibitive. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

FIRST CAUSE OF ACTION

(For Violations of Section 1962(c) and (d) of RICO)

96. Paragraphs 1-95 of this FAC are realleged and incorporated by reference. This claim, which asserts violations of Section 1962(c) and (d) of RICO, 18 U.S.C. § 1962(c) and (d), is asserted against Defendants Gay, Mowrey and Friedlander.

97. At all times relevant to this class action, Defendants Gay, Mowrey and Friedlander, and each of them, was a "person," as that term is defined in Section 1961(3) of RICO, 18 U.S.C. § 1961(3).

98. At all times relevant to this class action, Defendant Basic Research, was an "enterprise," as that term is defined in Section 1961(4) of RICO, 18 U.S.C. § 1961(4), engaged in or affecting trade or commerce. In the alternative, Defendant Dynakor was an "enterprise," as that term is defined in Section 1961(4) of RICO, 18 U.S.C. § 1961(4), engaged in or affecting trade or commerce.

99. At all times relevant to this class action, Defendants Gay, Mowrey and Friedlander, and each of them, did willfully and with the purpose to defraud consumers, engage in fraudulent conduct, including acts constituting (a) mail fraud, in violation of 18 U.S.C. §1341; (b) wire fraud, in violation of 18 U.S.C. §1343; and (c) interstate

transportation of money taken by fraud, in violation of 18 U.S.C. § 2314 by engaging in the following acts:

a. Fraudulently claimed that Defendants' product has been "clinically proven" when it was not;

b. Fraudulently represented that Defendants' product was a "European Weight-Loss Breakthrough," when the product was neither developed nor sold in Europe;

c. Fraudulently claimed that consumers could "Eat All You Want & Still Lose Weight" simply by using Defendants' product;

d. Fraudulently representing that Defendants' product offers a "foolproof" alternative to weight loss with "guaranteed success"; and

e. Fraudulently representing that consumers could lose weight "WITHOUT GRUELING DIET AND EXERCISE REGIMENS," simply by using Defendants' product.

100. As a result of the foregoing fraudulent activities, Defendants have engaged in a pervasive pattern of unlawful and unfair business practices, causing harm to Plaintiffs and the members of the Class. Defendants' fraudulent conduct, as described above, constitutes a scheme or artifice to defraud Plaintiffs and Class members.

101. In furtherance of and for purposes of executing the above-described fraudulent and illegal course of conduct and scheme to defraud, Defendants either individually or in combination with themselves, used and caused to be used the U.S. mail by both placing and causing to be placed letters, marketing and sales materials, advertisements, agreements and

other matters in depositories and by removing or causing to be removed letters and other mailable matters from depositories, in violation of the mail fraud statute, 18 U.S.C. § 1341.

102. In furtherance of and for purposes of executing the above-described fraudulent and illegal course of conduct and scheme or artifice to defraud, Defendants either individually or in combination with themselves, used or caused to be used interstate wire communications to transmit or disseminate false, fraudulent and misleading communications and information, in violation of the wire fraud statute, 18 U.S.C. § 1343. Defendants' use of interstate wire facilities included advertising Akävar through television commercials and Internet postings, as well as interstate telephone calls from Plaintiffs and Class members who were seeking to purchase the product and/or complain about its non-performance.

103. In furtherance of and for purposes of executing the above-described fraudulent and illegal course of conduct and scheme or artifice to defraud, Defendants either individually or in combination with themselves, transported, transmitted, or transferred in interstate commerce money, of the value of $5,000 or more, representing the proceeds of sales of Akävar to consumers, knowing the same to have been taken by fraud from Plaintiffs and Class members.

104. Each of the numerous mailings, interstate wire communications and interstate transportations that were made in furtherance of Defendants' scheme to defraud Plaintiffs and Class members constitute separate and distinct acts of "racketeering activity," as that term is defined in Section 1961(1) of RICO, 18 U.S.C. § 1961(1).

105. The fraudulent and deceptive activities engaged in by Defendants Gay, Mowrey and Friedlander, and each of them, in marketing Akävar to Plaintiffs and Class members

involve and affect interstate commerce. As alleged in this FAC, Defendants Gay, Mowrey and Friedlander have caused their affiliated entities to market, sell and deliver Akävar throughout the United States.

106. By committing such offenses, which victimized Plaintiffs and thousands of Class members, and which offenses continue today and are likely to continue in the future, Defendants Gay, Mowrey and Friedlander, and each of them, have engaged in a "pattern of racketeering activity," as that term is defined in Section 1961(5) of RICO, 18 U.S.C. § 1961(5).

107. At all times relevant to this class action, Defendants Gay, Mowrey and Friedlander, and each of them, have conducted or participated, directly or indirectly, in the management and operation of an "enterprise," as defined in § 98; namely, Basic Research, or, in the alternative, Dynakor, through a pattern of racketeering activity, in violation of Section 1962(c) of RICO, 18 U.S.C. § 1962(c).

108. At all times relevant to this class action, Defendants Gay, Mowrey and Friedlander, and each of them, have conspired to conduct or participate, directly or indirectly, in the management and operation of an "enterprise," as identified in § 98; namely, Basic Research, or, in the alternative, Dynakor, through a pattern of racketeering activity, in violation of Section 1962(d) of RICO, 18 U.S.C. § 1962(d).

109. Plaintiffs and Class members who purchased Akävar have been injured in their business or property and, therefore, have standing to sue Defendants Gay, Mowrey and Friedlander and recover damages and the costs of bringing this class action under Section 1964(c) of RICO, 18 U.S.C. § 1964(c).

110. By virtue of their violations of Section 1962(c) and (d) of RICO, 18 U.S.C. § 1962(c) and (d), Defendants Gay, Mowrey and Friedlander, and each of them, are jointly and severally liable to Plaintiffs and Class members for three times the damages that Plaintiffs and Class members suffered as a result of Defendants' scheme to defraud.

SECOND CAUSE OF ACTION

(For Violations of Section 1962(c) and (d) of RICO)

111. Paragraphs 1-110 of this FAC are realleged and incorporated by reference. This claim, which asserts violations of Section 1962(c) and (d) of RICO, 18 U.S.C. § 1962(c) and (d), is asserted against Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander.

112. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander, and each of them, was a "person," as that term is defined in Section 1961(3) of RICO, 18 U.S.C. § 1961(3).

113. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander constituted an association-in-fact "enterprise," as that term is defined in Section 1961(4) of RICO, 18 U.S.C. § 1961(4).

114. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander, and each of them, did willfully and with the purpose to defraud consumers, engage in fraudulent conduct, including acts constituting (a) mail fraud, in violation of 18 U.S.C. § 1341; (b) wire fraud, in violation of 18 U.S.C. § 1343; and (c) interstate transportation of money taken by fraud, in violation of 18 U.S.C. § 2314 by engaging in the following acts:

a. Fraudulently claimed that Defendants' product has been "clinically proven" when it was not;

b. Fraudulently represented that Defendants' product was a "European Weight-Loss Breakthrough," when the product was neither developed nor sold in Europe;

c. Fraudulently claimed that consumers could "Eat All You Want & Still Lose Weight" simply by using Defendants' product;

d. Fraudulently representing that Defendants' product offers a "foolproof" alternative to weight loss with "guaranteed success"; and

e. Fraudulently representing that consumes could lose weight "WITHOUT GRUELING DIET AND EXERCISE REGIMENS" simply by using Defendants' product.

115. As a result of the foregoing fraudulent activities, Defendants have engaged in a pervasive pattern of unlawful and unfair business practices, causing harm to Plaintiffs. Defendants' fraudulent conduct, as described above, constitutes a scheme or artifice to defraud Plaintiffs and Class members.

116. In furtherance of and for purposes of executing the above-described fraudulent and illegal course of conduct and scheme or artifice to defraud, Defendants either individually or in combination with themselves, used and caused to be used the U.S. mail by both placing and causing to be placed letters, marketing and sales materials, advertisements, agreements and other matters in depositories and by removing or causing to be removed letters and other mailable matters from depositories, in violation of the mail fraud statute, 18 U.S.C. § 1341.

117. In furtherance of and for purposes of executing the above-described fraudulent and illegal course of conduct due to fraud, Defendants either individually or in combination with themselves, used or caused to be used wire communications to transmit or disseminate false, fraudulent and misleading communications and information, in violation of the Federal wire fraud statute, 18 U.S.C. § 1343. Defendants' use of interstate wire facilities included advertising Akävar through television commercials and internet postings, as well as interstate telephone calls from Plaintiffs and Class members who were seeking to purchase the product and/or complain about its non-performance.

118. In furtherance of and for purposes of executing the above-described fraudulent and illegal course of conduct and scheme or artifice and to defraud, Defendants either individually or in combination with themselves, transported, transmitted, or transferred in interstate commerce money, of the value of $5,000 or more, representing the proceeds of sales of Akävar to consumers, knowing the same to have been taken by fraud from Plaintiffs and Class members.

119. Each of the numerous mailings, interstate wire communications and interstate transportations that were made in furtherance of Defendants' scheme to defraud Plaintiffs and Class members constitute separate and distinct acts of "racketeering activity," as that term is defined in Section 1961(1) of RICO, 18 U.S.C. § 1961(1).

120. The fraudulent and deceptive activities engaged in by Defendants Basic Research, Dynakor, Bydex, Western Holdings, Gay, Mowrey and Friedlander, and each of them, in marketing Akävar to Plaintiffs and Class members involve and affect interstate commerce.

As alleged in this FAC, Defendants Basic Research, Dynakor, Bydex, Western Holdings, Gay, Mowrey and Friedlander market, sell and deliver Akävar throughout the United States.

121. By committing such offenses, which victimized Plaintiffs and thousands of Class members, and which offenses continue today and are likely to continue in the future, Defendants, and each of them, have engaged in a "pattern of racketeering activity," as that term is defined in Section 1961(5) of RICO, 18 U.S.C. § 1961(5).

122. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander, and each of them, have conducted or participated, directly or indirectly, in the management and operation of an "enterprise," namely, the association-in-fact identified in ¶ 113, through a pattern of racketeering activity, in violation of Section 1962(c) of RICO, 18 U.S.C. § 1962(c).

123. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander, and each of them, have conspired to conduct or participate, directly or indirectly, in the management and operation of an "enterprise," namely, the association-in-fact identified in ¶ 113, through a pattern of racketeering activity, in violation of Section 1962(d) of RICO, 18 U.S.C. § 1962(d).

124. Plaintiffs and Class members who purchased Akävar have been injured in their business or property and, therefore, have standing to sue Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander and recover treble damages and the costs of bringing this class action under Section 1964(c) of RICO, 18 U.S.C. § 1964(c).

125. By virtue of their violations of Section 1962(c) and (d) of RICO, 18 U.S.C. § 1962(c) and (d), Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander, and each of them, are jointly and severally liable to Plaintiffs and Class members for three times the damages that Plaintiffs and Class members suffered as a result of Defendants' scheme to defraud.

THIRD CAUSE OF ACTION

(For Violations of Section 76-10-1603(3) and (4) of UPUAA)

126. Paragraphs 1-125 of this FAC are realleged and incorporated by reference. This claim, which asserts violations of Section 76-10-1603(3) and (4) of UPUAA, Utah Code Ann. §76-10(3) and (4), is asserted against Defendants Gay, Mowrey and Friedlander.

127. At all times relevant to this class action, Defendants Gay, Mowrey and Friedlander, and each of them, was a "person," as that term is defined in Section 76-10-1602(3) of UPUAA, Utah Code Ann. § 76-10-1602(3).

128. At all times relevant to this class action, and as described in this FAC, Defendant Basic Research, was an "enterprise," as that term is defined in Section 76-10-1602(1) of UPUAA, Utah Code Ann. § 76-10-1602(1). In the alternative, Defendant Dynakor was an "enterprise," as that term is defined in Section 76-10-1602(1) of UPUAA, Utah Code Ann. § 76-10-1602(1).

129. At all times relevant to this class action, Defendants Gay, Mowrey and Friedlander, and each of them, engaged in acts constituting mail fraud, in violation of 18 U.S.C. § 1341; wire fraud, in violation of 18 U.S.C. § 1343; and interstate transportation, transmittals, or transfers of money taken by fraud, in violation of in violation of 18 U.S.C. §

2314. Each of the numerous mailings, communications and transportations, transmittals, or transfers using interstate facilities that were made in furtherance of Defendants' scheme to defraud Plaintiffs and Class members constitute separate and distinct acts of "unlawful activity," as that term is defined in Section 76-10-1602(4)(g) of UPUAA, Utah Code Ann. § 76-10-1602(4)(g).

130. The fraudulent and deceptive activities engaged in by Defendants Gay, Mowrey and Friedlander, and each of them, in marketing Akävar to Plaintiffs and Class members involve and affect interstate commerce. As alleged in this FAC, Defendants Gay, Mowrey and Friedlander market, sell and deliver Akävar throughout the United States.

131. By committing such offenses, which victimized Plaintiffs and thousands of Class members, and which offenses continue today and are likely to continue in the future, Defendants, and each of them, have engaged in a "pattern of unlawful activity," as that term is defined in Section 76-10-1602(2) of UPUAA, Utah Code Ann. § 76-10-1602(2).

132. At all times relevant to this class action, Defendants Gay, Mowrey and Friedlander, and each of them, have conducted or participated, directly or indirectly, in the management and operation of an "enterprise," namely, Basic Research, or, in the alternative, Dynakor, through a pattern of racketeering activity, in violation of Section 76-10-1603(3) of UPUAA, Utah Code Ann. § 76-10-1603(3).

133. At all times relevant to this class action, Defendants Gay, Mowrey and Friedlander, and each of them, have conspired to conduct or participate, directly or indirectly, in the management and operation of an "enterprise," namely, Basic Research, or,

in the alternative, Dynakor, through a pattern of racketeering activity, in violation of Section 76-10-1603(4) of UPUAA, Utah Code Ann. § 76-10-1603(4).

134. Plaintiffs and Class members who purchased Akävar have been injured in their person or property and, therefore, have standing to sue Defendants Gay, Mowrey and Friedlander under Section 76-10-1605(1) of UPUAA, Utah Code Ann. § 76-10-1605(1).

135. By virtue of their violations of Section 76-10-1603(3) and (4) of UPUAA, Utah Code Ann. § 76-10-1603(3) and (4) Defendants Gay, Mowrey and Friedlander, and each of them, are jointly and severally liable to Plaintiffs and Class members for two times the damages that Plaintiffs and Class members suffered as a result of Defendants' scheme to defraud.

FOURTH CAUSE OF ACTION

(For Violations of Section 76-10-1603(3) and (4) of UPUAA)

136. Paragraphs 1-135 of this FAC are realleged and incorporated by reference. This claim, which asserts violations of Section 76-10-1603(3) and (4) of UPUAA, Utah Code Ann. § 76-10-1603(3) and (4), is asserted against Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander.

137. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander, and each of them, was a "person," as that term is defined in Section 76-10-1602(3) of UPUAA, Utah Code Ann. § 76-10-1602(3).

138. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander constituted an association-in-fact

"enterprise," as that term is defined in Section 76-10-1602(1) of UPUAA, Utah Code Ann. § 76-10-1602(1).

139. At all times relevant to this class action Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander, and each of them, engaged in acts constituting mail fraud, in violation of 18 U.S.C. § 1341; wire fraud, in violation of 18 U.S.C. § 1343; and interstate transportation, transmittals, or transfers of money taken by fraud, in violation of 18 U.S.C. § 2314. Each of the numerous mailings, communications and transportations, transmittals, or transfers using interstate facilities that were made in furtherance of Defendants' scheme to defraud Plaintiffs and Class members constitute separate and distinct acts of "unlawful activity," as that term is defined in Section 76-10-1602(4)(g) of UPUAA, Utah Code Ann. § 76-10-1602(4)(g).

140. The fraudulent and deceptive activities engaged in by Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander, and each of them, in marketing Akävar to Plaintiffs and Class members involve and affect interstate commerce. As alleged in this FAC, Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander market, sell and deliver Akävar throughout the United States.

141. By committing such offenses, which victimized Plaintiffs and thousands of Class members, and which offenses continue today and are likely to continue in the future, Defendants, and each of them, have engaged in a "pattern of unlawful activity," as that term is defined in Section 76-10-1602(2) of UPUAA, Utah Code Ann. § 76-10-1602(2).

142. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander, and each of them, have conducted

or participated, directly or indirectly, in the management and operation of an "enterprise," as described in ¶ 138 of this FAC, through a pattern of racketeering activity, in violation of Section 76-10-1603(3) of UPUAA, Utah Code Ann. § 76-10-1603(3).

143. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander, and each of them, have conspired to conduct or participate, directly or indirectly, in the management and operation of an "enterprise," as described in ¶ 138 of this FAC, through a pattern of racketeering activity, in violation of Section 76-10-1603(4) of UPUAA, Utah Code Ann. § 76-10-1603(4).

144. Plaintiffs and Class members who purchased Akävar have been injured in their business or property and, therefore, have standing to sue Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander under Section 76-10-1605(1) of UPUAA, Utah Code Ann. § 76-10-1605(1).

145. By virtue of their violations of Section 76-10-1603(3) and (4) of UPUAA, Utah Code Ann. § 76-10-1603(3) and (4), Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander, and each of them, are jointly and severally liable to Plaintiffs and Class members for two times the damages that Plaintiffs and Class members suffered as a result of Defendants' scheme to defraud.

FIFTH CAUSE OF ACTION

(Fraud)

146. Paragraphs 1-145 of this FAC are realleged and incorporated by reference. This claim, which asserts a claim for fraud, is asserted against Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander.

147. Defendants' business practices in marketing, advertising and promoting Akävar were and are intentionally and willfully false and fraudulent.

148. In marketing, advertising and promoting Akävar, Defendants willfully and intentionally made material representations regarding the product that were known by Defendants to be false and untrue.

149. Defendants' unlawful conduct, as set forth in this FAC has the capacity to mislead or deceive consumers, including Plaintiffs and members of the Class.

150. Defendants' willful and intentional false promises and misrepresentations, as set forth in this FAC, are material because they relate to matters that reasonable persons, including Plaintiffs and members of the Class, would attach importance to in their purchasing decisions or conduct regarding the purchase of Akävar.

151. Plaintiffs and the members of the Class uniformly relied on Defendants' misrepresentations and promises and, under the circumstances described above, such reliance was justifiable and unreasonable.

152. As a result of Defendants' fraudulent practices, as described herein, Plaintiffs and the members of the Class have suffered the loss of money and property.

153. The actions of Defendants were willful and malicious and manifested knowing and reckless indifference and disregard toward the rights of Plaintiffs and the Class.

SIXTH CAUSE OF ACTION

(Violation of UCSPA and Other Consumer Protection Statutes)

154. Paragraphs 1-153 of this FAC are realleged and incorporated by reference. This claim, which asserts violation of the UCSPA or, in the alternative, the consumer protection

laws of Utah and the other states, and the District of Columbia, is asserted against Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander.

155. In connection with the purchase and sale of Akävar, Plaintiffs and the Class are "consumers" and Defendants are "suppliers," within the meaning of the UCSPA and the similar consumer protection statutes of the other states.

156. The purchase of Akävar by Plaintiffs and the members of the Class, as described herein, constitute "consumer transactions" within the meaning of the UCSPA and the similar consumer protection statutes of the other states.

157. Defendants' business practices in marketing, advertising and promoting Akävar, as described herein, are intentionally and willfully false, misleading and fraudulent.

158. In marketing, advertising and promoting Akävar, Defendants willfully and intentionally made representations regarding the product that were known by Defendants to be false and untrue.

159. Defendants' unlawful conduct, as set forth in this FAC, had (and has) the capacity to mislead or deceive consumers, including Plaintiffs and the members of the Class. Such unlawful conduct did mislead and deceive Plaintiffs and the members of the Class, and continues to do so.

160. Defendants' willful and intentional false promises and misrepresentations, as set forth in this FAC, are material because they relate to matters as to which reasonable persons, including Plaintiffs and members of the Class, would attach importance in their purchasing decisions or conduct regarding the purchase of Akävar.

161. Defendants' misrepresentations in their marketing and advertising concerning the efficacy of Akävar, as described herein, constitute false, deceptive, misleading and unconscionable practices, in violation of the UCSPA.

162. Defendants acted in the face of prior notice that their conduct was deceptive, unfair and unconscionable. It is well established under the UCSPA, as well as the FTC Act, that material omissions and misrepresentations regarding a defective product's characteristics and efficacy constitute a violation of the statute. Further, the FTC has previously admonished Defendants, and brought enforcement proceedings against Defendants, concerning the same or similar misconduct as that alleged in this FAC, and Defendants have entered into consent judgments prohibiting such conduct.

163. Application of UCSPA to all Class members throughout the country, regardless of their state or residence, is appropriate because, inter alia:

a) Defendants' nationwide sales operations are controlled, directed and originate from Salt Lake City, Utah;

b) Defendants' marketing operations, including the decisions regarding how to advertise, promote and sell Akävar, are made in Salt Lake City, Utah, and internal marketing personnel and external marketing consultants all are based there;

c) Defendants' telephone sales force, customer service, and Internet website and advertising operations are controlled, directed and originate in Salt Lake City, Utah;

d) Defendants' principal place of business is in Salt Lake City, Utah;

e) All significant employees of Defendants are based in Salt Lake City, Utah;

f) Internet sales of Akävar are placed, fulfilled and carried out in Salt Lake City, Utah; and

g) The facts and circumstances of this case include such numerous contacts with the State of Utah as to create a state interest in applying Utah's consumer laws to Defendants, making application of Utah law to the entire Class appropriate.

164. As a result of Defendants' violations of UCSPA, Plaintiffs and the Class have suffered damages, and are entitled to recover such damages, equitable and restitutionary measures as are available under UCSPA, together with appropriate penalties, including attorneys' fees and costs of suit.

