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16 UNITED STATES DISTRICT COURT  
17 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
18 WESTERN DIVISION

19 UNITED STATES OF AMERICA,  
20 Plaintiff,  
21 v.  
22 LISA LEVEY, in her capacity as  
23 personal representative of the  
Estate of MICHAEL LEVEY;  
24 GARY BALLEEN;  
BENTLEY MYERS INTERNATIONAL  
25 CO.;  
26 PUBLISHER'S DATA SERVICES,  
INC.; and  
NUTRITIONAL LIFE, INC.,  
27 Defendants.

No. CV 03-4670 GAF (AJWx)  
AMENDED COMPLAINT FOR CIVIL  
PENALTIES, INJUNCTIVE AND  
OTHER RELIEF

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

5 1. Plaintiff brings this action under Sections 5(a), 5(1),  
6 12, 13(b), and 16(a) of the Federal Trade Commission Act ("FTC  
7 Act"), 15 U.S.C. §§ 45(a), 45(1), 52, 53(b), and 56(a): (a) to  
8 obtain monetary civil penalties, consumer redress, injunctive and  
9 other relief from defendants Lisa Levey, in her capacity as  
10 personal representative of the Estate of Michael Levey, Bentley  
11 Myers International Co., Publisher's Data Services, Inc., and  
12 Nutritional Life, Inc., for violations of a final order to cease  
13 and desist issued by the Commission; and (b) to obtain  
14 injunctive, redress and other relief for Michael Levey's, Gary  
15 Ballen's, Bentley Myers International Co.'s, Publisher's Data  
16 Services, Inc.'s, and Nutritional Life, Inc.'s unfair or  
17 deceptive acts and practices and false advertising in violation  
18 of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and  
19 52.

#### 20 I. JURISDICTION AND VENUE

21 2. This Court has jurisdiction over this matter pursuant  
22 to 15 U.S.C. §§ 45(a), 45(1), 52, 53(b), and 56(a) and under 28  
23 U.S.C. §§ 1331, 1337, 1345, and 1355.

24 3. Venue in the Central District of California is proper  
25 under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b-c) and  
26 1395(a).

#### 27 II. DEFENDANTS

28 4. Defendant Lisa Levey is the representative of the

1 Estate of Michael Levey. Before his death on August 2, 2003,  
2 Michael Levey ("Levey") was the president and co-owner of  
3 defendant Bentley Myers International Co., and co-owner of  
4 defendant Publisher's Data Services, Inc. Individually or in  
5 concert with others, Levey formulated, directed, controlled, or  
6 participated in the acts and practices of defendants Bentley  
7 Myers International Co., Publisher's Data Services, Inc., and  
8 Nutritional Life, Inc. (collectively, "the corporate  
9 defendants"), including the acts and practices set forth in this  
10 Complaint, and did so at all times pertinent to this action.  
11 Levey resided and transacted business in the Central District of  
12 California.

13 5. Defendant Gary Ballen ("Ballen") is a director and co-  
14 owner of defendant Bentley Myers International Co., president and  
15 co-owner of defendant Publisher's Data Services, Inc., and owner  
16 of defendant Nutritional Life, Inc. Individually or in concert  
17 with others, Ballen formulates, directs, controls, or  
18 participates in the acts and practices of the corporate  
19 defendants, including the acts and practices set forth in this  
20 Complaint, and has done so at all times pertinent to this action.  
21 He resides and transacts or has transacted business in the  
22 Central District of California.

23 6. Defendant Bentley Myers International Co. ("Bentley  
24 Myers") is a Nova Scotia, Canada, corporation that was  
25 incorporated in 1998, and was registered in British Columbia,  
26 Canada, that year. Bentley Myers' office and principal place of  
27 business in Canada is located at 203-2780 Granville Street,  
28 Vancouver, British Columbia, Canada. Its registered office is

1 located at 1050-1188 West Georgia Street, Vancouver, British  
2 Columbia, Canada. Bentley Myers is engaged in the marketing,  
3 promotion and sale of dietary supplements and other health-  
4 related products to U.S. consumers via direct mail solicitations  
5 and telephone orders. Bentley Myers transacts or has transacted  
6 business in the Central District of California and throughout the  
7 United States.