165. In the alternative to the application of the UCSPA on a nationwide basis, the conduct of Defendants alleged above constitutes unfair, unconscionable, deceptive or fraudulent acts or practices in violation of the other state consumer protection and unfair competition statutes listed below in addition to the UCSPA:

Alabama:	Alabama Code §8-19-1, *et seq.*
Alaska:	Alaska Stat. §45.50.471, *et seq.*
Arizona:	Ariz. Rev. Stat. Ann §44-1521, *et seq.*
Arkansas:	Arkansas Code §4-88-101, *et seq.*
California:	California Bus. & Prof. Code §17200, *et seq.* and California Consumer Legal Remedies Act, California Civil Code § 1750 *et seq.*
Colorado:	Colo. Rev. Stat. §6-1-101, *et seq.*
Connecticut:	Conn. Gen. Stat. §42-110a, *et seq.*
Delaware:	Del. Code Ann. §2511, *et seq.*; §2531, *et seq.*
District of Columbia:	District of Columbia Code §28-3901, *et seq.*
Florida:	Florida Stat. §501.201, *et seq.*
Georgia:	Off. Code Ga. Ann. § 10-1-390 *et seq.*
Idaho:	Idaho Code §48-601, *et seq.*
Hawaii:	Haw. Rev. Stat. §480-1, *et seq.;* §481A-1, *et seq.*

Idaho:	Idaho Code §48-601, *et seq.*
Illinois:	Ill. Comp. Stat. Ann. 505/1, *et seq.*; 510/1 *et seq.*
Indiana:	Ind. Code Ann. §24-5-0.5-1, *et seq.*
Iowa:	Iowa Code Ann. §714.16, *et seq.*
Kansas:	Kan. Stat. Ann. §50-623, *et seq.*
Kentucky:	Ky. Rev. Stat. Ann. §367.110, *et seq.*
Louisiana:	La. Rev. Stat. Ann. §51-1401, *et seq.*
Maine:	5 Maine Rev. Stat. Ann. §205-A *et seq.*
Maryland:	Md. Code Ann. Com. Law. §13-101, *et seq.*
Massachusetts:	Mass. Gen. Laws §93A:1 *et seq.*
Michigan:	Mich. Comp. Laws Ann. §445.901, *et seq.*
Minnesota:	Minn. Stat. §8.31; §325D.43, *et seq.*; §325F.67; §325F.68 *et seq.*
Mississippi:	Miss. Code Ann. §75-24-1 *et seq.*
Missouri:	Mo. Rev. Stat. §407.010 *et seq.*
Montana:	Montana Code §30-14-101, *et seq.*
Nebraska:	Nebraska Rev. Stat. §59-1601, *et seq.;* §87-301, *et seq.*
Nevada:	Nev. Rev. Stat. Chapter 598A.0903, *et seq.*
New Hampshire:	N.H. Rev. Stat. § 358-A:1, *et seq.*
New Jersey:	N.J. Stat. Ann. §56:8-1, *et seq.*
New Mexico:	New Mexico Stat. §57-12-1, *et seq.*
New York:	New York Gen. Bus. Law §349, *et seq.*
North Carolina:	North Carolina Gen. Stat. §75-1.1, *et seq.*

North Dakota:	N.D. Cent. Code §§51-15-01, *et seq.*
Ohio:	Ohio Rev. Code Ann. §1345.01, *et seq.*; §4165.01, *et seq.*
Oklahoma:	Okla. Stat. tit. 78, §5, *et seq.*
Oregon:	Or. Rev. Stat. §646.605, *et seq.*
Pennsylvania:	Pa. Stat. Ann. tit. 73, §201-1, *et seq.*
Rhode Island:	R.I. Gen. Laws §6-13.1-1, *et seq.*
South Carolina:	S.C. Code Ann. §39-5-10, *et seq.*
South Dakota:	S.D. §37-24-1, *et seq.*
Tennessee:	Tenn. Code Ann. §§ 47-18-101, *et seq.*
Texas:	Tex. Bus. & Com. Code Ann. §17.41, *et seq.*
Vermont:	Vt. Stat. Ann tit 9, §2451, *et seq.*
Virginia:	Va. Code Ann. §59.1-196, *et seq.*
Washington:	Wash. Rev. Code Ann. §19.86.010, *et seq.*
West Virginia:	W.V. Code §46A-1-101 *et seq.*
Wisconsin:	Wisc. Stat. Ann. § 100.18; §100.20, *et seq.*
Wyoming:	Wyo. Stat. Ann. §40-12-101, *et seq.*

166. As a direct and proximate result of Defendants' unlawful conduct in violation of the UCSPA, or in the alternative, of the UCSPA and these other state consumer statutes, Plaintiffs and members of the Class have been injured and suffered loss of money and property.

Notice To Attorneys General Of Action

167. A copy of this FAC shall be mailed to the Attorneys General, Administrators, Commissioners, or other officers, as required by laws for the States of Connecticut, Georgia, Hawaii, Illinois, Kansas, Louisiana, Nevada, New Jersey, Oregon and Texas within three days of the filing of this FAC with this Court pursuant to Conn. Gen. Stat. § 42-100g(c), Ga. Code § 10-1-399, Haw. Rev. Stat. § 48013.3, 815 ILCS § 505/6, Kan. Stat. § 50-634(g), La. Rev. Stat. § 51:1409(B), Nev. Rev. Stat. § 598A.210(3), N.J.S.A. § 56:8-20, Or. Rev. Stat. § 646.638(2) and Tex. Bus. & Com. Code § 17501(a)(1).

SEVENTH CAUSE OF ACTION

(Unjust Enrichment)

168. Paragraphs 1-167 of this FAC are realleged and incorporated by reference. This claim, which asserts unlawful and fraudulent conduct and resulting unjust enrichment, is asserted against Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander.

169. As a result of Defendants' wrongful and fraudulent conduct, Plaintiffs and members of the Class have conferred benefits upon Defendants in the form of payment for Defendants' product.

170. Defendants were at all times aware that the benefits conferred upon by them by Plaintiffs and the Class were the result of Defendant's fraud and misrepresentation.

171. Allowing Defendants to retain these unjust profits and other benefits would offend traditional notions of justice and fair play. Under these circumstances, it would be inequitable for Defendants to retain the benefits and allowing them to do so would induce companies to misrepresent key characteristics of their products in order to increase sales.

172. Defendants are in possession of funds that were wrongfully obtained from Plaintiffs and the Class and which should be disgorged as ill-gotten gains.

EIGHTH CAUSE OF ACTION

(Negligent Misrepresentation)

173. Paragraphs 1-172 of this FAC are realleged and incorporated by reference. This claim for negligent misrepresentation is asserted against Defendants Basic Research, Dynakor, Western Holdings, Bydex, Gay, Mowrey and Friedlander.

174. In marketing, advertising and promoting Akävar, Defendants carelessly and negligently made representations regarding the product that Defendants knew or should reasonably have known or reasonably foreseen misrepresented material facts and omitted to state material facts.

175. Defendants have a pecuniary interest in the marketing, advertising and promotion of Akävar and in making the careless, unreasonable and negligent misrepresentations and omissions alleged herein, including to Plaintiffs and members of the Class.

176. In their marketing, advertising and promoting of Akävar and in making the careless, unreasonable and negligent misrepresentations and omissions alleged herein, including the representations made to Plaintiffs and the members of the Class, Defendants

were in a superior position than Plaintiffs and the members of the Class to know the material facts.

177. In their marketing, advertising and promoting of Akävar and in making the careless, unreasonable and negligent misrepresentations and omissions alleged herein, including the representations made to Plaintiffs and the members of the Class, Defendants should have reasonably foreseen that Plaintiffs and members of the Class were likely to rely upon the misrepresentations.

178. Defendants' careless, unreasonable and negligent misrepresentations and omissions, as set forth in this FAC, are material in that they relate to matters to which reasonable persons, including Plaintiffs and the members of the Class, would attach importance in their purchasing decisions or conduct regarding the purchase of Akävar.

179. Under the circumstances, Defendants had a duty to disclose material, truthful information that they omitted in their careless, unreasonable and negligent misrepresentations and omissions, as set forth in this FAC.

180. As alleged in this FAC, Plaintiffs and the members of the Class uniformly relied on Defendants' careless, unreasonable and negligent misrepresentations and omissions, and under the circumstances described above such reliance was reasonable and justifiable.

181. As a result of Defendants' careless, unreasonable and negligent statements and omissions as described herein, Plaintiffs and the members of the Class have been injured and have suffered loss of money and property, and they are entitled to recover damages from Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment against Defendants as follows:

A. An order certifying a Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, certifying Plaintiffs as the representatives of the Class, and designating their counsel as counsel for the Class;

B. On the First Cause of Action, against Defendants jointly and severally in an amount equal to treble the amount of damages suffered by Plaintiffs and members of the Class as proven at trial plus interest and attorneys' fees and expenses;

C. On the Second Cause of Action, against Defendants jointly and severally in an amount equal to treble the amount of damages suffered by Plaintiffs and members of the Class as proven at trial plus interest and attorneys' fees and expenses;

D. On the Third Cause of Action, against Defendants jointly and severally in an amount equal to two times the amount of damages suffered by Plaintiffs and members of the Class as proven at trial plus interest and attorneys' fees and expenses;

E. On the Fourth Cause of Action, against Defendants jointly and severally in an amount equal to two times the amount of damages suffered by Plaintiffs and members of the Class as proven at trial plus interest and attorneys' fees and expenses;

F. On the Fifth Cause of Action, against Defendants jointly and severally, in an amount equal to the actual damages suffered by Plaintiffs and members of the Class as proven at trial plus interest, as well as punitive damages in an amount sufficient to punish Defendants and deter similar future conduct;

G. On the Sixth Cause of Action, against Defendants jointly and severally, in an amount equal to the actual damages suffered by Plaintiffs and members of the Class as proven at trial plus interest, together with all allowable penalties and damage multipliers available under the UCSPA and other state consumer protection laws, and attorneys' fees and expenses;

H. On the Seventh Cause of Action, against Defendants jointly and severally, for disgorgement of Defendants' unjust enrichment and/or imposition of a constructive trust upon Defendants' ill-gotten monies, freezing Defendants' assets, and requiring Defendants to pay restitution to Plaintiffs and the Class and to restore all funds acquired by means of any act or practice declared by this Court to be unlawful, deceptive, fraudulent or unfair, and/or a violation of laws, statutes or regulations;

I. On all Causes of Action, such other civil penalties and punitive damages to the fullest extent permitted by applicable law;

J. An order requiring Defendants to immediately cease their wrongful conduct as set forth above, as well as enjoining Defendants from continuing to falsely market and advertise, conceal material information and conduct business via the unlawful and unfair business acts and practices complained of herein; an order requiring Defendants to engage in a corrective notice campaign; and an order requiring Defendants to refund to Plaintiffs and all members of the Class the funds paid to Defendants for their fraudulent, defective product;

K. For the reasonable attorneys' fees and the costs of prosecuting this action;

L. For statutory pre-judgment interest; and

M. For such other relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all causes of action so triable.

Wilentz, Goldman & Spitzer, P.A.

May 23, 2008

By: /s/

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Attorneys for Plaintiffs and the Class

EXHIBIT A

European Weight-Loss Breakthrough

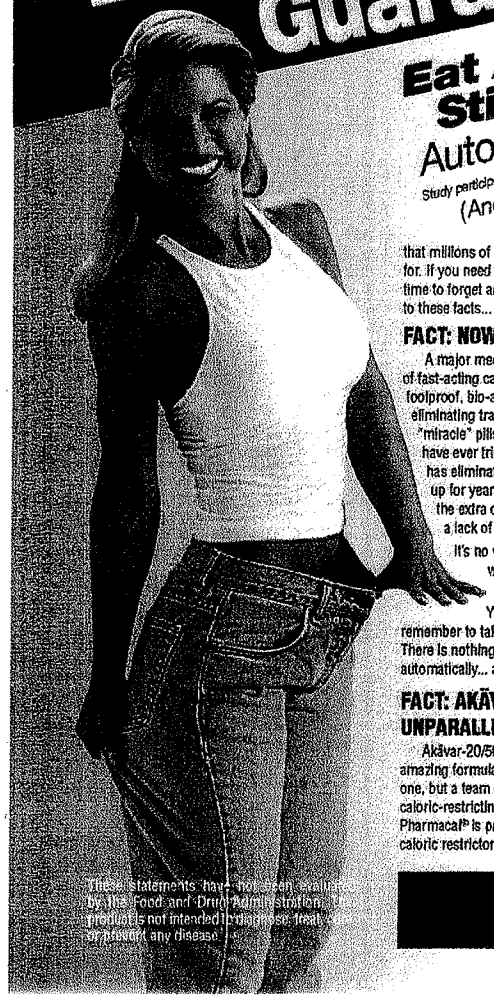
Amazing!

Lose Pounds & Inches Guaranteed!

Eat All You Want and Still Lose Weight...

Automatic Caloric Restriction!

Study participants were specifically told not to alter their eating habits and they still lost weight.
(And we couldn't say it in print if it wasn't true!)



These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

Here at last is the news...

that millions of men and women plagued by excess fat, flab and cellulite have been waiting for. If you need to lose weight... and every weight-loss scheme you've tried has failed... it's time to forget anything and everything anyone has ever told you about dieting before. Listen to these facts...

FACT: NOW THERE'S A "CURE" FOR FAT!

A major medical breakthrough has shattered the weight-loss barrier and a new generation of fast-acting caloric restrictors has been born... an entirely new generation of powerful, foolproof, bio-active weight-loss compounds that automatically reduce caloric intake... eliminating traditional dieting, calorie counting, strenuous exercise, fad diets, supermarket "miracle" pills, Japanese wonder diets, rubber suits, belts, creams or anything else you have ever tried before. But most significantly, this new generation of potent compounds has eliminated diet failure and replaced it with guaranteed success. Akävar™ 20/50 makes up for years of overeating, years without exercise, years without being able to push away the extra dessert or midnight snack and, most importantly, years of embarrassment and a lack of self-confidence.

It's no wonder there's been so much excitement about Akävar-20/50, as men and women around the world, just like you, have already discovered... there's no easier, more dramatic weight-loss compound available today.

YOU WILL NOT FAIL THIS TIME because the only thing you have to do is remember to take your easy-to-swallow Akävar-20/50 tablets each and every day. That's it! There is nothing else to do, no other diet to buy. Akävar-20/50 will do everything else for you... automatically... and that's guaranteed.

FACT: AKÄVAR™-20/50 WILL PRODUCE AN EXTRAORDINARY, UNPARALLELED LOSS OF BODY WEIGHT!

Akävar-20/50 is the perfect weight-loss compound for tough weight-loss problems. This amazing formulation is the result of years of intensive research and scientific evaluation. Not one, but a team of doctors working in a recognized medical university discovered the potent caloric-restricting qualities of the Akävar-20/50 formulation, and the research team at Dynakor Pharmacal® is proud to have played a major role in bringing this new generation of fast-acting, caloric restrictors to the general public... at an affordable price.

Call 1-801-517-7301
or visit www.Akavar2050.com

Introducing... AKÄVAR™-20/50

THE ULTIMATE "CURE" FOR FAT

FASTEST, EASIEST WEIGHT LOSS EVER!

FORGET ABOUT FAT... FORGET ABOUT FLAB... FORGET ABOUT FAILURE!

FACT: AKÄVAR™-20/50 LITERALLY CAUSES EXCESS FAT TO BE PULLED FROM BULGING PARTS OF YOUR BODY!

As Akävar-20/50 restricts your caloric intake to below your normal daily caloric consumption, your body literally pulls excess fat from your waist, hips, thighs and buttocks (the body's natural fat storage sites)... leaving your body thinner, trimmer and sexier than you ever thought possible. Akävar-20/50 helps draw out bulging pockets of fat and prevents the further conversion and storage of excess fat all over your body. This remarkably effective formulation works so fast and is so easy to use that before you have time to become discouraged... you will have lost pounds and inches of ugly, hard-to-get-at, figure-destroying fat.

FACT: TESTS PROVE VIRTUALLY 100% SUCCESS

That's right. While no diet pill can possibly work for everybody (that's why there's a money-back guarantee) scientific documentation has confirmed that virtually everyone in the study who used Akävar-20/50's active compound (23 out of 24 participants, to be exact) lost weight. The research results are staggering. In a controlled, randomized clinical trial (the only type of proof accepted by both scientific and medical communities) doctors tested a group of overweight patients. And among those who took the active, patented Akävar-20/50 compound, every single participant lost a substantial amount of weight... except one. That's right, 23 out of 24 people lost weight... Amazing!

This is not marketing fantasy, this is scientific fact, documented by published medical findings. But there's more! In recent months, thousands and thousands of men and women around this country who have been overweight for years... have used the Akävar-20/50 formulation and have also confirmed in documented, certified testimonials, a fantastic and incredible loss of weight without ever "dieting"... not even for one day. Finally, automatic caloric restriction is a reality. So now you know, no matter how much weight you need to lose... whether it's 10 pounds or 100 pounds... you have to start somewhere, and Akävar-20/50 is the fastest, easiest, unconditionally guaranteed way to start you on your journey to a thinner, trimmer, slimmer (and much healthier) body.

STOP: READ THIS BEFORE YOU ORDER!

When ordering any weight-loss formulation, know who you are dealing with. Dynakor Pharmacal is a solid, established retail firm you can count on. We are members of the Salt Lake City Chamber of Commerce and the prestigious Direct Marketing Association. 1-801-517-7301 is our "real" phone number... not a hired "toll-free" order-taking service. When you call for product information, you will speak to our trained customer service representatives who are eager to help you and are familiar with our fine family of products. (By the way, our customer service representatives work at our order processing center, corporate offices, and central retail outlet... not some rented mailing address.) We keep all your personal information strictly confidential, unlike many companies who sell "your" name and address to strangers for profit (they call it "their" mailing list). We don't. We respect your privacy and appreciate your business.

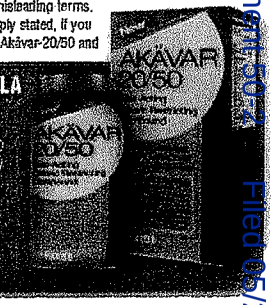
Remember, any guarantee (including those tempting double- and triple-your-money-back promises) is only as good as the company behind it. Dynakor Pharmacal delivers exactly what we promise, and we stand 100% behind our guarantee. We won't let you down. (P.S. The next time you're in Salt Lake City, stop by our offices and see what products are being planned for the future.)

MONEY-BACK GUARANTEE

As with all our fine formulations, Akävar-20/50 is covered by our No-Nonsense Money-Back Guarantee. Our guarantee contains no fine print or misleading terms. Simply stated, if you use Akävar-20/50 and do not see the substantial weight loss you would have (until now) thought impossible, just return the empty container within 30 days (we would like you to use all of this fine formulation) for a full, prompt refund (including shipping and handling). Again, let us restate: if for any reason you are not totally satisfied with Akävar-20/50, it will cost you absolutely nothing.

FACT: THE SECRET IS THE FORMULA

Do not mistake Akävar-20/50 for any weight-loss product you have ever seen advertised before. Akävar-20/50 is a truly revolutionary weight loss breakthrough. Akävar 20/50 is the only weight loss compound that works automatically. There is absolutely no need to count calories, no need to consciously lower your caloric intake, no need for expensive, pre-measured meals... and no need to give up your favorite foods! Why? Because Akävar-20/50 reduces your intake... automatically.



$39.99 for a full 30-day supply.

Order Now! 1-801-517-7301... www.Akavar2050.com

By this time, you've probably heard about Akävar-20/50 or seen promotional material in newspapers, magazines or on TV. If you have been unable to find Akävar-20/50 at your local pharmacy, it's because the patented Akävar-20/50 formulation will not be available in stores until August 23, 2007. At this time, Akavar-20/50 is only available by calling 1-801-517-7301 or by visiting www.Akavar2050.com. A full 30-day supply is only $39.99.

Note: While the published clinical trial using the active Akävar-20/50 compound resulted in significant weight loss WITHOUT diet and exercise, adding a sensible diet and exercise program to your weight-loss regimen should only enhance Akävar-20/50's incredible weight-loss power.

 BR10577

BR0023

EXHIBIT B

BODY

EAT ALL YOU WANT & STILL LOSE WEIGHT...

(And we couldn't say it in print if it wasn't true!)

AUTOMATIC CALORIC RESTRICTION!

Study participants were specifically told not to alter their eating habits and they still lost weight.

Here at last is the news...

that millions of men and women plagued by excess fat, flab and cellulite have been waiting for. If you need to lose weight ... and every weight-loss scheme you've tried has failed... it's time to forget anything and everything anyone has ever told you about dieting before. This is not marketing fantasy, this is scientific fact, documented by published medical findings. But there's more! In recent months, thousands and thousands of men and women around this country who have been overweight for years... have used the Akavar® 20/50 formulation and have also confirmed in documented, certified testimonials a fantastic and incredible loss of weight without ever "dieting"... not even for one day. Finally, automatic caloric restriction is a reality. So now you know, no matter how much weight you need to lose... whether it's 10 pounds or 100 pounds... you have to start somewhere, and Akavar-20/50 is the fastest, easiest, unconditionally guaranteed way to start you on your journey to a thinner, trimmer, shapelier (and much healthier) body.

A major medical breakthrough...

has shattered the weight-loss barrier and a new generation of 'fast-acting caloric restrictors has been born... but most significantly, this new generation of potent compounds has eliminated diet torture and replaced it with guaranteed success. Akavar 20/50 makes up for years of overeating, years without exercise, years without being able to push away the extra dessert or midnight snack and, most importantly, years of embarrassment and a lack of self-confidence. It's no wonder there's been so much excitement about Akavar-20/50, as men and women around the world, just like you, have already discovered... there's no easier, more dramatic weight-loss compound available today. You will not fail this time because the only thing you have to do is remember to take your easy-to-swallow Akavar 20/50 capsule 2 each and every day. That's it!

There is nothing else to do, no other diet to try. Akavar-20/50 will do everything else for you... automatically... and that's guaranteed. By this time, you've probably heard about Akavar 20/50 or seen promotional material in newspapers, magazines or on TV. If you have been unable to find Akavar 20/50 at your local pharmacy, it's because the patented Akavar-20/50 formulation will not be available in stores until August 20, 2007. At this time, Akavar-20/50 is only available by calling 1-800-719-8718 or by visiting www.AKAVAR2050.com. A full 60 capsule supply is only $39.99

STOP! Read this before you order!

When ordering any weight-loss formulation, know who you are dealing with. Dynakor Pharmacal is a solid, established retail firm you can count on. We are members of the Salt Lake City Chamber of Commerce and the prestigious Direct Marketing Association. When you dial 1-800-719-8718 (toll free), you will reach our own Customer Service Center, not some bead order-taking service. When you call for product information, you will speak to our trained customer service representatives who are there to help you and are further with our fine family of products. By the way, our customer service representatives work at our order processing center, corporate offices and central mail center... not some rented mailing address.) We keep all your personal information strictly confidential, unlike many companies who sell "your" name and address to strangers for profit (they call it their" mailing list). We don't. We respect your privacy and appreciate your business. Remember, any guarantee (including those tempting double- and triple-your-money-back promises) is only as good as the company behind it. Dynakor Pharmacal delivers exactly what we promise, and we stand 100% behind our guarantee. We won't let you down (U.S. The next time you're in Salt Lake City, stop by our offices and see what products are being planned for the future.)

INTRODUCING... AKÄVAR™ 20/50 "Fastest, Easiest Weight Loss Ever"

FACT

Akavar 20/50 literally causes excess fat to be pulled from bulging parts of your body!

As Akavar-20/50 restricts caloric intake to below your daily caloric requirement, you literally pull excess fat from all over your body, including your waist, hips, thighs and buttocks (the body's natural fat storage sites)... leaving your body thinner, trimmer and sexier than you ever thought possible. Akavar-20/50 helps drew out bulging pockets of fat and prevents the further conversion and storage of excess fat all over your body. This remarkably effective formulation works so fast and is so easy to use that before you have time to become discouraged you will have lost pounds and inches of ugly, hard-to get of, figure-destroying fat.

FACT

Akavar 20/50 will produce an extraordinary, unparalleled loss of body weight!

Akavar-20/50 is the perfect weight-loss compound for tough weight-loss problems. This amazing formulation is the result of years of intensive research and scientific evaluation. Not one, but a team of doctors working in a recognized medical university discovered the potent caloric-restricting qualities of the Akavar-20/50 formulation, and the research team at Dynakor Pharmacal® is proud to have played a major role in bringing this new generation of fast-acting caloric restrictors to the general public, at an affordable price.

ABOUT AKÄVAR 20/50

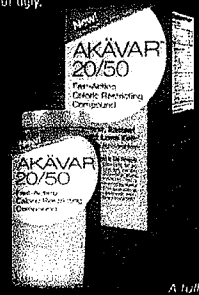
Tests prove virtually 100% success

That's right. While no diet pill can possibly work for everybody (that's why there's a money-back guarantee), scientific documentation has confirmed that virtually everyone in the study who used Akavar 20/50's active compound (23 out of 24 participants, to be exact) lost weight. The research results are staggering. In a controlled, randomized clinical trial (the only type of proof accepted by both scientific and medical communities), doctors tested a group of overweight patients. And among those who took the active, patented Akavar-20/50 compound, 23 out of 24 people lost a substantial amount of weight.

FACT

Now there's a "cure" for fat!

An entirely new generation of powerful, foolproof, bio-active weight-loss compounds that automatically reduce caloric intake... eliminating traditional dieting, calorie counting, strenuous exercise, fad diets, supermarket "miracle" pills, Japanese wonder diets, rubber suits, belts, creams or anything else you have ever tried before.



A full 60 capsule supply is only $39.99

Call 1-800-719-8718 or visit www.AKAVAR2050.com

LOSE POUNDS & INCHES! GUARANTEED!

DYNAKOR

EXHIBIT C

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

Commissioners: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

In the Matter of	)	
	)	
BASIC RESEARCH, L.L.C.,	)	
a limited liability corporation,	)	
A.G. WATERHOUSE, L.L.C.,	)	
a limited liability corporation,	)	
KLEIN-BECKER USA, L.L.C.,	)	
a limited liability corporation,	)	
NUTRASPORT, L.L.C.,	)	
a limited liability corporation,	)	
SOVAGE DERMALOGIC LABORATORIES, L.L.C.,	)	
a limited liability corporation,	)	
BAN, L.L.C.,	)	DOCKET NO. 9318
a limited liability corporation, also doing	)	
business as BASIC RESEARCH, L.L.C.,	)	DECISION AND ORDER
OLD BASIC RESEARCH, L.L.C.,	)	
BASIC RESEARCH, A.G. WATERHOUSE,	)	
KLEIN-BECKER USA, NUTRA SPORT, and	)	
SOVAGE DERMALOGIC LABORATORIES,	)	
DENNIS GAY,	)	
individually and as an officer	)	
of the limited liability corporations,	)	
DANIEL B. MOWREY,	)	
also doing business as	)	
AMERICAN PHYTOTHERAPY RESEARCH	)	
LABORATORY, and	)	
MITCHELL K. FRIEDLANDER	)	
	)	

The Federal Trade Commission having issued its Complaint charging the Respondents, Basic Research, L.L.C., A.G. Waterhouse, L.L.C., Klein-Becker USA, L.L.C., Nutrasport, L.L.C., Sovage Dermalogic Laboratories, L.L.C., BAN, L.L.C., (d/b/a Basic Research, L.L.C., Old Basic Research, L.L.C., Basic Research, A.G. Waterhouse, Klein-Becker USA, Nutra Sport, and Sovage Dermalogic Laboratories), Dennis Gay, Daniel B. Mowrey, (d/b/a American

Phytotherapy Research Laboratory), and Mitchell K. Friedlander named in the caption hereof with violations of Section 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. § 45(a) and 52 as amended, and Respondents having been served with a copy of that Complaint, together with a notice of contemplated relief, and Respondents having filed answers to the Complaint, denying the allegations set forth therein; and

Respondents, their attorneys, and Counsel for the Commission having thereafter executed an Agreement Containing Consent Order, an admission by Respondents of all the jurisdictional facts set forth in the Complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged as such in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers, releases, and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed Consent Agreement and placed such Agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure described in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following Order:

1. Respondent Basic Research, L.L.C., is a Utah limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116.

2. Respondent A.G. Waterhouse, L.L.C., is a Wyoming limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116.

3. Respondent Klein-Becker USA, L.L.C., is a Utah limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116.

4. Respondent Nutrasport, L.L.C., is a Utah limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116.

5. Respondent Sovage Dermalogic Laboratories, L.L.C., is a Utah limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116.

6. Respondent BAN, L.L.C., is a Utah limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116.

7. Respondent Dennis Gay is an officer of the limited liability companies. His principal place of business is the same as that of the limited liability companies.

8. Respondent Daniel B. Mowrey is an individual also doing business as American Phytotherapy Research Laboratory. His principal office or place of business is located at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116.

9. Respondent Mitchell K. Friedlander is an individual whose principal office or place of business is the same as that of Mowrey.

10. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

11. Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, which the parties agree will not be entered;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; provided that this waiver does not affect respondents' rights to assert any defenses in any Commission action not enforcing this order;

d. Respondents further waive and release any claim respondents may have against the Federal Trade Commission and the employees, agents, or representatives of the FTC arising from this enforcement action; and

e. Respondents shall cause a dismissal of the litigation entitled *Carter-Reed Company, LLC v. Federal Trade Commission*, pending in the United States District Court for the District of Utah, Civil No. 2:04cv001142DB, and agree that it will not be re-filed to challenge or contest the validity of this Order, or any FTC agency action that has been taken against respondents prior to this agreement.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

2. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

3. "Endorser" and "endorsement" shall mean as defined in 16 C.F.R. 2.55.0(b).

4. "Food" and "drug" shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.

5. Unless otherwise specified, "respondents" shall mean Basic Research, L.L.C., A.G. Waterhouse, L.L.C., Klein-Becker USA, L.L.C., Nutrasport, L.L.C., Sovage Dermalogic Laboratories, L.L.C., BAN, L.L.C., d/b/a Basic Research, L.L.C., Old Basic Research, L.L.C., Basic Research, A.G. Waterhouse, Klein-Becker USA, Nutra Sport, and Sovage Dermalogic Laboratories, Dennis Gay, Daniel B. Mowrey, and Mitchell K. Friedlander, and each of the above's successors and assigns, and their officers, agents, representatives, and employees.

6. "Substantially similar product" shall mean any product that is substantially similar in ingredients, composition, and properties.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Dermalin-APg, Cutting Gel, Tummy Flattening Gel, Leptoprin, Anorex, PediaLean, or any substantially similar product, in or affecting commerce, shall not represent, in any manner, expressly or by implication, including through the use of the names "Cutting Gel," "Tummy Flattening Gel," "Anorex" and "PediaLean," or other trade names, or through the use of endorsements, that such product causes weight or fat loss, unless at the time the representation is made, respondents possess and rely upon a reasonable basis for the representation, which shall consist of competent and reliable scientific evidence.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, drug, or dietary supplement, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of trade names or endorsements, about the effect of such food, drug or dietary supplement on any disease, or about the effect of such food, drug or dietary supplement on the structure or function of the human body or other health benefits or weight loss

benefits, unless at the time the representation is made respondents possess and rely upon a reasonable basis for the representation, which shall consist of competent and reliable scientific evidence.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, service, or program in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of endorsements or trade names, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Leptoprin, Anorex, or any other product, service, or program in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of endorsements:

A. That respondent Daniel B. Mowrey is a medical doctor; or

B. The profession, expertise, training, education, experience or qualifications of Mowrey or any other endorser.

V.

IT IS FURTHER ORDERED that payment shall be made to the Federal Trade Commission the sum of three million dollars ($3,000,000). This payment shall be made in the following manner:

A. Basic Research, L.L.C. shall make the payment, on behalf of all respondents, by wire transfer or certified or cashier's check made payable to the Federal Trade Commission, the payment to be made no later than fifteen (15) days after the date that this order becomes final; *provided* that all respondents are primarily liable, jointly and severally, for the payment amount, including any default payment amount if the payment is in default, unless and until payment is made in full.

B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.

C. The funds paid, together with any accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of any of the products challenged in the complaint in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty or punitive assessment.

D. Respondents relinquish all dominion, control and title to the funds paid, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of either respondent, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

VI.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in 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.

VII.

Nothing in this order shall prohibit respondents 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.

VIII.

IT IS FURTHER ORDERED that respondents Dennis Gay, Daniel B. Mowrey, and Mitchell K. Friedlander, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of their current business or employment, or of their affiliation with any new business or employment. The notice shall include the respondents' new business address and telephone number and a description of the nature of the business or employment and their duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondents shall, for three (3) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Copies of all advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. Any tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that reasonably contradict, qualify or call into question the representation or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

X.

IT IS FURTHER ORDERED that respondents shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

XI.

IT IS FURTHER ORDERED that respondents shall notify the Commission at least thirty (30) days prior to any change in the respondent corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

XII.

IT IS FURTHER ORDERED that respondents shall, within ninety (90) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XIII.

This order will terminate on June 19, 2026, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: June 19, 2006

EXHIBIT D

UNITED STATES POSTAL SERVICE

In the Matter of the Complaint Against

W. G. Charles COMPANY
7770 West Oakland Park Boulevard
Landmark Bank Building Suite 210
Sunrise, Florida 33321-6729

and

3952 N. Southport
Chicago, Illinois 60613-2606

and

CUSTOMER SERVICE DISTRIBUTION CENTER, INC.
997 N.W. 11th Avenue
Ft. Lauderdale, Florida 33311-1337

and

MITCHELL K. FRIEDLANDER
508 Bontona Avenue
Ft. Lauderdale, Florida 33301-2422

and
HARRIS FRIEDLANDER
2175 State Road 84, Dock 12 #1
Ft. Lauderdale, Florida 33312-4839

and
MICHAEL MEADE
2615 N. E. 49th Street
Ft. Lauderdale, Florida 33308-4846,

RESPONDENTS

P.S. Docket No. 19/104;
P.S. Docket No. 19/162

09/10/85

Bernstein, Edwin S.

In the Matter of the Complaint Against

THE ROBERTSON-TAYLOR COMPANY
1110 West Sunrise Boulevard
Ft. Lauderdale, Florida 33311-1337

and

INTRA-MEDIC FORMULATIONS, INC.
7770 West Oakland Park Boulevard Suite 210
Sunrise, Florida 33321-6729

and

CUSTOMER SERVICE DISTRIBUTION CENTER, INC.
997 N.W. 11th Avenue
Ft. Lauderdale, Florida 33311-1337

MITCHELL K. FRIEDLANDER
508 Bontona Avenue
Ft. Lauderdale, Florida 33301-2422

and

HARRIS FRIEDLANDER
2175 State Road 84, Dock 12 #1
Ft. Lauderdale, Florida 33312-4839

and

MICHAEL MEADE

APPEARANCES FOR COMPLAINANT:
Sandra C. McFeeley, Esq.,
Kenneth N. Hollies, Esq.
Consumer Protection Division
Law Department
U.S. Postal Service
Washington, D.C. 20260-1100

APPEARANCES FOR THE CORPORATE RESPONDENTS and MITCHELL K. FRIEDLANDER:
Lee H. Harter, Esq.
2256 Van Ness Avenue
San Francisco, CA 94109-2153,

Dale B. Hinson, Esq.,
1101 Fifteenth Street, N.W.
Washington, DC 20005-5002,

Mitchell K. Friedlander
c/o The Robertson-Taylor Co.
1110 West Sunrise Blvd.
Ft. Lauderdale, FL 33311-1337

APPEARANCE FOR HARRIS FRIEDLANDER:
Harris Friedlander, Pro Se
c/o The Robertson-Taylor Co.
1110 W. Sunrise Blvd.
Ft. Lauderdale, FL 33311-1337

APPEARANCE FOR MICHAEL MEADE:
Michael Meade, Pro Se c/o
The Robertson-Taylor Co.
1110 W. Sunrise Blvd.
Ft. Lauderdale, FL. 33311-1337

POSTAL SERVICE DECISION

On July 3, 1984, the Consumer Protection Division, United States Postal Service (Complainant) filed a Complaint in Docket No. 19/104 alleging that W. G. Charles Company, Mitchell K. Friedlander, Harris Friedlander and Michael Meade violated 39 U.S. Code § 3005 by selling Intercal-SX, a purported weight loss product, through the use of the mail by false representations.

On August 31, 1984, Complainant filed a similar Complaint in Docket No. 19/162 alleging that The Robertson-Taylor Company, Intra-Medic Formulations, Inc., Mitchell K. Friedlander, and Harris Friedlander violated 39 U.S. Code § 3005 by selling Metabolite-2050, also a purported weight loss product, through the use of the mail by false representations. The product in each case consisted of guar gum tablets to be taken in divided doses totaling 15 grams daily.

On November 15, 1984, Complainant filed a motion to amend the captions of these cases and other cases, by adding Respondent,

Customer Service Distribution Center, Inc. at 997 N.W. 11th Avenue, Ft. Lauderdale, Florida 33311. Upon no opposition, the motion was granted (Tr. 394).

The Complaint in Docket No. 19/104 alleged that Respondents falsely represent:

(a) Ingestion of Intercal-SX will cause significant weight loss in virtually all users.

(b) Ingestion of Intercal-SX will cause significant weight loss without calorie restricted diets or exercise.

(c) Ingestion of Intercal-SX prevents foods from being converted into stored fat.

(d) The weight loss claims for Intercal-SX are supported by the results of scientifically sound clinical studies.

(e) Respondents have accurately reproduced an excerpt from Acta Medica Scandinavia, Vol. 208, pp. 45-48 in certain of its printed advertisements, including Exhibit 1.

The Complaint in Docket No. 19/162 alleged that Respondents falsely represent:

(a) Ingestion of Metabolite-2050 will cause significant weight loss in virtually all users.

(b) Ingestion of Metabolite-2050 will cause significant weight loss without willpower, calorie restricted diets or exercise.

(c) Ingestion of Metabolite-2050 prevents foods from being converted into stored fat.

(d) The weight loss claims for Metabolite-2050 are supported by the results of scientifically sound clinical studies.

(e) Respondents have accurately reproduced an excerpt from Acta Medica Scandinavia, Vol. 208, pp. 45-48 in certain of its printed advertisements, including Exhibit 1.

(f) An obese person who takes Metabolite-2050 may reasonably expect to lose weight while continuing to eat all he or she wants.

Respondents denied that they violated 39 U.S. Code 3005. At Respondents' request the cases, together with P.S. Docket No.19/182, were scheduled for expedited hearing pursuant to 39 C.F.R. 952.17(a) (Judge Cohen's Order of February 1, 1985). I was designated Acting Judicial Officer for that purpose. Harris Friedlander and Michael Meade did not attend the expedited hearing or appear by counsel. However, by notarized letter to me dated February 11 and filed February 13, 1985, Harris Friedlander consented to the expedited hearing and wrote, "The questions I would ask of Complainant's winesses re: Intercal and Metabolite have been furnished to Co-Respondents, and the evidence they plan to offer is acceptable to me on the products." By notarized letter to me also dated February 11 and filed February 13, 1985, Michael Meade made the same statements, but limited to Intercal-SX in Docket No. 19/104.

Commencing February 12, 1985 Complainant presented the testimonies of Richard C. Eastman, M.D., William R. Ayers, M.D., and Albert I. Mendeloff, M.D. Respondents presented the testimonies of Thomas M. S. Wolever, B.M., Stephen C. Woods, Ph.D., Dan Sarel, Ph.D., Lynda M. Maddox, Ph.D., and Ruth B. Smith, Ph.D. By stipulation, Respondents' advertisements and various other exhibits as identified in Complainant's exhibit list were received in evidence (Tr. 2006-15).

During the hearing, Respondents offered as exhibits two collections of scientific articles which they designated as 'Anorex-CCK (Cholecystokinin) Source Book" and "Guar Source Book." Upon no objection these source books were received into evidence, although they were not given exhibit numbers since the books were to be furnished later and some of the articles duplicated other exhibits (Tr. 4690J-O). The Anorex-CCK Source Book is hereby

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designated as RX3-54 and the Guar Source Book is hereby designated as RX3-55. The articles contained in the Guar Source Book are listed in Appendix A to this decision.

Respondents offered as an exhibit the videotaped deposition of Joseph E. Morrow, Ph.D. Dr. Morrow conducted a survey and based upon that survey concluded that the money-back guarantee that Robertson Taylor offered in the sale of Metabolite-2050 and other products was a crucial factor in persuading the majority of users surveyed to buy the products. Although Complainant objected to the admission of this exhibit, I received it into evidence subject to a showing in post-hearing proposed findings and conclusions that the deposition is relevant (Tr. 4794-96). Respondents post-hearing submissions have failed to show that the deposition is relevant. In view of the holdings in Farley v. Heininger, 105 F.2d 79, 84 (D.C. Cir. 1939); Borg-Johnson Electronics, Inc. v. Christenberry, 169 F. Supp. 746, 751 (S.D.N.Y. 1959) and other cases that a promise of a refund if a customer is dissatisfied will not dispel the effect of false advertisements, I find the deposition to be irrelevant and therefore inadmissible. The transcript and the videotape of the deposition are hereby designated as RX3-56 and RX3-56A respectively and will be retained as rejected exhibits.

At the hearing, Respondents also offered an affidavit and report of Kenneth W. Clarkson, Ph.D. Upon objection by Complainant, the affidavit and report were rejected as irrelevant (Tr. 5906-07, Conference on the Record of April 15, 1985, pp. 5-6). The affidavit and report are hereby designated as RX3-57 and will be retained as a rejected exhibit.

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By Order dated May 20, 1985 the parties were directed to submit proposed findings of fact, proposed conclusions of law, and memoranda. Proposed findings and conclusions were to be specific and supported by citations. The parties were directed to file reply submissions specifically stating agreement or disagreement with the opposing party's proposed findings and conclusions, and providing supporting citations and alternate findings and conclusions where there was disagreement. Complainant filed 76 pages of proposed findings and conclusions on June 10, 1985. After requesting a 10 day extension of time, Respondents on June 18, 1985 filed a two-page submission which contained no specific citations to evidence or legal authority. Complainants filed reply submissions on June 19 and July 12, 1985. Respondents filed a reply submission on July 8, 1985 (Respondents' July 8 submission). All proposed findings, proposed conclusions and arguments have been considered. To the extent indicated, they have been adopted. Otherwise they have been rejected as irrelevant or not supported by the evidence.

DECISION ON MOTION FOR RECONSIDERATION AND REVERSAL OF JANUARY 28, 1985 DECISION AND ORDER ON MOTION TO DISMISS COMPLAINTS AGAINST HARRIS FRIEDLANDER AND MICHAEL MEADE

After receiving and considering testimony and other evidence at a hearing in December 1984 and considering the parties' proposed findings of fact and conclusions of law, by Decision and Order dated January 28, 1985 I determined that Harris Friedlander was properly named a Respondent in Docket Nos. 19/104, 19/162 and other cases, and that Michael Meade was properly named a Respondent in Docket No. 19/104 and other cases. By Order dated May 17, 1985, Michael Meade was added as a Respondent in Docket No. 19/162, since Docket Nos. 19/104 and 19/162 involve identical products and the same evidence.

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By Order dated May 20, Respondents Harris Friedlander and Michael Meade were advised that at the time set for filing proposed findings and conclusions, they could also file memoranda supporting reconsideration and reversal of the January 28 Decision. These memoranda were filed on June 12. Complainant filed a response on June 18. Upon reconsideration of the entire record and all of the briefs and memoranda, I find the January 28 Decision to be correct.