8 7. Defendant Publisher's Data Services, Inc. ("Publisher's  
9 Data") is a California corporation that was incorporated in 1998.  
10 Its principal place of business is 9090 Burton Way, Suite 201,  
11 Beverly Hills, California 90211. Publisher's Data provides data  
12 and information processing services, including telephone support  
13 services, to Bentley Myers. Publisher's Data transacts or has  
14 transacted business in the Central District of California.

15 8. Defendant Nutritional Life, Inc. ("Nutritional Life"),  
16 is or was a California corporation that was incorporated in 1981.  
17 Its principal place of business is 9350 Civic Center Drive, Suite  
18 140, Beverly Hills, California 90210. Although Nutritional  
19 Life's corporate status is or was suspended in California, Levey,  
20 Ballen, Bentley Myers and Publisher's Data continued to transact  
21 business in this name, including contracting with a third-party  
22 credit card processor that facilitates the transfer of funds  
23 among the various credit card organizations and Levey, Ballen,  
24 Bentley Myers and Publisher's Data for credit card sales to  
25 consumers. Nutritional Life transacts or has transacted business  
26 in the Central District of California.

27 9. Levey, Ballen and the corporate defendants have  
28 operated together as a common enterprise to manufacture,

1 advertise, package, label, promote, offer for sale, sell or  
2 distribute dietary supplements and other health-related products  
3 to consumers throughout the United States, in or affecting  
4 commerce, as "commerce" is defined in Section 4 of the FTC Act,  
5 15 U.S.C. § 44.

6 10. Either singly or in connection with one or more members  
7 of the common enterprise, Levey, Ballen and the corporate  
8 defendants also have done business under various names,  
9 including, but not limited to, Denman Scientific Research,  
10 Cartazyne Sciences International, Serotril Sciences  
11 International, Arthritis and Joint Disease Center, Nutritional  
12 Fulfillment Center, Vancouver Natural Products, Vancouver Health  
13 Products, and NLI Gentin.

### 14 III. PRIOR COMMISSION PROCEEDING

15 11. In a Commission proceeding bearing Docket No. C-3459,  
16 the Commission's complaint charged Levey, in part, with  
17 disseminating, or causing to be disseminated, false or misleading  
18 television advertisements for the EuroTrym Diet Patch, the  
19 Foliplexx baldness product, and the Y-Bron impotence treatment,  
20 and for performing deceptive demonstrations during infomercials  
21 he produced for the Magic Wand hand mixer. Ballen appeared in  
22 Levey's advertisements as an endorser of the Y-Bron product. The  
23 Commission charged that Levey's practices constituted unfair or  
24 deceptive acts or practices, and the making of false  
25 advertisements in or affecting commerce, in violation of Sections  
26 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

27 12. On September 23, 1993, the Commission issued a Decision  
28 and Order ("FTC Order") against Levey, individually and as an

1 officer of Positive Response Marketing, Inc., and against  
2 Positive Response Marketing, Inc., also doing business as  
3 Positive Response Television and Positive Response Advertising,  
4 to cease and desist certain advertising and marketing practices.  
5 The FTC Order was served upon Levey in the Fall of 1993, and by  
6 operation of law, became final and enforceable thereafter. The  
7 FTC Order has remained in full force and effect ever since.  
8 Copies of the Commission's complaint and the FTC Order are  
9 attached hereto as Exhibits A and B, respectively. Pursuant to  
10 the requirements set forth in Part XI of the FTC Order, copies of  
11 the FTC Order were distributed to, among others, Levey. At all  
12 times relevant to the counts of this Complaint, Levey and the  
13 corporate defendants knew of the FTC Order.

14 13. The Commission's Order includes the following  
15 provisions:

16 ORDER

17 DEFINITIONS

18 For purposes of this Order:

- 19 1) "Competent and reliable scientific evidence" shall  
20 mean tests, analyses, research, studies or other  
21 evidence based on the expertise of professionals  
22 in the relevant area, that has been conducted and  
23 evaluated in an objective manner by persons  
24 qualified to do so, using procedures generally  
25 accepted in the profession to yield accurate and  
26 reliable results.