The memorandum urging reversal indicated no basis for reversal. In the separate memorandum urging reconsideration, Respondents con tended the decision should be reversed based upon their assertions that Postal Inspector Cantley lied n testifying, and that Complain ant did not comply with the Jencks Rule in connection with Inspector Cantley's estimony.

t is not necessary to determine whether Respondents' allegations are correct because the January 28 Decision and Order would have been factually and legally supported by the evidence even if Inspector Cantley had not testified. nspector Cantley's November 1984 testimony, which relates to different issues, was not considered in connection with he January 28 Decision. His testimony at the December hearing was limited to: (1) describing locations of Respondents' business, and (2) describing several Postal Service forms and a letter by Lee H. Harter, Esq. The locations of Respond ents' business were not relevant to the issues addressed in the January 28 Decision. The Postal Service forms were under seal and, therefore, self-authenticating and independently admissible pursuant to Federal Rule of Evidence 902(1). Inspector Cantley's testimony about the various blocks on the forms was also not necessary to the

Decision. The importance of the forms was that two of them were signed by Harris Friedlander as vice president (CX3-7a and 7c); one was signed by Michael Meade as general manager (CX2-1a); two were signed by Mitchell K. Friedlander who referred to Harris Friedlander as vice president of W. G. Charles (CX2-1b) and Bio Technic Labs CX2-6a); and the letter of Mr. Harter as attorney for Robertson-Taylor referred to Harris Friedlander as a responsible corporate representative (CX2-8). Not only were all of these exhibits under seal with the exception of Mr. Harter's etter, but Harris Friedlander and Michael Meade did not deny that they had signed the forms as vice president and general manager, respectively, and did not deny the authenticity of the signatures of Mitchell Friedlander and Lee H. Harter, also present at the hearing. Since this evidence was reliable and admissible without Inspector Cantley's estimony, issues as to Inspector Cantley's credibility are irrelevant.

Therefore, the January 28, 1985 Decision and Order is affirmed.

FINDINGS OF FACT

. The Use of the Mail

Mitchell K. Friedlander owns Intra-Medic Formulations, Inc. Intra-Medic wholly owns W. G. Charles Company, The Robertson-Taylor Company and Customer Service Distribution Center, Inc. A similar finding was made in the January 28, 1985 Decision and Order on Motion to Dismiss and this was not denied by Respondents in their July 8 submission.

Mitchell K. Friedlander is the president and principal decision maker in Respondent corporations which he wholly owns and controls. (January 28, 1985 Decision and Order on Motion to Dismiss). It was determined that there was a complete identity of interests between Mr. Friedlander and his corporations, despite Respondents' protests to the contrary. Therefore, Lee H. Harter, Esq. was considered to also represent Mr. Friedlander. Mr. Friedlander was permitted to personally participate in the hearing as a matter of courtesy and convenience to Respondents (Tr. 2176-77; ny Memorandum For Record dated May 6, 1985).

Mitchell K. Friedlander's residence address is 508 Bontona Avenue, Ft. Lauderdale, Florida 33310. (Response to Request for Admissions No. 8 in Docket No. 19/182 filed by the Corporate Respondents on January 29, 1985). However, in accordance with Mr. Friedlander's request, service of papers will also be made to him c/o The Robertson-Taylor Company, 1110 West Sunrise Blvd., Ft. Lauderdale, FL 33311-1337. Michael Meade and Harris Friedlander are properly named as individual Respondents in these cases (Orders of January 28 and May 17, 1985; Decision on Motion for Reconsideration and Reversal herein).

Harris Friedlander's residence address is 2175 State Road 84, Ft. Lauderdale, Florida 33312 (Tr. 1426). However, in accordance with Harris Friedlander's request, service of papers will also be made to him at 1110 W. Sunrise Boulevard, Ft. Lauderdale, Florida 33311 (Letter of Harris Friedlander to Judge Bernstein filed February 13, 1985).

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Michael Meade's residence address is 2615 N.E. 49th Street, Ft. Lauderdale, Florida (Complainant's proposed finding No. 6, Tr. 1790). Therefore, the address in the captions for Michael Meade is amended to this address. However, in accordance with Mr. Meade's request, service of papers will also be made to him at 1110 W. Sunrise Boulevard, Ft. Lauderdale, Florida 33311 (Letter of Michael Meade to Judge Bernstein filed February 13, 1985).

Respondents solicit orders through the mail for Intercal-SX to W. G. Charles Company, 3952 N. Southport, Chicago, Illinois 60613. (C3-1, 2, 3b, c and g, 7, p. 3, 8d, f, g, 9, and 10; admitted in Respondents' July 8 submission).

Respondents solicit orders through the mail for Metabolite-2050 to The Robertson-Taylor Company at 1110 W. Sunrise Boulevard, Ft. Lauderdale, Florida 33311 (CX3-24, 25, 27b and e, 31c, and 32, admitted in Respondents' July 8 submission) and at 135 E. Oakland Park Boulevard, Ft. Lauderdale, Florida 33334 (CX 3-11, 12, 14b, 14c, 19, and 23c; admitted in Respondents' July 8 submission).

Any mail stop order for Docket Nos. 19/104 and 19/162 should also apply to Customer Service Distribution Center, Inc. at 997 N.W. 11th Avenue, Ft. Lauderdale, Florida 33311 since Respondents' products are received in packages using that return address. These packages contain packing slips which also use that name and address (CX3-6, 28 and 30). Therefore, customers may reasonably be expected to use the Customer Service address for inquiries, problems and reorders.

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However, Complainant has not supported the inclusion of 7770 West Oakland Park Boulevard, Landmark Bank Building, Suite 210, Sunrise, Florida 33321-6729 as an address for which mail to W. G. Charles Company should be stopped in Docket No. 19/104, or as an address for which mail to Intra-Medic Formulations, Inc. should be stopped on Docket No. 19/162. Respondents' advertisements appear in publications of general circulation (CX3-9, 10, 11, 17, 24, and 32; admitted in Respondents' July 8 submission).

Respondents are all part of a single enterprise directed by Mitchell K. Friedlander through various corporations using various advertisements for Intercal-SX and Metabolite-2050.

I. The Advertising Representations (P.S. Docket No. 19/104)

Respondents' advertising materials, including product inserts accompanying reorder solicitations, make the representations alleged in subparagraphs 8 (a), (b), (c), (d), and (e) of the Complaint. Specific reasons for these findings are as follows:

a) Ingestion of Intercal-SX will cause significant weight loss in virtually all users.

CX3-1, 8f and 10

LOSE WEIGHT WITHOUT DIETING]

Works from within your body to form a protective coating around the foods you eat, reducing the total number of calories BEFORE THEY CAN BE TURNED INTO POCKETS OF STORED FAT]

INTERCAL-SX is a powerful, bio-active formula that "NEUTRALIZES" EXCESS CALORIES from within your body. INTERCAL-SX actually absorbs excess fats and carbohydrates AFTER YOU HAVE EATEN THEM, preventing their further conversion into pockets of unsightly, figuredestroying stored fat.

No matter how overweight you are, no matter how many "diets" you've tried before, no matter how many weeks, months, or years you have been trying to lose excess pounds and inches of stubborn fat, flab and cellulite just to be frustrated by "diet programs" that are impossible to live with. No matter how many times you have failed before, believe us, you are not alone) this time will be different. THIS TIME YOU ARE GUARANTEED SUCCESS WITH INTERCAL-SX.

YES] Everyone who used INTERCAL-SX lost weight]

EVERYONE]

The results are medically documented.

Use of words such as "highly significant decrease in body weight," "powerful," and "neutralizes excess calories" conveys the impression that this product causes significant weight loss. Language such as "everyone," and "GUARANTEED SUCCESS," represents that the weight loss this product causes can be expected by virtually all users.

CX-3c, 8d, and 9

Guaranteed weight loss without dieting

LOSE UP TO 68 POUNDS WITHOUT DIETING

At last, the scientific community has developed what can only be called the "miracle" weight loss compound a potent and powerful compound that is specifically designed for tough, adult weight loss problems. That's right] No matter how long you've been overweight, no matter how hard you've tried to lose those embarrassing excess pounds and inches only to fall short of your goal, now there is a scientifically-developed, medically-verified answer to your adult weight loss problem -- INTERCAL-SX

NEVER BE FAT AGAIN]

The language, "Lose up to 68 pounds without dieting" conveys the impression to the average reader that the results can reasonably be expected. See: Weider Distributors, Inc., P.S. Docket No. 3/27

P.S.D. Nov. 4, 1974); Iso-Tensor Plan, P.S. Docket No. 3/30 (P.S.D. May 23, 1975); The New Body Boutique, Inc., P.S. Docket No. 10/169 (P.S.D. July 7, 1982).

Quantification of expected weight loss results, combined with representations that the product has been medically verified, conveys the impression that significant weight loss results may be expected by the user. Those assertions, together with the claim that any user, regardless of past experience with diet products, can expect to lose weight, convey the impression that the signifi cant weight loss results can be expected by virtually all users.

Also the warning emphasizes the product's great effectiveness. It states, "NOTICE: Intercal-SX is an extremely powerful potent and effective weight loss compound."

CX3-3b, a product insert, reads:

With INTERCAL-SX you will be beginning a most REVOLUTIONARY WEIGHT LOSS program. This caloric neutralizing" formulation has the industry buzzing because INTERCAL-SX lets you LOSE WEIGHT EFFORTLESSLY -- WITHOUT DIETING, CALORIE COUNTING AND EXERCISE. You can forget about failure, no matter how many times you have tried to lose weight only to abandon your intentions out of frustration. INTERCAL-SX will help you reach YOUR GOAL so quickly, you won't have time to become discouraged. And that's

GUARANTEED. But don't take our word for it -- or the medically documented double-blind study that conclusively proved that EVERYONE who took the INTERCAL-SX formulation LOST SIGNIFICANT AMOUNTS OF WEIGHT - see for yourself. We're confident that you will be amazed at the results.

The claims that this is a "revolutionary" weight loss product, that there are no "failures," that the product "neutralizes," that the effects are "medically documented," and that "everyone" lost significant amounts of weight, convey the impression that virtually all users will lose significant amounts of weight.

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CX3-7, an instruction booklet that accompanies Intercal-SX, states: WITH THE EXCLUSIVE INTERCAL-SX YOU WILL LOSE ALL OF THE WEIGHT YOU WANT TO LOSE -- AUTOMATICALLY. for the serious dieter who needs to lose more than 20 pounds, INTERCAL-SX eliminates any chance for you to fail.

There is no chance of failure because INTERCAL-SX does it all-scientifically.

Medical studies have documented the amazing success of this wonderful weight loss formulation. In a medically documented, double-blind study performed at a major university, it was conclusively shown that everyone who used the INTERCAL-SX formulation -- Yes 100 percent of those who undertook the study -- lost weight .... this same guaranteed weight loss is yours.

Because INTERCAL-SX is so powerful, and its weight loss effects are automatic, you can quit worrying about ever again being fat.

The claims that users can lose "all" the weight they wish, that this program is for users who wish to lose "more than 20 pounds," that there are no "failures," that the effects are medically documented, and that the effects are "guaranteed" and "automatic" with this "powerful" product together convey the impression that the product causes significant amounts of weight loss in virtually all users.

b) Ingestion of Intercal-SX will cause significant weight loss without calorie restricted diets or exercise.

CX3-1, 8f and 10

LOSE WEIGHT WITHOUT DIETING]

Works from within your body to form a protective coating around the foods you eat, reducing the total number of calories BEFORE THEY CAN BE TURNED INTO POCKETS OF STORED FAT]

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INTERCAL-SX is a powerful, bio-active formula that "NEUTRALIZES" EXCESS CALORIES from within your body. INTERCAL SX actually absorbs excess fats and carbohydrates AFTER YOU HAVE EATEN THEM, preventing their further conversion into pockets of unsightly, figure-destroying stored fat.

This revolutionary new concept not only eliminates dieting, eliminates calorie counting, eliminates strenuous exercise, but most importantly eliminates fat, flab and ugly cellulite so easily, so effectively and so efficiently that you will soon know exactly why the entire diet industry is talking about this exciting breakthrough discovery.

By claiming that users will lose weight without the need for "calorie counting," and that Intercal-SX "eliminates dieting," the advertisements represent that users can lose weight "without dieting."

CX3-3c, 8d and 9

Guaranteed Weight Loss Without Dieting ...

The Foods You Love To Eat.

LOSE UP TO 68 POUNDS WITHOUT DIETING

NEVER BE FAT AGAIN]

This revolutionary new concept not only eliminates dieting, eliminates calorie counting ...

By claiming that users will "never" be fat again, regardless of attention to diets, without giving up foods they love to eat, Respondents convey the impression that the product causes significant weight loss in users without the need for calorie-restricted diets.

CX3-3b

LOSE WEIGHT EFFORTLESSLY -- WITHOUT DIETING,

CALORIE COUNTING AND EXERCISE.

The representation of significant weight loss in users without calorie-restricted diets or exercise is expressed in the above language.

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CX3-7

INTERCAL-SX eliminates any chance for you to fail. This special formulation works by itself, WITHOUT dieting, WITHOUT calorie counting . . . This advertisement represents that the user need only ingest the product to lose weight, since it "works by itself." Further, users do not need to adjust their caloric balances by dieting.

c) Ingestion of Intercal-SX prevents foods from being converted into stored fat.

CX3-1, 8f and 10

Works from within your body to form a protective coating around the foods you eat, reducing the total number of calories BEFORE THEY CAN BE TURNED INTO POCKETS OF STORED FAT]

INTERCAL-SX is a powerful, bio-active formula that "NEUTRALIZES" EXCESS CALORIES from within your body. INTERCAL-SX actually absorbs excess fats and carbohydrates after you have eaten them, preventing their further conversion into pockets of unsightly, figure-destroying stored fat.

These quotations describe the mechanism of action; the product blocks the absorption of calories by forming a protective coating" around calories or by "absorbing " them, thereby "preventing" their conversion into stored fat.

CX3-3c, 8d and 9

Now you can eat all you want and still lose weight] INTERCAL-SX actually bonds with ingested foods, thereby altering the time contact is made with the intestinal membrane.

INTERCAL-SX was developed and tested for adults only (anyone over 18 years of age) because the adult metabolism requires a very special weight loss formulation -- a powerful action-specific compound that helps to "short circuit" the fat building cycle BEFORE your body turns excess calories into figure-destroying fat.

These advertisements claim that Intercal-SX "bonds" with food, alters the food's contact with the intestinal wall, and "short circuits" the fat building cycle before the body turns excess calories into fat. In this way, the advertisements convey the impression that ingestion of Intercal-SX prevents foods from being converted into stored fat.

CX3-7

This proven, powerful formulation works from WITHIN to limit your system's ability to absorb excess fat-creating calories.

NTERCAL-SX is the proven automatic caloric "neutralizing" compound.

This advertisement also represents that the product "limits" the body's ability to "absorb ... calories" and describes ntercal-SX as a caloric-neutralizing compound.

d) The weight loss claims for Intercal-SX are supported by the results of scientifically sound clinical studies.

This proposed finding was not disputed in Respondents' July 8 submission. The May 20, 1985 Order required each party to reply to the opposing party's proposed findings. The parties were advised that unless an opposing party's proposed finding was specifically denied with supporting citations and an alternate finding, it would be deemed admitted. Respondents' comment, "no objection," is consequently deemed an admission. Therefore, I find that this epresentation was made. This finding is also based upon quotations from advertisements set forth in pages 15-18 of Complainant's proposed findings.

e) Respondents have accurately reproduced an excerpt from Acta Medica Scandinavia, Vol. 208, pp. 45-48 in certain of its printed advertisements, including Exhibit 1.

CX3-1, 8f, and 10

Finally a weight loss compound that delivers exactly what it promises. But don't take our word for it. The results are medically documented. Published in Acta Medica Scandinavia (Volume 208, pages 45-48), this amazing study was uncovered by a team of U.S. researchers during a computer search of Excerpta Medica and Medicine (2 major medical data bases). What follows is a word for word excerpt from the actual medical abstract ...

A highly significant decrease in body weight (62.9 ± 2.1 vs. 60.4 ± 2.4 kg. p is less than 0.0005, paired comparison) was seen in subjects receiving cyamopsis tetragonolobus (INTERCAL-SX) whereas body weight remained constant in he other two groups IT IS CONCLUDED THAT THE DAILY INGESTION OF 15 MG. sic OF INTERCAL-SX RESULTS IN PERMANENT WEIGHT-LOSS..."

II. The Advertising Representations (P.S. Docket No. 19/162)

Respondents' advertising materials, including product inserts accompanying reorder solicitations, make the epresentations alleged in subparagraphs 8(a), (b), (c), (d), (e), and (f) of the Complaint.

Specific reasons for these findings are as follows:

a) Ingestion of Metabolite-2050 will cause significant weight loss in virtually all users.

The theme and central message of Respondents' advertisements is "Weight Loss]" See headline of CX3-17 p. 2, CX3-9. In CX3-24, a full-page advertisement in the July 1984 Cosmopolitan, the weight loss theme is expressed in the headline as "THE ULTIMATE CURE FOR FAT." The promise of "significant" weight loss is found in CX3-17, p. 1. When you need to lose 15 pounds or more, take METABOLITE-2050 . . . .

The text below that headline contains two references to the prospective customer's need to lose more than 15 and up to 40 pounds. In that paragraph, and again in the last paragraph on page 1 where it is in bold print, are references to "tough weight-loss problems." The same references are repeated in the package insert material, (CX3-23b and 31b), which also includes reorder forms, (CX3-23c and 31c). In the centered and boxed print on page 2 of CX3-17 and in CX3-19 is a reference to "highly significant decrease in body weight." The ordinary reader would understand "significant" in its usual sense rather than as it is technically used in a statistical sense. That usual meaning is "important, of consequence" Random House Dictionary of the English Language (1967) or "having meaning, full of import, weighty, notable" Webster's Third New International Dictionary (1968).

In the lower portion of the boxed text and in bold print is the language,

The research RESULTS ARE STAGGERING . . .

EVERYONE LOST SUBSTANTIAL WEIGHT PERMANENTLY.

On page 1 of CX3-17 at bottom center is the subheading

"I lost 31 pounds so far without even dieting]"

The message that the user will lose significant amounts of weight is repeated twice in CX3-32, a two-page advertisement in the September 1984 Playgirl. Under the large headline of "EAT ALL YOU WANT AND STILL LOSE WEIGHT," the text tells the reader,

There has truly been a major breakthrough in the science of dramatic and permanent weight loss. Science has produced a new, medically-documented weight loss compound specifically for those who need to lose a large amount of weight . . ."

Under "THE ULTIMATE CURE FOR FAT" headline in CX3-24 appears,

If you need to LOSE WEIGHT, and we mean LOTS OF WEIGHT - 10 pounds, 15 pounds, 20 pounds, 30 pounds, 50 pounds and more - . . .

nCX3-32, as in CX3-24, the photograph of a slender woman wearing extremely large shorts emphasizes "significant" weight loss by the use of Metabolite-2050. The "before" and "after" photographs on page 1 of CX3-17 also represent that significant amounts of weight will be lost by taking Metabolite-2050.

That everyone will experience the promised weight loss with Metabolite is represented by the bold subheading, "FACT: EVERYONE LOST WEIGHT: TESTS PROVE 100% SUCCESS," followed by language which repeats and reinforces that message.(CX3-11 p.2, CX3-17 p. 2, CX3-19, CX3-24, CX3-32 p.2).

b) Ingestion of Metabolite 2050 will cause significant weight loss without willpower, calorie restricted diets or exercise.

The advertisement at CX3-17 emphasizes:

AUTOMATIC WEIGHT-LOSS

NO calorie counting]

NO dieting]

NO food restrictions]

NO expensive fat clinics]

NO exercise]

[n the same advertisement, the product is described to as "The powerful Scandinavian SUPERPILL]" -- an indication hat the pill alone is responsible for an automatic weight loss. In the text near the middle of page 1, the message is epeated:

METABOLITE-2050 works by itself, without dieting, without calorie counting, without special foods, without powdered mixes, without strenuous exercise, without anything else at all. For the first time, we can truly say there is now a compound that will produce AUTOMATIC WEIGHT-LOSS.

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The automatic, i.e., effortless, achievement of weight loss is repeated in one sub-headline:

FACT: "EAT AS MUCH AS YOU WANT AND STILL

LOSE POUNDS & INCHES OF EXCESS FAT]

The Randee N. testimonial in CX3-17 says "you don't have to change your life style at all." On page 2 of that advertisement, the message is repeated:

WHAT DOES THIS MEAN IN ENGLISH? Now you can eat all you want and still lose weight, without will power and without dieting,automatically.

The same message is repeated in the product inserts, CX3-23b and 31b.

CX3-24 and 32 also represent weight loss without effort or diet. The headlines read, "EAT AS MUCH AS YOU WANT AND STILL LOSE WEIGHT] NEVER DIET AGAIN]" This is followed in CX3-24 by the subheadings:

NO CALORIE COUNTING.

NO STRENUOUS EXERCISE]

NO MORE WILLPOWER]$

NO MORE DIETING]

c) Ingestion of Metabolite-2050 prevents foods from being converted into stored fat.

CX3-11 reads at page 2:.

FACT: THE SECRET IS THE FORMULA METABOLITE-2050 has definitely been determined to increase satiety through its binding action to ingested food stuffs. WHAT DOES THIS MEAN IN ENGLISH? Now you can eat all you want and still lose weight ..."

The nearly identical message appears in the package insert received with the Metabolite ordered from CX3-11 (CX3-6, p. 2). In other

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advertising materials, Respondents add just after "ingested food stuffs:"

. . thereby altering gastric emptying time, decreasing the normal caloric absorption rate and in effect lowering total caloric capacity (CX3-17 p. 1, 3-19, 3-23b).

In other advertisements, Respondents represent in a sub-headline:

FACT: METABOLITE-2050 RENDERS FAT CALORIE FREE]

(CX3-24, 3-32).

(d) The weight loss claims for Metabolite-2050 are supported by the results of scientifically sound clinical studies.

This proposed finding was not disputed in Respondents' July 8 submission. The May 20, 1985 Order required each party to reply to the opposing party's proposed findings. The parties were advised that unless an opposing party's proposed finding was specifically denied with supporting citations and an alternate finding, it would be deemed admitted. Respondents' comment, "no objection," is consequently deemed an admission. Therefore, I find that this representation was made. This finding is also based upon quotations from advertisements set forth in pages 24 and 25 of Complainant's pro posed findings.

(e) Respondents have accurately reproduced an excerpt from Acta Medica Scandinavia, Vol. 208, pp 45-48 in certain of its printed advertisements, including Exhibit 1.

This proposed finding also was not disputed in Respondents' July 8 submission. Respondents' only comment similarly was "no objection." Therefore, the finding is deemed admitted and I find that this representation was made. This finding is also based upon a quotation from advertisements set forth in page 26 of Complainant's proposed findings.

(f) An obese person who takes Metabolite-2050 may reasonably expect to lose weight while continuing to eat all he or she wants.

This proposed finding also was not disputed in Respondents' July 8 submission. Respondents' only comment was "no objection." Therefore, the finding is deemed admitted and I find that the representation was made. This finding is also based upon quota tions from advertisements set forth in page 27 of Complainant's proposed findings.

V. Qualifications of the Scientific Witnesses

Medical doctors William R. Ayers, Albert I. Mendeloff, and Richard C. Eastman testified for Complainant. Medical doctor Thomas M. S. Wolever and Stephen C. Woods, Ph.D., testified for Respondents.

Dr. William R. Ayers

Dr. William R. Ayers is Associate Professor of Internal Medicine and Associate Dean for undergraduate medical education at the Georgetown University Medical School, Washington, D.C. (Tr. 2194). He is certified in internal medicine (Tr. 2195), a fellow in the American College of Physicians (Tr. 2198), and co-founder and former director of the Diet Management Clinic at the Georgetown University Hospital (Tr. 2199-2200). He has published articles on the manage ment of obesity and on the use of computers in medicine (Tr.2224, CX3-65). I found Dr. Ayers to be a credible witness. He demon strated great expertise concerning principles of weight loss and diet management. He also testified logically in his analysis of scientific studies. Dr. Ayers' testimony in Docket No. 19/182, which was heard together with these cases, indicated weaknesses and

misunderstandings with regard to peptide chemistry. However, Dr. Ayers' testimony demonstrated a good understanding about the state of scientific knowledge concerning guar.

Dr. Albert I. Mendeloff

Dr. Albert I. Mendeloff is Professor of Medicine at the Johns Hopkins University School of Medicine, Baltimore,

Maryland (Tr. 2858). He is a gastroenterologist, a physician who specializes in digestive diseases and disorders of the digestive system. He is a fellow in gastroenterology, past president of the American Gastro enterological Association (Tr. 2859), Governor of the American College of Physicians for the State of Maryland (Tr. 2852) and editor of the American Journal of Clinical Nutrition (Tr. 2864). His research and practice interests encompass nutritional disorders, absorption and digestion, dietary fiber, diabetes and obesity (Tr. 2865-66). Respondents stated that Dr. Mendeloff "is eminently well qualified to testify and evaluate the studies" (Tr. 2867), and described him as "an expert's expert" who is 'one of the world's greatest authorities on guar" (Tr. 2844). Dr. Mendeloff demon strated great expertise concerning the product at issue in these cases. I found him to be an extremely credible and reliable witness. He also testified knowledgeably and persuasively about weight loss concepts and scientific studies.

Respondents accused Dr. Mendeloff of being untruthful and biased. They first argued that he had misrepresented a guar study that he conducted. Later they contended that he was biased because: (1) he was involved in a competing mail order business, (2) he may have incorrectly believed that Respondents delayed payment of his

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witness fee and, (3) he made negative comments to Dr. Wolever about Respondents. None of these accusations led me to conclude that Dr. Mendeloff testified untruthfully.

Dr. Mendeloff testified that he conducted a study using a grant from the United States Department of Agriculture for the purpose of determining guar's safety. Guar was administered in the form of bars made by the National Biscuit Company. Placebo bars which tasted exactly the same were also developed and administered. He stated that these were 'fairly high calorie bars." At the end of the six month study, no differences in subjects' body weights were noted (Tr. 3090-94). He stated that this demonstrated how tough it is to make people lose weight, and that the subjects kept eating 'even though they had all these extra calories we provided them" (Tr. 3093). Respondents contended that Dr.Mendeloff's co-researcher, Dr. Michael McIvor, contradicted several of Dr. Mendeloff's statements about the study in a recently taped telephone interview. Respondents were not permitted to introduce the recording of the conversation or the testimony of their interviewer, Mr. Lester, to prove the truth of Dr. McIvor's statements, but they were permitted to call Dr. McIvor as a witness (Tr. 3199-3201, 3261-62). Dr. McIvor agreed to testify (Tr. 3351), but Respondents subsequently decided not to call him as a witness (Lee H. Harter's February 25 mailgram). Thus Respondents never substantiated their accusation that Dr. Mendeloff did not testify credibly about the study.

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Respondents also argued that Dr. Mendeloff was biased, because according to Mr. Friedlander, "We have been informed that Dr. Mendeloff is selling medication through the mail in direct compe tition with me" (Tr. 4937). Mr. Friedlander appeared to refer to a "mail order diet" allegedly distributed by the American Digestive Disease Society, a non-profit organization with which Dr. Mendeloff is associated (Tr. 4937-39, 4944, 4956-57, 5066-67). I found this accusation to be too far-fetched to constitute proof of bias (Tr. 4938, 4940). Dr. Mendeloff's association with the sale or distribu tion of diets by the American Digestive Disease Society does not place him in direct competition with Respondents, nor does it provide him a motive to testify falsely about Respondents' products and medical and scientific matters.

In a motion to strike testimonies of Drs. Ayers and Mendeloff filed June 12, 1985, Respondents also argued that because of a post script in a September 13, 1984 letter by Ms. McFeeley to Dr. Mendeloff referring to a "payment problem," which Respondents' contended referred to a delay in their payment of Dr. Mendeloff's witness fee through no fault of theirs, Dr. Mendeloff became biased against Respondents. This accusation also seems absurd. I do not believe that a man of Dr. Mendeloff's stature would testify falsely because of a delay in payment of his bill.

The final accusation of bias relates to Dr. Wolever's testi mony. Dr. Wolever testified that he telephoned Dr. Mendeloff on April 9, 1985, the evening after Dr. Wolever's first day of testimony in this hearing. Dr. Wolever stated that Dr. Mendeloff

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said that Respondents were crooks who, after one mail box was closed down, moved to another city and opened another one (Tr. 5606). Although this testimony indicates Dr. Mendeloff's negative view of Respondents as of April 9,

Dr. Wolever's statements do not destroy Dr. Mendeloff's credibility. Dr. Mendeloff completed his testimony almost three weeks before this conversation with Dr. Wolever. Assuming the accuracy of Dr. Wolever's testimony, it is not clear whether Dr. Mendeloff's negative opinion formed by April 9 preceded any of his testimony, or that these views affected his testimony. It would not be surprising after the many incidents in which Respondents verbally attacked Dr. Mendeloff during his testimony, that Dr. Mendeloff subsequently formed a negative impression of Respondents.

Dr. Richard C. Eastman

Dr. Richard C. Eastman is Associate Professor of Medicine at the Georgetown University Medical School, and chief of the Division of Endocrinology and Metabolism, an area which includes the treatment of obesity. Dr. Eastman is consultant to Georgetown's Diet Manage ment and Eating Disorders Program. He also consults directly with patients, some of whom have obesity problems. He is director for clinical research for the diabetes unit. He is a board certified nternist (Tr. 2043-45, CX3-67). Dr. Eastman has impressive credentials, having published approximately 25 articles. I found Dr. Eastman to be highly knowledgeable about weight loss principles and about peptide chemistry. He testified n a sincere, forthright manner and carefully considered the questions in an effort to be helpful and truthful. I found him o be an extremely reliable witness although he did not testify specifically about guar.

Dr. Thomas M. S. Wolever

Dr. Thomas Wolever is a licensed physician in England and in Ontario, Canada (Tr. 5405-06). He is currently working oward a Ph.D. in the Department of Nutritional Sciences at the University of Toronto. His doctoral research involves nutrition in the treatment of diabetes and lipid problems (Tr. 5404). Dr. Wolever has excel lent credentials and substantial expertise with regard to guar. Dr. Wolever was an extremely interesting and highly informative witness. However, on several critical issues, I found his testimony less reliable than that of Dr. Mendeloff. Dr. Mendeloff estified consistently despite lengthy cross-examination. Although Dr. Wolever demonstrated candor in condemning Respondents' advertising language, his testimony at other times was unbelievable and contradicted by his subsequent estimony.

Dr. Stephen C. Woods

Dr. Stephen C. Woods is Professor of Psychology, chairman of the Department of Psychology, and Adjunct Professor of Medicine at the University of Washington. Dr. Woods holds the Ph.D. in physiology, biophysics, and psychology. He has worked in the field of endocri nology since the late 1960s and has authored more than 100 scienti fic articles, he majority of which deal with metabolism, food intake, and peptide hormones. Dr. Woods is the National Science Foundation's expert on food intake. He serves on the editorial boards of two peer review journals, American Journal of Physiology and Behavioral Neurobiology. He is organizer of the 1986 Inter national Congress of Physiology of Food and Food Intake (Tr. 5113-15, RX3-36). Dr. Woods did not testify about guar. He

estified mainly about a product involved in another case, but some of his testimony related to relevant issues concerning scientific method. I found his credentials to be impressive. V. Definition of Terms and Background Findings

Dr. Ayers stated, and Respondents accepted the definition, that obesity is the state of being 15 percent or more over the deal weight for one's height, age and sex as defined by tables published periodically by, among others, the Metropolitan Life Insurance Company (Tr. 2201-02, Respondents' July 8, 1985 submission, p. 8, para 44).

As Dr. Ayers and Dr. Mendeloff testified, obesity is a complex problem that is not simple to treat. Nutrition, energy balance, exercise and behavior are important aspects of the problem. (Tr. 2202-03, 2268-69, 2873-76). Dr. Wolever also characterized obesity as a complex problem (Tr. 5463). To lose weight, a person must create an energy or calorie deficit so that the body will use stored energy or fat to meet its current energy needs (Tr. 2203, 3134, 3684). Satiety in humans is the sense of fullness that normally leads to cessation of eating. Dr. Ayers gave this definition (Tr. 4762-63), and Dr. Woods agreed that the definition was reasonable (Tr. 5215). Dr. Eastman's similar definition was, "the sense of having had enough to eat, being full" (Tr. 2092). Satiety signals that cause a lean person to stop eating are not equally

effective for obese persons. Dr. Ayers testified that satiety does not necessarily cause obese people to eat less, that there s no necessary relationship between increased satiety and weight loss,

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nd that the normal satiety signals do not apply in obese people (Tr. 3381, 4128). When Dr. Woods was asked whether ne believed "that producing the feeling of satiety in an obese person leads inevitably to weight loss for that person," he eplied, "Certainly not" (Tr. 5289-90). Dr. Wolever agreed that just because a substance produces satiety does not necessarily mean that the substance also produces weight loss (Tr. 5462-63, 5415, 5557). Dr. Mendeloff emphasized hat many patients who say they feel full in hunger-satiety ratings continue to eat, ignoring the feeling of fullness (Tr. 3841, 3880).

As scientific experts for both sides testified, to establish a claim that a substance will be effective to achieve a particular esult, the claim must be established by sound scientific evidence (Tr. 2079-82, 2273, 3068, 5283, 5434, 5550-51). Dr. Ayers said that efficacy claims for Anorex-CCK, a product involved in the companion case, must be treated as false in he absence of information to support them (Tr. 2972-74). Dr. Woods said that until a substance is tested using the node of administration for which claims are made, there is no way to know how that substance will work (Tr. 5283). He stated that, in the absence of data, a claim or hypo thesis is an open question; there is simply no information (Tr. 5197-98). Dr. Wolever also indicated that data are required in order to support a medical opinion (Tr. 5434-35, 5550-51).

Formation of a scientific or medical consensus requires that results of studies be disseminated among members of the scientific community and be reviewed by others working in the field. Presenta tions of data at meetings and conferences lend themselves to that

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function as do having papers reviewed by experts in the field prior to their publication in peer reviewed journals (Tr. 2270, 2956-57, 3072). Persons who perform work and who follow work in a field are in positions to be aware of a consensus in that field.

VI. The Truth or Falsity of the Representations

Intercal-SX and Metabolite-2050 each consists of tablets of cyamopsis tetragonolobus (CX3-5, 3-15, 3-29). The only difference between Intercal-SX and Metabolite-2050 tablets, other than their names, seems to be the quantities of liquids which the user is told to take with tablets when ingesting three daily doses. Test purchases of Intercal-SX and Metabolite-2050 each contained 1,500 mg of cyamopsis tetragonolobus per tablet (CX3-5, 3-15). A later test purchase of Metabolite-2050 contained 750 mg of cyamopsis tetragonolobus per tablet but required the user to take twice the number of tablets (CX3-29).

Cyamopsis tetragonolobus is the latin name for guar, a product made from seeds of the cluster plant. Guar is a dietary fiber. A dietary fiber is the portion of food obtained from plants which is not digested by the enzymes of the gastrointestinal tract (RX3-40, p. 1). When guar is mixed with water it swells and becomes gelatinous. It is used as a thickening agent for such foods as ice cream and salad dressings. It is also used to thicken skin creams and lotions, for baking to give better loaf quality to bread, and in oil wells to thicken sludge (Tr. 2878-79, 3073, 3075-76, 5413). Guar is grown and commonly used in India (Tr. 5414, 2880). Dr. Wolever testified that guar "is a very old part of the diet. People have been eating guar for many hundreds or even thousands of years. It's a staple" (Tr. 5414). Although guar is tasteless, when it

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combines with saliva in the mouth, it quickly forms a gel, swells and becomes unpleasant and bitter tasting. Like other fibers, guar adds bulk to the intestinal tract. It is believed that guar and other fibers may be helpful in treating diabetes since they have been shown to lower blood sugar levels (Tr. 2206, 2880, RX3-40, pp.1-2). Guar also slows gastric emptying and lowers cholesterol levels (Tr. 3850-52. RX3-40. p. 2). Guar was discussed at an international fiber conference held in Washington, D.C. in the Spring of 1984 and attended by Drs. Mendeloff and Wolever (Tr. 5596).

On February 15, the fourth day of the hearing, Respondents presented a new issue. Respondents stated that they wished to fill all existing orders for Intercal-SX and Metabolite-2050 with lej guar, a granulated form of guar manufactured by the Lej Pharmaceutical House in Sweden (Tr. 2901-03, 3010). Mr. Friedlander explained:

> "In the ads and the coupons and orders that are being held, it says a three week supply of Metabolite-2050. If I had my mail, I would supply them with a three week supply of Metabolite-2050. No one is going to be able to tell me that these people know what they are going to get when they order the product other than a three week supply of Metabolite-2050" (Tr. 2908-09).

Mr. Harter said that lej guar would be taken in amounts of 20 grams per day in two 10 gram doses. The guar in tablet form provided only 15 grams per day. Mr. Harter stated that Respondents would no longer sell guar in tablet form (Tr. 3013). The parties considered a consent agreement with respect to guar tablets, but were unable to reach agreement (Tr. 3049, 5452).

It is proper to determine falsity issues with respect to both the guar tablets and the guar granules within these proceedings.

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With respect to guar in tablet form, United States v. W. T. Grant Co., 345 U.S. 629, 632 (1953) instructs that voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e., does not make the case moot .... A controversy may remain to be settled in such circumstances ... The defendant is free to return to his old ways. This, together with a public interest in having the legality of the practices settled, militates against a mootness conclusion" Citations to other cases omitted . The parties agreed to litigate the truth or falsity issues and presented evidence regarding the lej guar products, and the Postal Service decisions prohibiting the issuance of advisory opinions do not bar decisions regarding these products.The decisions -- Paul Harvey, P.S. Docket No. 8/10 (P.S.D. on Appl. for Mod. of Mail Stop Order, August 29, 1980) and George Ernst, Jr., P.S. Docket No. 13/88 P.S.D. in Motion to Revoke False Representa tion Orders, May 1, 1984) -- apply to requests for opinions where advertising representations have not been formulated and orders have not been received. In the present cases, there are existing adver tisements and orders which Respondents desire to implement with lej guar products.

Although Respondents allege that lej guar represents an improve ment over guar in tablet form, I find that there is no difference between these forms of guar in their effects upon weight loss. Dr. Mendeloff testified that guar may vary in grades of purity, particle size, palatability, concentration, and effects of temperature, but these variations do not effect the metabolism of food or nutrient

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absorption (Tr. 3075-77). With respect to the differences in effect between the guar tablets and lej guar granules, Dr. Mendeloff explained:

> The first effect of guar, as it's customarily used, is in contact with water or "liquous" components so that granules would be in the mouth, subject to immediate swelling on contact with the secretions of saliva and the natural moisture that's in the mouth.Therefore, if you started swallowing guar as granules in the mouth, it would start swelling up. It might be unpleasant, because it's sticky stuff and it's hard to swallow. Therefore, the use of a capsule would mean that the material would not begin to swell until it reached the stomach, when the capsule dissolves and the material inside then goes out into the stomach secretions and begins to swell at that point. So the difference I would say has nothing to do with its actions in the stomach. It would have to do primarily with whether you want to avoid actions in the mouth, which is not really what you are trying to produce (Tr. 3073).

Dr. Wolever, Respondents' only witness concerning guar, wavered on this point. He stated that "possibly the type of guar and the way it is given may be important" (Tr. 5563) and "Guar is not guar is not guar" (Tr. 5547), but on cross-examination Dr. Wolever could not support the conclusion that the form of guar would effect its weight loss properties. He testified:

> Q. When you said the formulation is important, what exactly do you mean?

A. I mean whether the guar is the type of presentation, in other words whether it is a tablet, a capsule, mini capsule, granulated, whatever, powder, and how it is taken with respect to meals. In other words, do you mix it on your food, do you take it before the meal, after the meal, is it incorporated into the food and so on.

Q. Which is better for the purposes of producing weight loss?

A. That I don't know because this sort of experience is the sort of experience you get and from this data I would say the lej guar seems to be the one that is most effective (Tr. 5549-50)

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The data to which Dr. Wolever referred is a guar study by Dr. Marcin Krotkiewski of Sweden, the only known study using lej guar (CX3-64).

When pressed on the subject of formulation, Dr. Wolever testified:

Q. So you think if powdered or granulated guar is mixed with water and drunk down immediately before a meal it is likely to have more effect on weight loss than administered some other way?

A. I have no comment to make there, I don't know.

Q. You stated before formulation and administration were important. I am trying to find out what formulation and what mode of administration will produce weight loss.

A. I am telling you there has not been enough study (Tr. 5550-51).

There is very little scientific evidence relating to guar's effect upon weight loss. Most studies with respect to guar relate to its potential use for the treatment of diabetes and the treatment of heart disease (Tr. 3862, 5425).

Dr. Wolever testified that he knew of only one study which had specifically used guar to produce weight loss and had shown it to do so. That was a 1975 study reported by Evans and Miller entitled "Bulking Agents In The Treatment of Obesity" (RX3-21; Tr. 5462, 5543). Evans and Miller conducted a two-week study in which guar and methylcellulose were each given to 11 subjects for one week. They concluded that guar and methylcellulose were equally effective to produce weight loss. But reported weight losses with both substances were small and the two week time period was extremely short. The report concluded, "The indication that these agents are more effective in obese subjects than non-obese subjects is

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nteresting and needs further investigation" (RX3-21, p. 203). Dr. Mendeloff said that he report "indicated a pious hope hat this would be a very good way ofreducing weight" (Tr. 4925).

n a 1980 Finnish study of guar's effect on cholesterol levels, the study that Respondents emphasized and quoted from n many of their advertisements (CX3-1, 3-8(f), 3-10, 3-11, 3-17, p. 2, 3-17), the investigators found no change in cholesterol levels, but noted that subjects lost weight (CX3-59). The weight loss was statistic ally significant but not clinically significant, being only 5.5 lbs in four months (Tr. 2882, 3287-88, 5493). Several of the report's authors ndicated that the observed weight loss could possibly be explained by seasonal variations in diet and/or inadequate lietary instructions (CX3-60, p. 114-15). Drs. Ayers, Mendeloff and Wolever agreed that the 1980 study was not lesigned to reveal whether guar caused the weight loss (Tr. 3289-90, 2881-82, 5495-96).

Groups of researchers, including some of those involved in the 1980 study, conducted three follow-up studies using guar (CX3-60, 61, 62). None of these studies found significant weight loss with guar administration. A 1983 report of a study of 12 obese hyper cholesterolemics indicated that subjects actually gained weight while on guar treatment, though not a statistically significant amount (CX3-60, p. 114). One group of Finnish investigators concluded, "it seems to us that guar gum alone cannot control body weight, but could probably be of importance as a part of a more

comprehensive weight-control programme" (CX3-60, p. 115).

The only known study of lej guar's effect on body weight, and the one upon which Respondents rely to support efficacy claims for

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heir products, was reported in the British Journal of Nutrition in 1984. It is entitled "Effect of Guar Gum on Body Weight, Hunger Ratings and Metabolism in Obese Subjects" and was written by Dr. Marcin Krotkiewski, a Swedish scientist (CX3-64).