27 \* \* \*

28

1 II.

2 IT IS FURTHER ORDERED that respondent Positive  
3 Response Marketing, Inc., a corporation, its successors  
4 and assigns, and its officers, and respondent Michael  
5 S. Levey, individually and as an officer of said  
6 corporation, and respondents' agents, representatives  
7 and employees, directly or through any partnership,  
8 corporation, subsidiary, division or other device, do  
9 forthwith cease and desist from:

10 \* \* \*

11 B. Representing, directly or by implication, in  
12 connection with the advertising, packaging,  
13 labeling, promotion, offering for sale, sale  
14 or distribution of any other product in or  
15 affecting commerce, as "commerce" is defined  
16 in the Federal Trade Commission Act, that:

- 17 (1) Use of the product prevents or reduces  
18 feelings of hunger;
- 19 (2) Use of the product enables users to lose  
20 substantial amounts of weight;
- 21 (3) Use of the product enables users to lose  
22 weight in a substantial number of cases;  
23 or
- 24 (4) Any competent or reliable test or study  
25 establishes that use of the product  
26 promotes weight loss,

27 unless such representation is true and, at the  
28 time of making such representation, respondents

1 possess and rely upon competent and reliable  
2 scientific evidence that substantiates the  
3 representation.

4 \* \* \*

5 VI.

6 IT IS FURTHER ORDERED that respondent Positive  
7 Response Marketing, Inc., a corporation, its successors  
8 and assigns, and its officers, and respondent Michael  
9 S. Levey, individually and as an officer of said  
10 corporation, and respondents' agents, representatives  
11 and employees, directly or through any partnership,  
12 corporation, subsidiary, division or other device, in  
13 connection with the advertising, packaging, labeling,  
14 promotion, offering for sale, sale or distribution of  
15 any product or service in or affecting commerce, as  
16 "commerce" is defined in the Federal Trade Commission  
17 Act, do forthwith cease and desist from:

18 A. Making any representation, in any manner,  
19 directly or by implication, regarding the  
20 efficacy or safety of any food, drug or  
21 device, as those terms are defined in Section  
22 15 of the Federal Trade Commission Act, 15  
23 U.S.C. § 55, unless at the time of making  
24 such representation respondents possess and  
25 rely upon competent and reliable scientific  
26 evidence that substantiates the  
27 representation; provided, however, that any  
28 such representation for any food product that

1 is specifically permitted in labeling for  
2 such food product by regulations promulgated  
3 by the Food and Drug Administration pursuant  
4 to the Nutrition Labeling and Education Act  
5 of 1990 will be deemed to be substantiated by  
6 competent and reliable scientific evidence;  
7 provided further that any such representation  
8 for any over-the-counter drug product in  
9 Final Regulations establishing conditions  
10 under which such product is safe and  
11 effective promulgated by the Food, Drug and  
12 Cosmetic Act, will be deemed to be  
13 substantiated by competent and reliable  
14 scientific evidence.

15 B. Making any representation, in any manner,  
16 directly or by implication, regarding the  
17 performance, benefits, efficacy or safety of  
18 any product or service (other than a  
19 representation covered under Subpart VI.A  
20 above), unless at the time of making such  
21 representation respondents possess and rely  
22 upon competent and reliable evidence, which  
23 when appropriate must be competent and  
24 reliable scientific evidence, that  
25 substantiates the representation.

26 VII.

27 IT IS FURTHER ORDERED that respondent Positive  
28 Response Marketing, Inc., a corporation, its successors

1 and assigns, and its officers, and respondent Michael  
2 S. Levey, individually and as an officer of said  
3 corporation, and respondents' agents, representatives  
4 and employees, directly or through any partnership,  
5 corporation, subsidiary, division or other device, in  
6 connection with the advertising, packaging, labeling,  
7 promotion, offering for sale, sale or distribution of  
8 any product or service in or affecting commerce, as  
9 "commerce" is defined in the Federal Trade Commission  
10 Act, do forthwith cease and desist from:

11 \* \* \*

12 C. Representing, in any manner, directly or by  
13 implication, by words, depictions or symbols,  
14 that such product or service has been  
15 endorsed by a person, group or organization  
16 that is an expert with respect to the  
17 endorsement message unless:

- 18 (1) The endorser is an existing person,  
19 group or organization whose  
20 qualifications give it the expertise  
21 that the endorser is represented as  
22 possessing with respect to the  
23 endorsement; and
- 24 (2) The endorsement is supported by an  
25 objective and valid evaluation or test  
26 using procedures generally accepted by  
27 experts in that science or profession to  
28 yield accurate and reliable results.

VIII.