The report involved two studies -- experiment 1 and experiment 2. In experiment 1, nine obese female subjects were studied. They were recruited to the obesity outpatient clinic for weight reduction. Subjects were given 10 grams of lej guar twice daily for eight weeks. The study was designed to evaluate guar's effects on blood glucose levels. Cholesterol and triglyceride levels and body weight were also measured. The mean weight loss for the nine subjects was about 1.1 pounds per week. Although this is a small weight loss, it is considered statistically significant (Complainant's proposed finding no. 71).

As Dr. Krotkiewski reported, "Since the obese patients in Expt 1 lost weight (see Table 3) and several patients spontaneously reported an increased satiety during guar gum treatment a second experiment was carried out" (CX3-64, p. 99). For Experiment 2, 21 obese subjects were recruited from the obesity outpatient clinic. Patients were given either 10 grams of lej guar or 10 grams of wheat bran twice daily mixed in water. The experiment was designed to last 10 weeks with the subjects taking guar and wheat bran during alternating weeks. Subjects were weighed weekly and were asked to rate their hunger on a scale of one to nine. All subjects continued in the study for 6.6 weeks but then 14 subjects discontinued hunger ratings, and weight loss statistics were thereafter reported for

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only nine subjects in one table (Table 5) and for seven in another (Table 4). As Dr. Krotkiewski reported, the mean body weights were significantly less after 10 weeks (P. 102). The subjects lost an average of approximately 1.5 pounds per week (Tables 4 and 5, p.103). Dr. Krotkiewski concluded:

The results of the present study clearly demonstrate that guar gum taken in conjunction with meals leads to a reduction in hunger as compared with wheat bran taken in the same way. This effect seems to be long-lasting and could still be demonstrated after a 10-week period.

The study acknowledged, "Previous studies have usually reported that guar gum treatment did not significantly influence body-weight, although this has been found in some investigations" (P. 104).

As the witnesses testified, although the Krotkiewski study of lej guar reported weight loss, there are a number of problems with the study. First, the two experiments involved very small numbers of subjects. Dr. Mendeloff testified that although this study's P value of .05 is highly significant in statistics (Tr. 2894) many would consider a seven-subject experiment with an .05 level of significance insufficiently rigorous from a statistical viewpoint (Tr. 3082, 3848). To the same effect, Dr. Wolever testified "it is not the P value that gives me caution, it is the smaller number of people that gives me caution" (Tr. 5633).

The Krotkiewski report presented other problems. Experiment 1 had no control group. Therefore, it was not a blind study. Another concern is the study's failure to explain why between 12 and 14 of the 21 subjects did not complete Experiment 2. Both Drs. Ayers (Tr. 3373, 3510-19) and Mendeloff (Tr. 3078) felt that this greatly reduced the study's value. I agree. Did they drop out because they

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achieved poor results and become discouraged? Dr. Mendeloff acknowledged that it is not unusual for subjects to drop out. How ever, he stated "But to have two-thirds of the people drop out is really a serious matter. And the fact that

here's no explanation here makes it extremely difficult to understand what's going on here" (Tr. 3078). Dr. Wolever agreed that the reasons why they discontinued the study should have been explained. That would have been good scientific practice (Tr. 5502, 5505).

Drs. Ayers, Mendeloff and Wolever agreed that the Krotkiewski study was not designed to show the mechanism of action, whether guar caused the weight loss. Rather, the study was designed to look at hunger (Tr. 3479, 3080, 5460, 5509, 5512). Dr. Wolever also acknowledged that reduced hunger is not necessarily the reason why the patients lost weight; it is merely a plausible explanation (Tr. 5415).

Drs. Ayers and Mendeloff pointed out that Experiment 2 involved two subjects who lost much more weight than the other five. Without these two, the group weight loss would have been much less (Tr. 3374-76, 3081-82, Table 4). Also, Drs. Ayers and Mendeloff observed that subjects had been selected from new referrals to an obesity clinic. Thus, it would have been important to know what they had been eating and whether they were already losing weight (Tr. 3498, 4930-35, 4990-93). Dr. Mendeloff also testified that wheat bran has not been shown to cause weight loss. Weight loss observed during the bran treatment in Experiment 2 was not of significant statis tical difference from that reported during guar treatment (Tr. 5009)

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Another weakness in the Krotkiewski study was its failure to monitor subjects' diets and exercise. A study should always control for other variables which could effect its results. Such important variables for a weight loss study include diet and exercise (Eastman Tr. 2079-80, 2089, 2141, 2149; Ayers 3308, 3479; Mendeloff 3125-26, 4930-31; Woods 5297). In Experiment 1, the subjects "were asked not to alter their normal diet or energy intake during the trial period." However, it is not clear whether they followed this direction. The report also indicated that, "Diet records (4d) before and during guar gum treatment suggested that no qualitative difference in dietary habits occurred" (P. 99). However, qualitative refers only to kinds of foods, as contrasted with amounts of food. Therefore, it is not clear whether there were quantitative changes in diet (Tr. 3371-72, 5512-13, 5594-95). Also the study did not indicate whether subjects' exercise patterns were determined to make sure that after the study began they did not increase their exercise. Experiment 2 was completely silent about diet and exercise, making it unclear whether these important factors were controlled in that experiment.

Dr. Mendeloff testified that, of course, the medical community is not going to accept just one study of this type. The study would require replication by an independent source, "at least one other study, to reproduce this, before, I think, anyone would take it very seriously" (Tr. 3070-71). Dr. Ayers testified that "findings ... must be replicated in the hands of someone else so that any possible bias can be excluded ..." (Tr. 2270, 2301). Dr. Eastman explained that a single group's findings might be subjected to unknown biases and that findings would have to be confirmed before they would be

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widely accepted by the scientific community (Tr. 2140). Dr. Woods also advocates replication for unexpected findings. He stated, "when they give me - bring me back findings that I think are unexpected, I have them do the study again." When asked to explain why he would require replication, Dr. Woods said "because I'm a skeptic. And I would like to see if it comes out the same way. You have tremendous statistical power if you get the same results in two independent replications" (Tr. 5310). Dr. Wolever stated that "One paper alone on anything is not enough to convince the scientific community that anything works." He agreed that replication would be required to establish these results (Tr. 5561-62).

With regard to the Krotkiewski study, Dr. Wolever testified as follows: He telephoned Dr. Krotkiewski a few days before he testified and learned that Dr. Krotkiewski now puts virtually everybody in his obesity clinic on guar. Dr. Krotkiewski told Dr. Wolever that he has over 200 patients in his obesity clinic whom he has studied for 50 weeks using guar. He reported that as a result of the patients' use of guar, they are more compliant with the weight loss program, lose more weight, and still feel less hungry even after a year (Tr. 5415-16). By "compliant," Dr. Wolever thought that Dr. Krotkiewski meant continuing in the obesity clinic rather than dropping out (Tr. 5455). Dr. Wolever also testified that Dr. Krotkiewski's patients are not necessarily specifically instructed on diets. Therefore, a subject may or may not be on a diet during the study (Tr. 5457-58). Dr. Wolever said that Dr. Krotkiewski's findings would soon be published (Tr. 5416). Dr. Wolever stated that he felt a lot happier about testifying in this

proceeding after having talked to Dr. Krotkiewski about Dr. Krotkiewski's additional work. Dr. Wolever said that if he only had the one study of a few patients CX3-64 to go on he would be a lot less happy about saying the things he has said at the hearing (Tr. 5593).

Soon after Dr. Wolever testified, Complainant recalled Dr. Ayers as a rebuttal witness. Dr. Ayers testified as follows: He telephoned Dr. Krotkiewski after being informed of Dr. Wolever's testimony. Dr. Krotkiewski confirmed that he had done subsequent work with guar, that a paper describing some of his work had been presented at the International Fiber Conference in Washington, DC in the spring of 1984 and that Dr. Ayers could most easily obtain a copy of the paper from Dr. George Vahouny, a co-director of the fiber conference, at the George Washington University in Washington, D.C. (Tr. 5918-19). Dr. Krotkiewski told Dr. Ayers that patients had better compliance with the program when they used guar and that the program included a 1000 calorie-a-day diet (Tr. 5923-23, 5964). After the telephone conversation, Dr. Ayers called Dr. Vahouny and obtained a copy of the Krotkiewski paper (Tr. 5917-19). The paper confirmed that in the Krotkiewski program guar helped patients comply with their 1000 calorie-a-day diets (CX3-73).

After introductory statements, the paper discussed the study at CX3-64 and then discussed Dr. Krotkiewski's subsequent work, begin ning with the following language:

An additional study was made of seven patients on a low calorie regimen supplemented with guar gum. One patient succeeded in losing 62 kg over a period of one year. (The other six lost and sic average of 22.5 kg ± SD) (CX3-73, p. 7) [Emphasis added].

repaper continued:

After the completion of the above studies, 68 patients routinely obtained guar gum as a supplement to their 800 to 1000 Kcal diet recommendation. Of those who followed the programme (and had a check-up every five weeks), 58% reported good tolerance and an appetite-suppressing effect. Only 67% of those initially included in the study followed the treatment after eight months, but of these 74% belonged to the guar users. Sixty-nine percent reported a persistent appetite-suppressing effect and 61% a laxative effect of the guar (CX3-73, p. 8) [Emphasis added].

This language specifically contradicts Dr. Wolever's testimony about his telephone conversation with Dr. Krotkiewski. Dr. Wolever testified:

Q. In the follow-up work that you and he discussed on the phone, do you know whether those patients who had been taking the guar, as you said, for 50 weeks had been given a diet to follow, a diet plan?

A. No. He says that they are specifically -- they are not instructed to keep -- they are just instructed to keep their regular diet and encouraged to keep their regular activities.

Q. When you say "he says," do you mean in this paper?

A. No. Over the telephone, he stated to me that his patients are not instructed specifically on diets necessarily. Some of them go on to diets, and some of them don't. So it's not necessary for the patients to go on to specific diets. They can get weight loss just by maintaining their normal everyday life and not making any special efforts (Tr. 5457-58).

After Dr. Ayers testified on rebuttal, Respondents requested and were given additional time to present the testimony of either Dr. Krotkiewski, Dr. Wolever or a Dr. Kristokis as a surrebuttal witness (Tr. 6126-27). However, Respondents subsequently decided not to present surrebuttal testimony. In the absence of any contradictory

evidence, I find that CX3-73 is an authentic report of Dr. Krotkiewski and I have no reason to question the truthfulness

)f the statements contained in the report. Therefore, I find that Dr. Wolever's testimony in this critical area is naccurate.

The follow-up report confirms Dr. Krotkiewski's concluding statement in CX3-64:

n summary, the present results document some effect of granulated guar gum on carbohydrate and lipid metabolism in)bese individuals. These effects would appear of particular importance in obesity considering the known associations vith diabetes and lipid disorders. In addition, guar gum reduces hunger when taken with meals and may thus be an mportant adjunct to other treatments of obesity.[Emphasis added].

)r. Wolever was Respondents' only scientific witness with respect to guar. On direct examination Dr. Wolever was sked if the representations referred to in subparagraphs 8(a), (b), (c), and (d) of Docket No. 19/104 and subparagraphs 3(a), (b), (c), (d), and (f) of Docket No. 19/162 were true or false. He testified that all these representations were true Tr. 5427-29). However, these conclusions were contradicted by the testimonies of Drs. Mendeloff and Ayers, the veight at the credible evidence and some of Dr. Wolever's own testimony. I find that the representations alleged in 'aragraphs 8 of the Complaints in Docket Nos. 19/104 and 19/162 are false for the following reasons:

a) Ingestion of Intercal-SX (or Metabolite-2050) will cause significant weight loss in virtually allusers.

)r. Wolever at first supported Respondents on this issue, testifying that "virtually every obese person has lost weight ust 46taking guar." However, this testimony was contradicted by Dr. Wolever's later testimony and by other evidence. ater, Dr. Wolever acknowledged that (1) there is conflicting evidence as to whether everyone who takes guar loses veight (2) that a "good proportion" of persons who take guar will lose weight, and (3) that a majority or a high majority)f persons who take guar will lose weight (Tr. 5558-59, 5549, 5592). I find Dr. Mendeloff's conclusions to be more)lausible. Dr. Mendeloff stated that his review of the scientific literature for various forms of guar revealed inconsistent veight loss results and that only about 25 percent of the people reported in guar studies lost weight (Tr. 3961, 3988, 5031). Dr. Mendeloff concluded that "some people lose weight and most people don't" on guar administration (Tr. 1924-25). The results of the very few studies of guar's effects on weight loss are inconsistent. Three of the four Finnish tudies showed no significant weight loss while taking guar; one showed weight gain. In the one Finnish study where here was weight loss (CX3-59) the weight loss was statistically significant but not clinically significant. In the Evans nd Miller study the weight loss also was small. Dr. Krotkiewski's statement in CX3-64 also supports Dr. Mendeloff's :onclusion. Dr. Krotkiewski stated, "Previous studies have usually reported that guar gum treatment did not ignificantly influence body weight, although this has been found in some investigations" (P. 104). The Krotkiewski tudy, in view of its small sample, unexplained drop outs, and the other problems discussed, and without replication, loes not overcome the other evidence that guar will not cause significant weight loss in virtually all users.

Guar does appear to cause a feeling of fullness and satiety and may cause weight loss in some users. Dr. Mendeloff xplained that almost all dietary fibers that have been tested, including carrots, cabbage and a great number of foods,)roduce the effect of increased satiety (Tr. 3880). However, as the scientific experts agreed, satiety signals are not as ffective for obese people and satiety does not necessarily cause obese people to eat less and lose weight (Tr. 3381, 3880, 4128, 5289-90, 5462-63, 5415).

b) Ingestion of Intercal-SX (or Metabolite-2050) will cause significant weight loss without willpower, calorie estricted diets or exercise.

)r. Mendeloff testified that the consensus of informed medical opinion is that this representation is false (Tr. 3096). The evidence supports that conclusion. Several of the authors of the Finnish studies concluded, "it seems to us that guar gum alone can not control body weight, but could probably be of importance as part of a more comprehensive weight oss programme" (CX 3-60, P.115). Dr. Krotkiewski agreed, stating that guar "may thus be an important adjunct to)ther treatments of obesity," such as the 800 to 1,000 calorie diet that Dr. Krotkiewski supplements with guar (CX3-64, 3-73, p. 8). Dr. Wolever, in complaining about exaggerations found in Respondents' advertising materials stated that it vould be more accurate to describe guar as "an aid to slimming." "In other words, used as a part of a calorie controlled liet and in the program of diet and exercise" although he then qualified his testimony by stating, "The fact that they can ose weight and even if they don't try to diet and don't alter their diet, that may be true" (Tr. 5556-57, CX3-40, p. 2).

c) Ingestion of Intercal-SX (or Metabolite-2050) prevents foods from being converted into stored fat.

Dr. Mendeloff stated his opinion that this representation is false and that his opinion is consistent with the consensus of nformed medical opinion (Tr. 3096). I agree. Dr. Mendeloff testified that guar has no effect on the metabolism of food. Guar's only effect is to cause the lining of the small intestine to be covered by a thickened layer which overlies every ıbsorbing cell. Guar has no effect on the amount of nutrients absorbed, but does influence their rate of absorption (Tr. 3077). Dr. Wolever did not disagree with these assertions, and I find them to be accurate and to reflect the consensus of nformed medical opinion.

At the hearing Respondents contended that an increase in fecal fat supports their representation that guar prevents food rom being converted into stored fat (Tr. 3935-36) and offered scientific articles which they contended supported this ırgument (Tr. 3938-40). However, Respondents never indicated how the articles supported their position and the ırticles do not appear to support Respondents' claim. Moreover, the testimony of the expert witnesses indicates that the ıse of guar results in miniscule increase of fecal fat and I so find. In addition, the testimonies of Drs. Mendeloff and Wolever on this subject demonstrate why I found Dr. Mendeloff's testimony more reliable than that of Dr. Wolever vhere they differed. Dr. Mendeloff's testimony was clear and unequivocal despite many days of cross-examination. He tated, "The effect of guar on fecal excretion of most metabolites is minimal to nothing." When pressed on cross-xamination with the question "Guar in large

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loses, though, has been shown to increase fecal fat, not in all studies, but in some?" Dr. Mendeloff adhered to his ›revious testi mony stating, "It is generally considered to be a trivial result" (Tr. 3861). In contrast, Dr. Wolever's initial estimony appeared misleading, and he later retracted some of that testimony. At first, Dr. Wolever stated that guar ncreases bile acid excretion in the stool and "this has implications in the way that fat itself is metabolized and ıbsorbed" (Tr. 5422-24). Later he said, "Bile can be made from cholesterol, which can be made from stored fat, if you ike, metabolicaly. So I guess that it could possibly come from stored fat" (Tr. 5463-64). Still later, Dr. Wolever ıdmitted, "Well, bile acids are not fat, they don't get metabolized in the way of fat but they are fatty materials so there s not a great deal of calories there." He admitted that "we are talking about milligrams of fat" and agreed that one gram 1,000 milligrams) of fat equals only nine calories (Tr. 5571-72). Later when asked, "So if there were an alleged ›inding action on food that is ingested by guar in order to promote its excretion in the stool, it would be miniscule, if at ıll, would it not?" Dr. Wolever agreed, replying "I think from a physiological point of view, yes, it would be ;mall" (Tr. 5572).

d) The weight loss claims for Intercal-SX (or Metabolite-2050) are supported by the results of scientifically sound :linical studies.

Respondents did not dispute that this representation was made. The following are typical of Respondents' advertising anguage that made the representation:

NTERCAL-SX CERTIFIED GUARANTEE. The INTERCAL-SX Caloric "Neutralizing" compound has been proven n double-blind studies to create dramatic weight loss for all who used this unique formulation.

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MEDICALLY DOCUMENTED FACT: EVERYONE WHO USED INTERCAL-SX EXPERIENCED A SIGNIFICANT LOSS OF WEIGHT] (CX3-1, 3-8(f) and 3-10).

At last, the scientific community has developed what can only be called the "miracle" weight loss compound, a potent ınd powerful compound that is specifically designed for tough, adult weight loss problems... now there is a scientifically-developed,medically-verified answer to your adult weight loss problem -- (CX3-3c, 8-8d and 3-9).

FACT: EVERYONE LOST WEIGHT]

TESTS PROVE 100% SUCCESS]

Yes, that's right] Scientific documentation confirmed that EVERY PERSON who used METABOLITE-2050 LOST WEIGHT] The research RESULTS ARE STAGGERING. In a Scandinavian double-blind study, DOCTORS TESTED a number of overweight women and in the group that took METABOLITE-2050, EVERYONE LOST SUBSTANTIAL WEIGHT PERMANENTLY. This is not a marketing fantasy. This is a scientific fact documented by PUBLISHED MEDICAL FINDINGS from the Public Health Laboratory of Finland. This is the most DIRECT, unequivocal MEDICAL DOCUMENTATION of weight loss that can be published (CX3-11, 3-17).

In CX3-11, 3-17 and 3-32, a serious looking, bearded man in a white coat identified as Dr. G. K. Knowlton, stated:

After reviewing all the available European studies, I can say, without a doubt, that cyamopsis tetragonolobus METABOLITE-2050) is the only product I have seen that has worked for everyone who has used it. . .

For the reasons that I state in this decision, Respondents' weight loss claims - subparagraphs 8(a), (b), and (c) of both Complaints and 8(f) of the Complaint in Docket No. 19/162 - are not supported by the results of scientifically sound scientific studies..

e) Respondents have accurately reproduced an excerpt from Acta Medica Scandinavia, Vol. 208, pp. 45-48 in certain of its printed advertisements, including Exhibit 1.

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This representation is also false in both Docket Nos. 19/104 and 19/162. The advertisements for Intercal-SX in Docket No. 19/104 read:

But don't take our word for it. The results are medically documented. Published in Acta Medica Scandinavia (Volume 208, pages 45-48), this amazing study was uncovered by a team of U.S. researchers during a computer search of Excerpta Medica and Medicine (2 major medical data bases). What follows is a word for word excerpt from the actual medical abstract..."A highly significant decrease in body weight (62.9 $\pm$ 2.1 vs. 60.4 $\pm$ 2.2 kg.p - 0.0005, paired comparison) was seen in subjects receiving cyamopsis tetragonolobus (INTERCAL-SXTM) whereas body weight remained constant in the other two groups. IT IS CONCLUDED THAT THE DAILY INGESTION OF 15MG, OF NTERCAL-SXTM RESULTS IN PERMANENT WEIGHT LOSS..." (CX3-1, 3-8(f), 3-10) [Emphasis added].

The advertisements for Metabolite-2050 in Docket No. 19/162 read:

Actual Excerpt from original Medical Abstract (Published in Vol. 208 of Acta Medica Scandinavia, pages 45-48). "A highly significant decrease in body weight (62.9 $\pm$ 2.1 vs. 60.4 $\pm$ 2.2 kg.p - 0.0005, paired comparison) was seen in subjects receiving cyamopsis tetragonolobus (METABOLITE-2050TM), whereas body weight remained constant in the other two groups. IT IS CONCLUDED THAT THE DAILY INGESTION OF 15MG. OF METABOLITE-2050TM RESULTS IN PERMANENT WEIGHT-LOSS...." (CX3-11, 3-17, p. 2, 3-19) Emphasis added.

The excerpt from the quoted report (CX3-59, p. 1) actually reads:

A highly significant decrease in body weight (62.9 $\pm$ 2.1 vs. 60.4$\pm$ 2.2 kg, p - 0.0005 paired comparison) was seen in subjects receiving guar gum, whereas body weight remained constant in the other two groups.It is concluded that the daily ingestion of 15 g of guargum results in a permanent weight loss. [Emphasis added].

Although most of the language in the report is quoted accurately in Respondents' advertisements, Respondents have substituted "cyamopsis tetragonolobus" and the names of their products for "guar gum." These substitutions render false Respondents' representations

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that "what follows is a word for word excerpt" and that each advertisement is an "actual excerpt." Furthermore, the substitutions convey the false impressions that Respondents' actual products were subjected to the reported test and that the report specifically concluded that the products themselves result in permanent weight loss.

f) An obese person who takes Metabolite-2050 may reasonably expect to lose weight while continuing to eat all he or she wants (Docket No. 19/162).

This representation is false. As previously stated, to lose weight one must create an energy or calorie deficit so that the body will use stored energy or fat to meet its current energy needs (Tr. 2203, 3134, 3684). Although guar may cause satiety in some individuals, satiety does not necessarily cause overweight people to eat less (Tr. 3381, 4128). Thus Dr. Mendeloff stated, "There are plenty of people who tell you they are full while eating their fourth meal in five hours (Tr. 2889). Clearly a representation to such indiv iduals that they can expect to lose weight while stuffing themselves with food is false. Dr. Wolever expressed this view on cross examination as follows:

Q. Which effect of the product is exaggerated and to what degree by this ad?

A. For instance, the statement "Eat as much as you want and still lose weight, never diet again," that seems to imply that people will be able to stuff themselves with ice cream and chocolate cake and all that sort of stuff and in fact they will be able to eat all the sorts of food that they like which are bad for them and lose weight (Tr. 5555).

Although guar may have weight loss attributes, the evidence is clear that it does not fulfill the exaggerated claims of Respondents' advertisements. Dr. Wolever expressed his disapproval

of these advertisements. He testified in answer to Mr. Friedlander's questions:

Q. What do you think of the ads in general?

A. These ads?

Q. Yes.

A. I think they're sensational. They go along with the sort of ads that I usually see in the rag-mags for slimming products which generally I don't feel work. And this puts guar into a category, in my mind of material similar to that, which I find offensive, because I feel guar should have more respect than that (Tr. 5427). Dr. Wolever also stated, "Neither can I endorse the advertisements made as they seem to me to be sensational and able to be interpreted such that the effects of the product are exaggerated" (RX3-40, p. 2, Tr. 5553).

The issue is not whether guar has value. It is whether the public is being mislead by untrue advertising claims.

As the Supreme Court stated in Leach v. Carlile, 258 U.S. 138, 139 (1922), "it is sufficient to say that the question really decided by the lower courts was, not that the substance which appellant was selling was entirely worthless as a medicine, as to which there were some conflict in the evidence, but that it was so far from being the panacea which he was advertising it through the mails to be, that by so advertising it he was perpetrating a fraud upon the public."

CONCLUSIONS OF LAW

1. Postal Service False Representation Orders do not violate the First Amendment of the Constitution. Donaldson v. Read Magazine, 333 U.S. 178 (1948); Lynch v. Blount, 330 F. Supp. 689

(S.D.N.Y. 1971); Hollywood House International, Inc. v. Klassen, 508 F.2d 1276 (9th Cir. 1974); and United States Postal Service v. Beamish, 466 F.2d 804 (3d Cir. 1972). In the latter case, the Court held "Advertisers possess no constitutional right to disseminate false or misleading materials. Therefore, Congress has the power to prohibit such deceptions through appropriate legislation." p. 807. See also: Bolger v. Young's Drug Products Corp., 463 U.S. 60 (1983).

2. With the exception of 7770 West Oakland Park Boulevard, Landmark Building, Suite 210, Sunrise, Florida 33321-5729 as an address for W. G. Charles Company in Docket No. 19/104 and for Intra-Medic Formulations, Inc. in Docket No. 19/162, the Corporate Respondents solicit money through the mail in connection with their sales of Intercal-SX and Metabolite-2050 at the addresses listed in the captions of these proceedings.

3. An advertisement must be considered as a whole and its meaning will be determined in the light of its probable effect on persons of ordinary minds. Donaldson v. Read Magazine, Inc., supra; Vibra Brush Corp. v. Schaffer, 152 F. Supp. 461 (S.D.N.Y. 1957). Rev'd on other grounds, 256 F.2d 681 (2d Cir. 1958).

4. The impression of promotional representations on the ordinary mind generally is a question for the judge to determine. Expert testimony on interpretation is not required, but it is within the discretion of the judge to permit such testimony. Vibra Brush Corp. v. Schaffer. The impression of advertising on the ordinary mind may be determined by the trier of fact solely on the basis of the advertising itself. Vibra Brush Corp. v. Schaffer; Delta Enterprises, P.S. 14/72 et al, (P.S.D. July 3, 1984).

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5. Express misrepresentations are not required. It is the net impression that the advertisement as a whole is likely to make upon individuals to whom it is directed that is important. Even if a solicitation is so worded as to not make an express representation, but is artfully designed to mislead those responding to it, the false representation statute is applicable. G. J. Howard Co. v. Cassidy, 162 F. Supp. 568 (E.D.N.Y. 1958); See also,Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748 (1976), quoting United States v. 95 Barrels of Vinegar, 265 U.S. 438, 443 (1924): "It is not difficult to choose statements, designs and devices which will not deceive." In Vibra Brush Corp. v. Schaffer, supra, the Court stated:

It is not each separate word or a clause here and there of an advertisement which determines its force, but the totality of its contents and the impression of the entire advertisement upon the general populace. p. 465. Similarly, in American Image Corp. v. United States Postal Service, 370 F. Supp. 964 (S.D.N.Y. 1974) the Court held: "The cases are clear that such advertisements are to be viewed not with a lawyer's eye to 'fine spun distinctions' but with an eye to their over-all effect on the average reader."

6. False representations may also be made in order verification letters and package insert materials since these may be relied upon in connection with reorders. Iso-Tensor Plan, P.S. Docket No. 3/30 (P.S.D. May 23, 1975).

7. Where an advertisement is ambiguous or capable of more than one meaning, if one of those meanings is false, the advertisement will be held to be misleading. Rhodes Pharmacal Co., Inc. v.

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Federal Trade Commission, 208 F.2d 382, 387 (7th Cir. 1953); Ralph J. Galliano, P.S. Docket No. 19/15, (P.S.D. p. 9, May 2, 1985); Bruce Roberts Co., P.O.D. Docket No. 3/78, (I.D., August 16, 1971); Moneymakers et al., P.S. Docket No. 16/1, (I.D., June 20, 1983).

8. Applying the foregoing standards, the average person who reads Respondents' advertisements would interpret them substantially as characterized in paragraphs 8 of the Complaints in Docket Nos. 19/104 and 19/162.

9. As expressed in Chaachou v. American Central Insurance Co., 241 F.2d 889, 893 (5th Cir. 1957), a representation is material if it would ". . . cause the other party to do other than that which would have been done had the truth been told." Applying the Chaachou test, the representations are material because they have the effect of inducing individuals to remit money through the mail to purchase Intercal-SX and Metabolite-2050.

10. A statement of contents on a product label is presumptive evidence of the product's ingredients. Sister Fannie Howard, P.S. Docket No. 1/101 (I.D. July 21, 1972). In fact, even in cases of conflicting evidence, ingredients listed on product labels may be relied upon as correct. Carter-Ross Labs, P.S. Docket No. 5/163 (I.D. July 25, 1977); Emil-John Research, P.S. Docket No. 5/162 (I.D. July 21, 1977).

1. Complainant has established through qualified expert testimony that the informed consensus of scientific and medical opinion is that Respondents' representations are false. Where Complainant shows that the representations in issue are not accepted as true by such a consensus, this establishes a prima facie case

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hatthe representations are false. Cosvetic Laboratories, P.S. Docket No. 8/160 (P.S.D. July 22, 1982). Once Complainant presents a prima facie case of falsity, the burden of going forward with evidence to rebut this showing though not the burden of proof which always remains with Complainant) moves to Respondents who must adduce evidence either that the consensus does not exist or that the claim of effectiveness is true despite the lack of acceptance by the medical community. Peak Laboratories, Inc. v. United States Postal Service, 556 F. 2nd 1387 (5th Cir. 1977); Frank E. Bush, Inc. v. United States Postal Service, 84 Civ. 8756 (LBS) (S.D.N.Y. 1985); Cosvetic Laboratories, supra. Respondents have failed to rebut Complainant's prima facie case in either of these ways. Accordingly, the representations alleged in subparagraphs 8(a), (b), (c), (d) and (e) in Docket No. 19/104 and 8(a), (b), (c), (d), (e) and f) in Docket No. 19/162 are materially false as a matter of law.

2. Respondents relied upon Reilly v. Pinkus, 338 U.S. 269 (1949) frequently throughout the hearing (e.g. Tr. 2041-42, 2815-20). Respondents appear to believe that Reilly stands for the proposition that if, in a case brought pursuant to 39 U.S.C. § 3005, Respondent produces evidence tending to show that their products perform as claimed, the Postal Service's case must necessarily fail. Reilly does not change the standard of evidence from a preponderance to some higher standard as Respondents suggest. Reilly's dictum cautioned the Postal Service to avoid crushing new or developing ideas. Reilly did not tell the agency to avoid

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enforcementactions where unproved ideas are promoted as established fact. Reilly stated:

n the science of medicine, as in other sciences, experimentation is the spur of progress. It would amount to condemnation of new ideas without a trial to give the Postmaster General power to condemn new ideas as fraudulent solely because some cling to traditional opinions with unquestioning tenacity P. 274.

The Court in Reilly court was concerned with placing a "limita tion upon findings of fraud under the mail statutes when he charges concern medical practices in fields where knowledge has not yet been crystalized in the crucible of experience." Knowledge in the areas of weight loss and fiber has been sufficiently well scrutinized that one may state he consensus with respect to several scientific facts: One cannot lose weight without adjustment of caloric balance. Guar appears to cause satiety in some people but not virtually all people. The reported weight loss with guar alone and no diet regimen is generally not clinically significant. Satiety does not necessarily lead to weight loss. There is evidence, however, that guar assists persons to comply with reduced calorie diets, with resultant weight loss. Had Respondents produced evidence of properly conducted replicated tests showing that their product in tablet or granule form performed as claimed, this case would have been subject to the cautions of the Reilly Court. However, no such "minority school of thought" was established by Respondents' evidence.

13. A promise to refund if a customer is dissatisfied will not dispel the effect of false advertisements. Farley v. Heininger, 105 F.2d 79, 84 (D.C. Cir. 1939); Borg-Johnson Electronics, Inc., v. Christenberry, 169 F. Supp. 746, 751 (S.D.N.Y. 1959).

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14. The Corporate Respondents in this proceeding are conducting a scheme for obtaining money or property through the mails by means of materially false representations within the meaning of 39 U.S. Code § 3005 through their sales of Intercal-SX and Metabolite-2050.

15. Mitchell K. Friedlander formulates, directs and controls the policies of the corporate Respondents. Therefore, it is necessary that Cease and Desist Orders include Mitchell K. Friedlander.Because of the significant involvement of Harris Friedlander and Michael Meade in the business activities of the corporate Respondents, it is necessary that Cease and Desist Orders also include Harris Friedlander and Michael Meade. See: January 28, 1985 Decision and Order on

Motion to Dismiss, Federal Trade Commission v. Standard Education Society, 302 U.S. 112 (1937); Benrus Watch Company v. F.T.C., 352 F.2d 313, (8th Cir. 1965).

Accordingly, False Representation Orders and Cease and Desist Orders are issued herewith.

EXHIBIT E

Advertisement

AKÄVAR™ EUROPEAN WEIGHT-LOSS BREAKTHROUGH | BODY | New Product Update

EAT ALL YOU WANT & STILL LOSE WEIGHT...

(And we couldn't say it in print if it wasn't true!)

INTRODUCING... AKÄVAR™-20/50 "Fastest, Easiest Weight Loss Ever"

Here at last is the news...

that millions of men and women plagued by excess fat, flab and cellulite have been waiting for. If you need to lose weight... and every weight-loss scheme you've tried has failed... it's time to forget anything and everything anyone has ever told you about dieting before. A major medical breakthrough has shattered the weight-loss barrier and a new generation of fast-acting caloric restrictors has been born... but most significantly, this new generation of potent compounds has eliminated diet failure and replaced it with guaranteed success.

Akävar™-20/50 makes up for years of overeating, years without exercise, years without being able to push away the extra dessert or midnight snack and, most importantly, years of embarrassment and a lack of self-confidence. It's no wonder there's been so much excitement about Akävar-20/50, as men and women around the world, just like you, have already discovered... there's no easier, more dramatic weight-loss compound available today.

You will not fail this time...

because the only thing you have to do is remember to take your easy-to-swallow Akävar-20/50 capsules each and every day. That's it! There is nothing else to do, no other diet to buy. Akävar-20/50 will do everything else for you... automatically... and that's guaranteed.

This is not marketing fantasy, this is scientific fact, documented by published medical findings. But there's more! In recent months, thousands and thousands of men and women around this country who have been overweight for years... have used the Akävar-20/50 formulation and have also confirmed in documented, certified testimonials a fantastic and incredible loss of weight without ever "dieting"... not even for one day. Finally, systemic caloric restriction is a reality. So now you know, no matter how much weight you need to lose... whether it's 10 pounds or 100 pounds... you have to start somewhere, and Akävar-20/50 is the fastest, easiest, unconditionally guaranteed way to start you on your journey to a thinner, trimmer, slimmer (and a much healthier) body.

By this time, you've probably heard about Akävar-20/50 or seen promotional material in newspapers, magazines or on TV. If you have been unable to find Akävar-20/50 at your local pharmacy, it's because the patented Akävar-20/50 formulation will not be available in stores until August 23, 2007. At this time, Akävar-20/50 is only available by calling 1-800-719-8681 or by visiting www.AKAVAR2050.com.

A full 60-capsule supply is only $39.90

THE SECRET IS THE FORMULA

Do not mistake Akävar™-20/50 for any weight-loss product you have ever seen advertised before. Akävar-20/50 is a truly revolutionary weight-loss breakthrough. Akävar-20/50 is the only weight-loss compound that works automatically. There is absolutely no need to count calories, no need to consciously lower your caloric intake, no need for expensive, pre-measured meals... and no need to give up your favorite foods! Why? Because Akävar-20/50 reduces caloric intake... automatically!

$39.90 FOR A FULL 60-CAPSULE SUPPLY

CALL 1-800-719-8681

AUTOMATIC CALORIC RESTRICTION!

Study participants were specifically told not to alter their eating habits and they still lost weight.

ABOUT AKÄVAR-20/50

FACT Now there's a "cure" for fat!

A major medical breakthrough has shattered the weight loss barrier and a new generation of fast-acting caloric restrictors has been born... An entirely new generation of powerful, foolproof, bio-active weight-loss compounds that automatically reduce caloric intake... eliminating traditional dieting, calorie counting, strenuous exercise, fad diets, supermarket "miracle" pills, Japanese wonder diets, rubber suits, belts, creams or anything else you have ever tried before

FACT Akävar-20/50 causes excess fat to be pulled from bulging parts of your body!

As Akävar-20/50 restricts caloric intake to below your daily caloric requirement, you literally pull excess fat from all over your body, including your waist, hips, thighs and buttocks (the body's natural fat storage sites)... leaving your body thinner, trimmer and sexier than you ever thought possible. Akävar-20/50 helps draw out bulging pockets of fat and prevents the further conversion and storage of excess fat all over your body. This remarkably effective formulation works so fast and is so easy to use that before you have time to become discouraged you will have lost pounds and inches of ugly, hard-to-get-at, fig ure-destroying fat.

FACT Tests prove virtually 100% success

That's right. While no diet pill can possibly work for everybody (that's why there's a money-back guarantee), scientific documentation has confirmed that virtually everyone in the study who used Akävar 20/50's active compound (23 out of 24 participants, to be exact) lost weight. The research results are staggering. In a controlled, randomized clinical trial (the only type of proof accepted by both scientific and medical communities), doctors tested a group of overweight patients. And among those who took the active, patented Akävar 20/50 compound, 23 out of 24 people lost a substantial amount of weight.

FACT Akävar™-20/50 will produce an extraordinary, unparalleled loss of body weight!

Akävar-20/50 is the perfect weight-loss compound for tough weight loss problems. This amazing formulation is the result of years of intensive research and scientific evaluation. Not one, but a team of doctors working in a recognized medical university discovered the potent caloric-restricting qualities of the Akävar-20/50 formulation, and the research team at Dynakor Pharmacal™ is proud to have played a major role in bringing this new generation of fast acting caloric restrictors to the general public... at an affordable price.

DYNAKOR PHARMACAL

Note: While the published clinical trial using the active Akävar-20/50 compound resulted in significant weight-loss WITHOUT diet and exercise, adding a sensible diet and exercise program to your weight-loss regimen should only enhance Akävar-20/50's incredible weight loss power.

CALL 1-800-719-8681

STOP: READ THIS BEFORE YOU ORDER! When ordering any weight-loss formulation, know who you are dealing with. Dynakor Pharmacal™ is a solid, established retail firm you can count on. We are members of the Salt Lake City Chamber of Commerce and the prestigious Direct Marketing Association. When you dial 1-800-719-8681 (toll free), you will reach our own Customer Service Center, not some hired order-taking service. When you call for product information, you will speak to our trained customer service representatives who are eager to help you and are familiar with our fine family of products. (By the way, our customer service representatives work at our order processing center, corporate offices and central retail outlet... not some rented mailing address.) We keep all your personal information strictly confidential, unlike many companies who sell "your" name and address to strangers for profit (they call it "their" mailing list). We don't. We respect your privacy and appreciate your business. Remember, any guarantee (including those tempting double- and triple-your-money-back promises) is only as good as the company behind it. Dynakor Pharmacal delivers exactly what we promise, and we stand 100% behind our guarantee. We won't let you down. (P.S. The next time you're in Salt Lake City, stop by our offices and see what products are being planned for the future.)

LOSE POUNDS & INCHES! GUARANTEED!

CALL 1-800-719-8681 OR VISIT WWW.AKAVAR2050.COM

MONEY-BACK GUARANTEE: As with all our fine formulations, Akävar-20/50 is covered by our No-Nonsense Money-Back Guarantee. Our guarantee contains no fine print or misleading terms. Simply stated, if you use Akävar-20/50 and don't see the substantial weight loss you ... thought impossible, just return the empty container within 30 days (we would like you to use all of this fine formulation) for a full, prompt refund ... Again, let us restate: if for any reason you are not totally satisfied with Akävar-20/50, it will cost you absolutely nothing. BR10879

... not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease. All trademarks are the property of their respective owners. ©2007 All Rights Reserved

AKÄVAR EUROPEAN WEIGHT LOSS BREAKTHROUGH BODY | New Product Update

EAT ALL YOU WANT & STILL LOSE WEIGHT...™

(And we couldn't say it in print if it wasn't true!)

INTRODUCING... AKÄVAR™-20/50 "Fastest, Easiest Weight Loss Ever"

Here at last is the news...

that millions of men and women plagued by excess fat, flab and cellulite have been waiting for. If you need to lose weight... and every weight-loss scheme you've tried has failed... it's time to forget anything and everything anyone has ever told you about dieting before. A major medical breakthrough has shattered the weight-loss barrier and a new generation of fast-acting caloric restrictors has been born... but most significantly, this new generation of potent compounds has eliminated diet failure and replaced it with guaranteed success.

Akavar™-20/50 makes up for years of overeating, years without exercise, years without being able to push away the extra dessert or midnight snack and, most importantly, years of embarrassment and a lack of self-confidence. It's no wonder there's been so much excitement about Akävar-20/50, as men and women around the world, just like you, have already discovered... there's no easier, more dramatic weight-loss compound available today.

You will not fail this time...

because the only thing you have to do is remember to take your easy-to-swallow Akavar-20/50 capsules each and every day. That's it! There is nothing else to do, no other diet to buy. Akavar-20/50 will do everything else for you... automatically... and that's guaranteed.

This is not marketing fantasy, this is scientific fact, documented by published medical findings. But there's more! In recent months, thousands and thousands of men and women around this country who have been overweight for years... have used the Akävar-20/50 formulation and have experienced a fantastic and incredible loss of weight without ever "dieting"... not even for one day. Finally, automatic caloric restriction is a reality. So now you know, no matter how much weight you need to lose... whether it's 10 pounds or 100 pounds... you have to start somewhere,

and Akävar-20/50 is the fastest, easiest, unconditionally guaranteed way to start you on your journey to a thinner, trimmer, slimmer (and much healthier) body.

By this time, you've probably heard about Akävar-20/50 or seen promotional material in newspapers, magazines or on TV. If you've been unable to find Akavar-20/50 at your local pharmacy, it's because of the incredible worldwide demand for this patented breakthrough formula. Your best bet is to order Akävar-20/50 directly from Dynakor Pharmacal at 1-800-334-2545 or by visiting www.AKAVAR2050.com.

1 full 60-capsule supply, only $59.99

THE SECRET IS THE FORMULA

Do not mistake Akävar-20/50 for any weight-loss product you have ever seen advertised before. Akävar-20/50 is a truly revolutionary weight-loss breakthrough. Akävar-20/50 is the only weight-loss compound that works automatically. There is absolutely no need to count calories, no need to consciously lower your caloric intake, no need for expensive, pre-measured meals... and no need to give up your favorite foods! Why? Because Akävar-20/50 reduces caloric intake automatically!

$59.99 FOR A FULL 60-CAPSULE SUPPLY

CALL 1-800-334-2545

AUTOMATIC CALORIC RESTRICTION!

Study participants were specifically told not to alter their eating habits and they still lost weight.

ABOUT AKÄVAR™-20/50

FACT An entirely new generation of "diet pills"

An entirely new generation of powerful, fool-proof, bio-active weight-loss compounds that automatically reduce caloric intake... eliminating traditional dieting, calorie counting, strenuous exercise, fad diets, supermarket "miracle" pills, Japanese wonder diets, rubber suits, belts, creams or anything else you have ever tried before.

FACT Akävar™-20/50 literally causes excess fat to be pulled from bulging parts of your body!