IT IS FURTHER ORDERED that respondent Positive Response Marketing, Inc., a corporation, its successors and assigns, and its officers, and respondent Michael S. Levey, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, in connection with any advertisement depicting a demonstration, experiment or test, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that any demonstration, picture, experiment or test depicted in the advertisement proves, demonstrates or confirms any material quality, feature or merit of any product, when such demonstration, picture, experiment or test does not prove, demonstrate or confirm the representation for any reason, including but not limited to:

- A. The undisclosed use or substitution of a material mock-up or prop.
- B. The undisclosed material alteration in a material characteristic of the advertised product or any other material prop or device depicted in the advertisement.

1 C. The use of a visual perspective or camera,  
2 film, audio or video technique that, in the  
3 context of the advertisement as a whole,  
4 materially misrepresents a material  
5 characteristic of the advertised product or  
6 any other material aspect of the  
7 demonstration.

8 \* \* \*

9 XII.

10 IT IS FURTHER ORDERED that respondent Michael S.  
11 Levey shall, for a period of ten (10) years from the  
12 date of issuance of this Order, notify the Commission  
13 within thirty (30) days of the discontinuance of his  
14 present business or employment and of his affiliation  
15 with any new business or employment. Each notice of  
16 affiliation with any new business or employment shall  
17 include the respondent's new business address and  
18 telephone number, current home address, and a statement  
19 describing the nature of the business or employment and  
20 his duties and responsibilities.

21 IV. COURSE OF CONDUCT

22 14. Since at least 1998, Levey, Ballen and the corporate  
23 defendants have manufactured, advertised, packaged, labeled,  
24 promoted, offered for sale, sold or distributed numerous dietary  
25 supplements and other health-related products. Their products  
26 have included, but are not limited to, the following, each of  
27 which is a "food" or "drug" within the meaning of Sections 12 and  
28 15 of the FTC Act, 15 U.S.C. §§ 52 and 55:

1 a. Zymax, a weight loss product containing the ingredient  
2 Ma Huang (the herb Ephedra sinica, also known as  
3 Chinese Ephedra, which contains ephedrine alkaloids  
4 commonly referred to as ephedra). For example, Levey,  
5 Ballen and the corporate defendants have offered a  
6 thirty-day supply of Zymax for \$29.95 and a ninety-day  
7 supply of Zymax for \$79.95. The label lists a daily  
8 dose of two pills with each pill containing 7.5 mg of  
9 ephedrine.

10 b. MillenexES, another weight loss product containing the  
11 ingredient Ma Huang. For example, Levey, Ballen and  
12 the corporate defendants have offered a thirty-day  
13 supply of MillenexES for \$29.95 and a ninety-day supply  
14 of MillenexES for \$79.95. The label lists a daily dose  
15 of two pills with each pill containing 7.5 mg of  
16 ephedrine.

17 c. Serotril, a product containing *hypericum perforatum*  
18 (the herb commonly known as St. John's wort) that  
19 Levey, Ballen and the corporate defendants have  
20 marketed for weight loss. For example, Levey, Ballen  
21 and the corporate defendants have offered a thirty-day  
22 supply of Serotril for \$29.95 and a ninety-day supply  
23 of Serotril for \$89.95.

24 d. CartazyneDS, an oral arthritis treatment combining  
25 glucosamine sulfate and chondroitin sulfate. For  
26 example, Levey, Ballen and the corporate defendants  
27 have offered a thirty-day supply of CartazyneDS for  
28 \$29.95 and a ninety-day supply of CartazyneDS for



1 statements, among others:

2 a. "I thought I would never be able to lose this weight.  
3 I went from a size 14 down to a sexy size 6. My  
4 friends think I had plastic surgery. They're very  
5 jealous!"

6 (Quotation is adjacent to photo of woman) (Exhibit C-1,  
7 March 2002 edition of "Plastic Surgery Magazine,"  
8 p. 131; Exhibit C-2, February-March 2001 edition of  
9 "Plastic Surgery Magazine," p. 143)

10 b. "This powerful formula attacks weight loss in a unique  
11 and extremely effective manner. We recognize that  
12 unsightly fat deposits are usually very hard to get rid  
13 of. Our goal was to make it as simple and as foolproof  
14 as possible-almost automatic!"

15 \* \* \*

16 "After much hard work, we were finally able to safely  
17 increase thermogenesis and quickly promote weight  
18 loss\*," Dr. Perry energetically added. "Patients  
19 actually enjoy taking Zymax for two reasons: It gives  
20 you loads of energy for work, play and exercise, plus  
21 you lose lots of weight while you still eat!"