As Akavar-20/50 restricts caloric intake to below your daily caloric requirement, you literally pull excess fat from all over your body, including your waist, hips, thighs and buttocks (the body's natural fat storage sites)... leaving your body thinner, trimmer and sexier than you ever thought possible. Akavar-20/50 helps draw out bulging pockets of fat and prevents the further conversion and storage of excess fat all over your body. This remarkably effective formulation works so fast and is so easy to use that before you have time to become discouraged you will have lost pounds and inches of ugly, hard-to-get-at, figure-destroying fat.

FACT Tests prove virtually 100% success

That's right. While no diet pill can possibly work for everybody (that's why there's a money-back guarantee), scientists virtually everyone in the study who used Akavar-20/50's active compound (23 out of 24 participants) lost weight. The research results are staggering. In a controlled, randomized clinical trial (the only type of proof accepted by both scientific and medical communities), doctors tested a group of overweight patients. And among those who took the active, potent Akavar-20/50 compound, 23 out of 24 people lost a substantial amount of weight. But there's more! Not one of the subjects who continued taking the active Akavar-20/50 weight-loss compound for a period of one full year experienced rebound weight gain. Not one! In other words, Akavar-20/50 caused easy, automatic weight loss without calorie counting and without diet rebound.

FACT Akävar™-20/50 will produce an extraordinary, unparalleled loss of body weight!

Akavar-20/50 is the perfect weight loss compound for tough weight loss problems. This amazing formulation is the result of years of intensive research and scientific evaluation. Not one, but a team of doctors working in a recognized medical university discovered the potent caloric-restricting qualities of the Akavar-20/50 formulation, and the research team of Dynakor Pharmacal is proud to have played a major role in bringing this new generation of fast-acting caloric restrictors to the general public... at an affordable price.

DYNAKOR PHARMACAL

Note: [illegible]

CALL 1-800-334-2545

STOP: READ THIS BEFORE YOU ORDER! When ordering any weight-loss formulation, know who you are dealing with. Dynakor Pharmacal is a solid, established retail firm you can count on. We are members of the Salt Lake City Chamber of Commerce and the prestigious Direct Marketing Association. When you dial 1-800-334-2545 (toll free), you will reach our own Customer Service Center, not some hired order-taking service. When you call for product information, you will speak to our trained customer service representatives who are eager to help you and are familiar with our fine family of products. (By the way, our customer service representatives work at our order processing center, corporate offices and central retail outlet... not some rented mailing address.) We keep all your personal information strictly confidential, unlike many companies who sell "your" name and address to strangers for profit (they call it "their" mailing list). We don't. We respect your privacy and appreciate your business. Remember, any guarantee (including those tempting double- and triple-your-money-back promises) is only as good as the company behind it. Dynakor Pharmacal delivers exactly what we promise, and we stand 100% behind our guarantee. We won't let you down. (P.S. The next time you're in Salt Lake City, stop by our offices and see what products are being planned for the future.)

LOSE POUNDS & INCHES! GUARANTEED!

CALL 1-800-334-2545 OR VISIT WWW.AKAVAR2050.COM

MONEY BACK GUARANTEE: [illegible] Simply stated, if you use Akavar-20/50 [illegible] If for any reason you are not totally satisfied with Akavar-20/50, it will cost you absolutely nothing. BR11305

[illegible] © 2007 [illegible]

BR00017

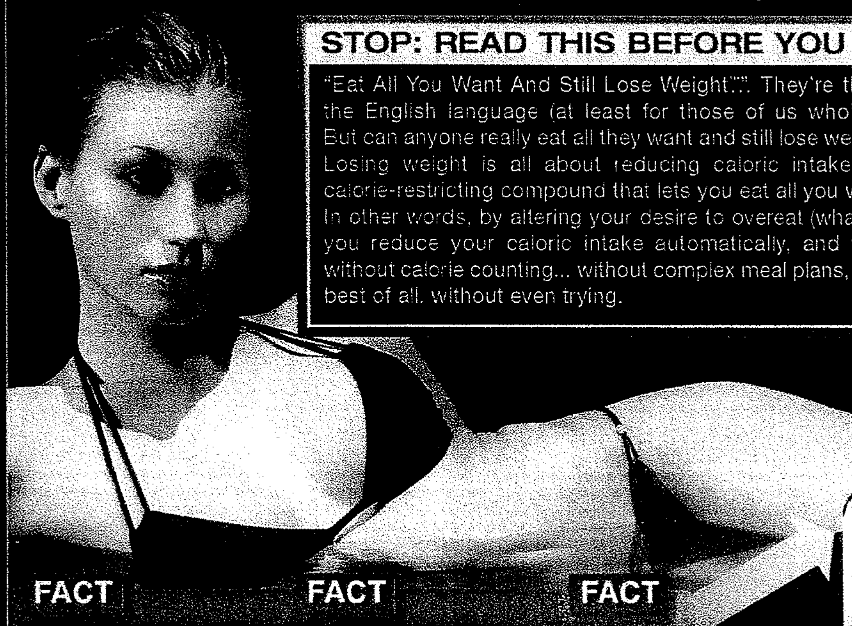
Advertisement

AKÄVAR® EUROPEAN WEIGHT-LOSS BREAKTHROUGH — BODY | New Product Update

EAT ALL YOU WANT & STILL LOSE WEIGHT™?

(And we couldn't say it in print if it wasn't true!)

INTRODUCING... AKÄVAR-20/50 "Fastest, Easiest Weight Loss Ever"



STOP: READ THIS BEFORE YOU BUY AKÄVAR®-20/50

"Eat All You Want And Still Lose Weight™". They're the eight most provocative words in the English language (at least for those of us who've tried diet after diet and failed). But can anyone really eat all they want and still lose weight? The answer might surprise you. Losing weight is all about reducing caloric intake, and Akävar is a new-generation calorie-restricting compound that lets you eat all you want... because you want to eat less. In other words, by altering your desire to overeat (what scientists call "increasing satiety"), you reduce your caloric intake automatically, and you lose weight without "dieting"... without calorie counting... without complex meal plans, frozen foods or feeling starved... and, best of all, without even trying.

FACT

Akävar-20/50 literally causes excess fat to be pulled from bulging parts of your body!

As Akävar-20/50 restricts caloric intake to below your daily caloric requirement, you literally pull excess fat from all over your body, including your waist, hips, thighs and buttocks (the body's natural fat storage sites)

FACT

The secret is the formula

Akävar-20/50 is the only weight-loss compound that works automatically. There is absolutely no need to count calories, no need to consciously lower your caloric intake, no need for expensive, pre-measured meals ... and no need to give up your favorite foods! Why? Because Akävar-20/50 reduces caloric intake ... automatically

FACT

Clinical trial shows success

That's right. While no diet pill can possibly work for everyone (that's why there's a money-back guarantee), the peer-reviewed clinical trial revealed that virtually everyone in the study who used Akävar's active compound (23 out of 24 participants, to be exact) lost a significant amount of weight

$39.99 FOR A FULL 60-CAPSULE SUPPLY.

CALL 1-800-467-6817 or visit www.AKAVAR2050.com

AKÄVAR®-20/50: HOW IT WORKS

Through its ability to delay gastric emptying and influence the "hunger hormone," ghrelin, Akävar has become the most sought-after weight-control compound of its time. In a well-controlled, double-blind, peer-reviewed clinical trial (the type of evidence accepted by both scientific and medical communities), doctors divided 46 overweight patients into two groups (a placebo [sugar pill] group, and an active [Akävar] group). Both groups were specifically told not, that's right, not to change their normal eating habits or exercise routine. At the conclusion of the study, the data was independently reviewed and verified. The results: In the group that took the active Akävar compound, 23 out of 24 people lost a substantial amount of weight. That's right... significant weight loss without "dieting," without calorie counting, without doing anything other than remembering to take their easy-to-swallow Akävar capsules 15 minutes before their main meals. But there's more! Not one of the subjects who continued taking the active Akävar-20/50 weight-loss compound for a period of one full year (in an uncontrolled, "real life" setting) experienced rebound weight gain. Not one! In other words, Akävar-20/50 caused easy, automatic weight loss without calorie counting and without diet rebound... simply through its remarkable ability to automatically reduce food intake to below previous levels.

100% MONEY-BACK GUARANTEE!!

CALL 1-800-467-6817 OR VISIT WWW.AKAVAR2050.COM

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DYNAKOR PHARMACAL

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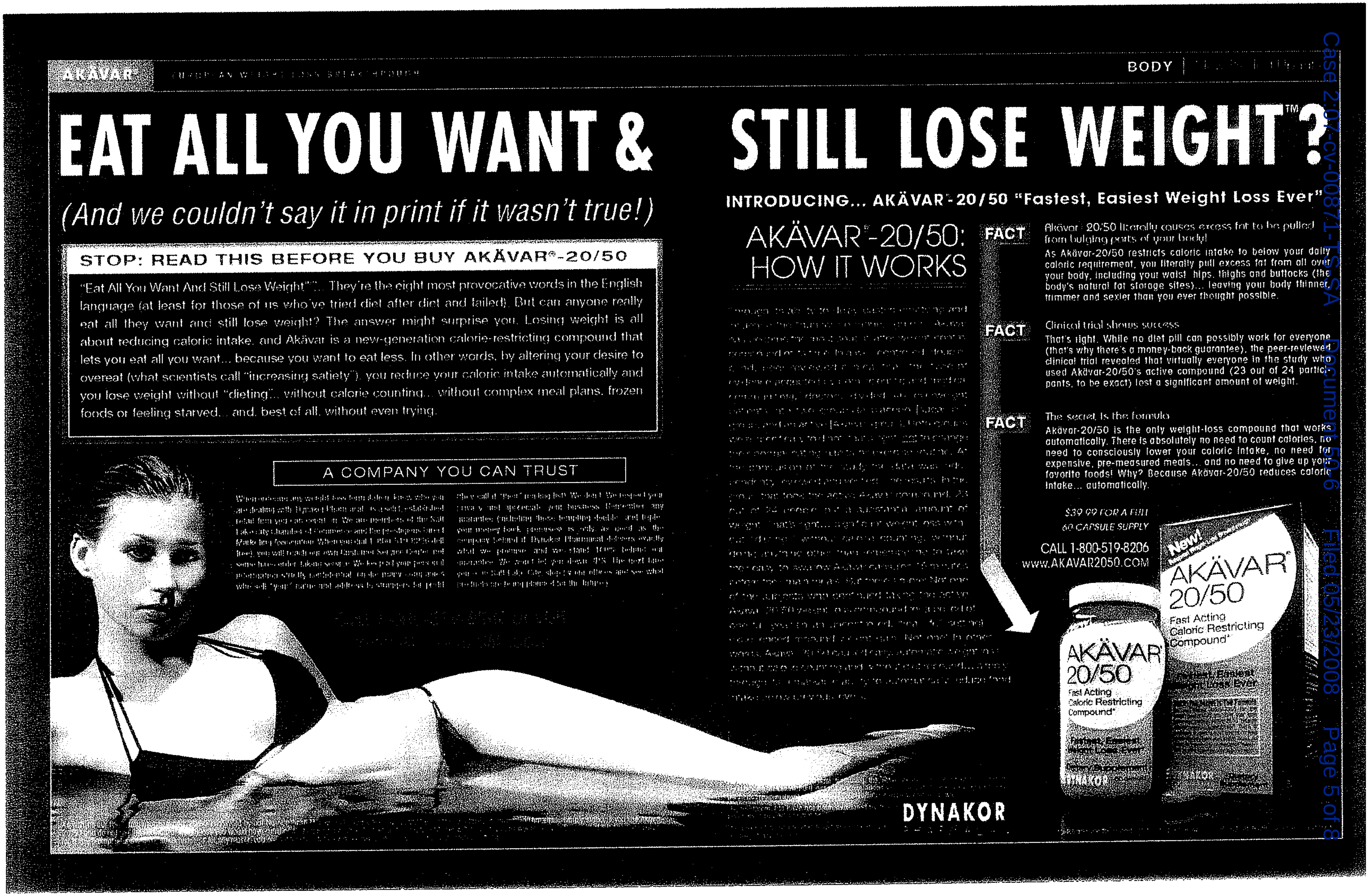
AKÄVAR
BODY
EAT ALL YOU WANT & STILL LOSE WEIGHT™?
(And we couldn't say it in print if it wasn't true!)
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A COMPANY YOU CAN TRUST
INTRODUCING... AKÄVAR®-20/50 "Fastest, Easiest Weight Loss Ever"
AKÄVAR®-20/50: HOW IT WORKS
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$39.99 FOR A FULL 60 CAPSULE SUPPLY
CALL 1-800-519-8206
www.AKAVAR2050.COM
New!
AKÄVAR® 20/50
Fast Acting Caloric Restricting Compound*
AKÄVAR® 20/50
Fast Acting Caloric Restricting Compound*
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AKÄVAR

BODY

EAT ALL YOU WANT & STILL LOSE WEIGHT...

(And we couldn't say it in print if it wasn't true!)

AUTOMATIC CALORIC RESTRICTION!

Study participants were specifically told not to alter their eating habits and they still lost weight.

Here at last is the news...

that millions of men and women plagued by excess fat, flab and cellulite have been waiting for. If you need to lose weight... and every weight-loss scheme you've tried has failed... it's time to forget anything and everything anyone has ever told you about dieting before. This is not marketing fantasy, this is scientific fact, documented by published medical findings. But there's more! In recent months, thousands and thousands of men and women around this country who have been overweight for years... have used the Akävar™ 20/50 formulation and have also confirmed in documented, certified testimonials a fantastic and incredible loss of weight without ever "dieting"... not even for one day. Finally, automatic caloric restriction is a reality. So now you know, no matter how much weight you need to lose... whether it's 10 pounds or 100 pounds... you have to start somewhere, and Akävar-20/50 is the fastest, easiest, unconditionally guaranteed way to start you on your journey to a thinner, trimmer, slimmer (and much healthier) body.

A major medical breakthrough...

has shattered the weight-loss barrier and a new generation of fast-acting caloric restrictors has been born... But most significantly, this new generation of potent compounds has eliminated diet failure and replaced it with guaranteed success. Akävar-20/50 makes up for years of overeating, years without exercise, years without being able to push away the extra dessert or midnight snack and, most importantly, years of embarrassment and a lack of self-confidence. It's no wonder there's been so much excitement about Akävar-20/50, as men and women around the world, just like you, have already discovered... there's no easier, more dramatic weight-loss compound available today. You will not fail this time because the only thing you have to do is remember to take your easy-to-swallow Akävar-20/50 capsules each and every day. That's it! There is nothing else to do, no other diet to buy. Akävar-20/50 will do everything else for you... automatically... and that's guaranteed. By this time, you've probably heard about Akävar-20/50 or seen promotional material in newspapers, magazines or on TV. If you have been unable to find Akävar-20/50 at your local pharmacy, it's because the patented Akävar-20/50 formulation will not be available in stores until August 23, 2007. At this time, Akävar-20/50 is only available by calling 1-800-719-9492 or by visiting www.AKAVAR2050.com. A full 60-capsule supply is only $39.99.

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FACT

Now there's a "cure" for fat!

An entirely new generation of powerful, foolproof, bio-active weight-loss compounds that automatically reduce caloric intake... eliminating traditional dieting, calorie counting, strenuous exercise, fad diets, supermarket "miracle" pills, Japanese wonder diets, rubber suits, belts, creams or anything else you have ever tried before

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DYNAKOR

AKÄVAR™ EUROPEAN WEIGHT-LOSS BREAKTHROUGH

EAT ALL YOU WANT & STILL LOSE WEIGHT...™

(And we couldn't say it in print if it wasn't true!)

AUTOMATIC CALORIC RESTRICTION!

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Note: While the published clinical results of the active Akävar-20/50 compound resulted in significant weight loss WITHOUT diet and exercise, adding a sensible diet and exercise program to your weight-loss regimen could only enhance Akävar-20/50's incredible weight-loss power.

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease. All trademarks are the property of their respective owners.

 Printed in U.S.A.

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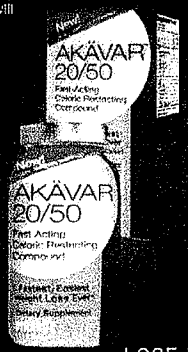

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LOSE POUNDS & INCHES GUARANTEED!

MANUFACTURER'S COUPON EXPIRES 4/30/08

$2.50 OFF

Limit one item per coupon. Void if copied, transferred, purchased, sold or prohibited by law. No cash value.
Cashier: Scan product, then scan coupon.

IRC redemption return to: Attn: Accounting - Dynakor Pharmacal™ III
5742 W. Harold Gatty Drive - Salt Lake City, UT 84116

kmart

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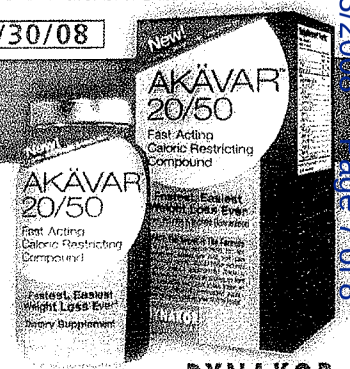

FULL 60-CAPSULE SUPPLY!

DYNAKOR PHARMACAL

BR00021

EVERYBODY WANTS TO lose weight

...but which "diet pill" is right for you?

There are two things we all know for sure... you can't be too rich or too thin (well... unless you're the Olsen twins). And if you're like most of us, you're still looking for the perfect diet pill because your last diet (and the one before that) probably failed. The truth is, no single weight-loss program or diet pill works for everybody... that's why, according to the latest government figures, weight loss remains a $30-billion-a-year business.

Choosing the right diet plan, diet book, or diet pill can be very confusing. Just take a trip to your local Wal-Mart or GNC. There are literally dozens of brightly-labeled bottles lining the shelves. Open up your favorite magazine. You'll see hundreds of before and after pictures, doctors in white coats, Hollywood celebrity endorsements, and outrageous promises like, "Lose 20 Pounds Overnight While You Sleep."

Want to know which diet pill is right for you? Here's a list of the most popular pills on the market today. Each is a little different... each addresses a specific weight-loss problem. One of these should help you get thin, stay thin, and put an end to diet failure.

All featured products are available at smarter retailers nationwide... or you can order directly from their respective distributors... Happy Dieting!

A buyer's guide to America's best-selling diet pills.

EAT ALL YOU WANT AND STILL LOSE WEIGHT?

Sounds too good to be true... but this European breakthrough has the science to prove it. Called Akävar "20/50," it really is the fastest, easiest weight loss ever because people drop pounds and inches without "dieting" or additional exercise. Akävar actually puts your body into a negative caloric balance as it automatically reduces caloric intake. Although they're not really sure why, researchers think Akävar works through adjustments to the "hunger hormone" ghrelin or through its ability to delay gastric emptying. In plain English, you take this stuff before meals and you just don't want to eat. Dynakor Pharmacal. www.Akavar2050.com, or call 1-800-464-2473.

Heard About "Combo Pilling"... Hollywood's Hottest New Weight-Loss Craze?

Ever wonder how Hollywood starlets get so thin... so fast? It could be "Combo Pilling"... the über-trendy, "underground" practice of combining two or more diet pills to create "supercharged" weight loss. Tinsel Town's favorite diet pill combination is Zantrex®-3 (the "rapid weight loss;" incredible energy" diet pill) and Relacore® (the calming, feel good, "belly fat" pill). One pill picks you up, the other pill calms you down... both of them help you lose weight... but together, oh my goodness!

NOTE: *Neither the maker of Zantrex-3 nor the maker of Relacore condone the practice of "Combo Pilling."*

AMERICA'S #1 "BELLY FAT" PILL

Everyone knows that stress increases cortisol... cortisol increases belly fat... and Relacore is the #1 belly fat pill across America. So if stress-induced belly fat is your problem, Relacore is the ultimate solution. It's easy... you'll love it. The Carter-Reed Company. Relacore.com, or call 1-800-504-5549.

PS: While known as a "belly fat" pill, millions use Relacore's anti-stress formula as a "feel good" pill.

MENOPAUSE IS MORE THAN HOT FLASHES AND MOOD SWINGS... IT'S ABOUT GAINING WEIGHT

Estrin-D™ is the first and only diet pill specifically developed for adult women... to help combat menopausal and perimenopausal weight gain. If you're over 40 and just can't seem to lose the weight no matter how hard you try, menopausal weight gain could be the problem, and Estrin-D should be the diet pill for you. Plus, Estrin-D is said to help improve hormonal balance so you feel great and lose weight in all the right places. Covaxil™ Laboratories. EstrinD.com, or call 1-800-454-4948.

RAPID WEIGHT LOSS." INCREDIBLE ENERGY

The most popular diet pill with the under-30 set, Zantrex-3's serious weight loss and extreme energy together in one power-packed diet pill... 5-15% more weight loss" than the leading ephedrine-based diet pill and all the energy you'll ever want or need. Zeller® Labs Zantrex-3.com, or call 1-800-497-1521.

SIGNIFICANTLY OVERWEIGHT?

You've seen the ad. What is a diet pill worth $153 a bottle? When you truly need to lose weight... lots of weight... there's only one Leptoprin. At $153 a bottle, Leptoprin™-SD is much too expensive and much too powerful for the casual dieter. Leptoprin is not recommended for anyone who has a BMI less than 27. A.G. Waterhouse, leptoprin.com, or call 1-800-492-4200.

A SLIMMING GEL THAT REALLY WORKS

No less than the famed *Washington Post* dubbed Tummy Flattening Gel (TFG) "The Dream Cream." Don't let the name fool you... Tummy Flattening Gel permits you to reduce the appearance of bulging pockets of unsightly fat wherever they appear. Put TFG on your thighs, it goes to work directly on your thighs. Rub around the mid-riff? Apply TFG to your waist or tummy and (with a little diet and exercise, of course) watch them shrink in size. You can even apply TFG to your double chin. Wherever you've got those unsightly lumps and bumps, there's nothing better than topically-applied Tummy Flattening Gel... "The Dream Cream!" Sövage™ Dermatologic Laboratories. Sovage.com, or call 1-800-495-6563.

PS: You really have to try this stuff and see the difference with your own eyes. It's amazing!