22 \* \* \*

23 \*These statements have not been evaluated by the Food &  
24 Drug Administration. This product is not intended to  
25 diagnose, treat, cure or prevent any disease.

26 (Text and quotations are adjacent to photo of man in  
27 white physician's coat and stethoscope, with caption  
28 "Dr. David Perry, MD") (Exhibit C-1, p. 132; Exhibit C-

1 2, p. 144)

2 c. "Doctors & Scientists Discover Amazing New Fat Burning  
3 Breakthrough"

4 "Subject: Female 155 lbs"

5 "Individual results will naturally vary"

6 (Text is adjacent to photos of three unclothed  
7 backsides pictured side by side. The three backsides  
8 are progressively thinner from left to right, and bear  
9 the labels "Baseline Reference," "Mid-Test Reference,"  
10 and "Final Observation," respectively) (Exhibit C-1, p.  
11 132; Exhibit C-2, p. 144, which does not include  
12 "Individual results will naturally vary.")

13 d. Clinical Studies Show How ZymaX Finally Ends Useless  
14 Dieting!

15 (Exhibit C-1, p. 134; Exhibit C-2, p. 146)

16 e. ZymaX Actually Increases In Effectiveness The Longer  
17 You Take It!

18 (Exhibit C-1, p. 135, headline; Exhibit C-2, p. 147,  
19 headline)

20 f. We decided to ask a registered pharmacist, *B. Bubman*,  
21 to review the Zymax formula and studies, and compare  
22 Dr. Perry's new formula to the blur of bottles and  
23 boxes that line drugstore shelves. Below are his  
24 personal findings and his comments.

Product . . .	Comments . . .
Zymax . . .	Natural, safe, effective. Clinically tested, with guaranteed results.
Metabolite . . .	Expensive. Sold thru distributors who mark up price for big profit. Can make you jittery. Expensive!
Dexatrim . . .	Synthetic OTC drug. Common appetite suppressant. Comes with low cal diet. Side effects.
Accutrim . . .	Synthetic OTC drug. Common appetite suppressant. Comes with low cal diet. Side-effects.
Slim-Fast . . .	Powdered meal replacement drink. Comes with low-cal diet. Uses artificial sweeteners.
Xenical . . .	Synthetic prescription drug. Can cause runny & uncontrollable bowel movements.
Meridia . . .	Synthetic prescription drug. Expensive appetite suppressant. Has side-effects & can cause chemical addiction!

(Exhibit C-1, p. 136; Exhibit C-2, p. 148)

g. "Zymax is so much more than I ever expected. I went from size 12 to size 6 in a very short time--and kept the weight off. I'm still full of energy and loving

1 life!"

2 (Exhibit C-1, p. 137; Exhibit C-2, p. 149)

3 h. Dear Denman Scientific Research Customer Service:

4 I apologize for being so skeptical when I called  
5 and asked if Zymax really works. Your representative,  
6 Lily, was so pleasant and patient with me. You see, I  
7 had been 60 pounds overweight for most of my adult life  
8 and embarrassed to leave my house at times. I had  
9 tried so many other diet pills and all I lost was more  
10 self-image and more money. I hope you understand why I  
11 asked so many questions now.

12 I am writing this letter to let you know that  
13 Zymax worked great for me. Each morning when I got on  
14 my bathroom scale, the weight loss was obvious-but even  
15 more impressive was when I looked in the mirror! I  
16 could actually see myself getting thinner everyday! I  
17 am almost at my goal weight and ready to switch to the  
18 Zymax maintenance program.

19 . . . Best of all, it's been months now and my  
20 weight is staying down, and I still have lots of  
21 energy. . . .

22 Thanks, Love Alice Wilcox, New York, NY

23 (Exhibit C-1, p. 138; Exhibit C-2, p. 150)

24 i. SAFE AND EFFECTIVE ZYMAX IS AVAILABLE WITHOUT A  
25 PRESCRIPTION

26 \* \* \*

27 "I woke up in the morning one full dress size smaller!"

28 \* \* \*

1 Amazing Success of New Fat Burning Formula Now

2 CONFIRMED By 8 Major Clinical Tests

3 (Exhibit C-2, p. 153)

4 j. WARNING Losing weight is extremely easy with new  
5 Zymax. It is important that you set a target weight  
6 before you begin the Zymax program.

7 Do Not Lose Too Much Weight

8 Weigh yourself often when using Zymax. As your weight  
9 begins to plummet, reduce your dose and follow the  
10 Zymax maintenance instructions. Please look at the  
11 chart to the right and identify your ideal weight prior  
12 to taking Zymax.

13 Being too thin can be just as dangerous as being  
14 overweight!

15 (Text is adjacent to chart of height and weigh)

16 (Exhibit C-3, February 2000 edition of "Plastic Surgery  
17 Magazine," p. 163)

18 k. Below are the most frequently asked questions received  
19 by the Denman Scientific Research consultants, and  
20 answers provided by their medical and professional  
21 staff.

22 Q: "I have tried those appetite suppressants that you  
23 can buy in stores and they really don't work for me.  
24 Why will Zymax work when I've failed with so many other  
25 methods to lose weight?

26 A: This is one of the most frequently asked  
27 questions.... Zymax works by naturally increasing  
28 thermogenesis and directing your body to use stubborn

1 stored fat as energy. The result is a flood of new  
2 energy plus weight loss you can count on. You're not  
3 alone—many of those in the clinical studies also had  
4 failed using other methods, and were quite surprised at  
5 how easy it was to lose weight quickly with Zymax.

6 \* \* \*

7 Q: "How much and how fast will I lose weight with  
8 Zymax? Is there a diet you have to follow?"

9 A: Since results naturally vary, this is a difficult  
10 question to accurately answer. Weight loss often  
11 begins in about 48-hours after taking Zymax and then  
12 accelerates over the next few days to a week. You  
13 should set a target weight prior to starting Zymax. As  
14 your weight begins to plummet, switch to the *Phase 2*  
15 dose, explained in the instruction booklet. Losing too  
16 much weight can be just as unhealthy as being  
17 overweight! There is absolutely no fad, starvation  
18 diet to follow.

19 (Exhibit C-2, p. 151)

- 20 1. SAFE & EFFECTIVE ZYMAX NOW AVAILABLE WITHOUT A  
21 PRESCRIPTION!

22 (Exhibit C-2, p. 153; Exhibit C-3, p. 165)

23 18. Levey's, Ballen's and the corporate defendants'  
24 advertisements, in numerous instances, do not refer to ephedra or  
25 ephedrine and instead include "other ECA stack components" in  
26 fine print as one of many ingredients. (Exhibit C-2, p. 150;  
27 Exhibit C-3, p. 162). ECA stands for "ephedra, caffeine and  
28 aspirin."

1 19. In numerous instances when ordering Zymax by telephone,  
2 consumers who asked Levey's, Ballen's and the corporate  
3 defendants' customer service representatives about the risks  
4 associated with Zymax have been told that the product is natural,  
5 safe, and without side effects. Ephedra, however, can have side  
6 effects, such as jitteriness and increased blood pressure. In  
7 addition, the risk of side effects due to ingestion of ephedra  
8 increases with increased dosage.

9 **B. MillenexES**

10 20. Levey, Ballen and the corporate defendants have  
11 disseminated or have caused to be disseminated advertisements and  
12 promotional materials for MillenexES, including, but not  
13 necessarily limited to, the brochure titled "Diet News" attached  
14 hereto as Exhibit D, which contains the following statements,  
15 among others:

16 a. "I lost 38 pounds and found more romance than I ever  
17 thought possible. I'm loving life now!" "This Pill is  
18 Amazing!"

19 (Exhibit D, Summer 2001 edition of "Diet News," p. 167)

20 b. New Safe Fat-Fighting Pill

21 \* \* \*

22 Dr. [Robert] Aldan and his team had been searching for  
23 an effective way to lower life-threatening serum  
24 triglyceride and cholesterol levels, when they made the  
25 discovery that made them the talk of the entertainment  
26 world - at least behind the scenes. "The discovery of  
27 MillenexES (*Mill-in-ex Extra Strength*) was actually an  
28 accident. Honest!"

1 \* \* \*

2 Weight Loss Has Never Been So Easy . . .

3 Now, for the first time, here's a clinically proven,  
4 dynamic approach that's both fast and very effective  
5 . . . .

6 "The MillenexES formula also contains a group of  
7 natural ingredients that boost your energy level  
8 without giving you the jitters.\* Having plenty of  
9 energy and a strong feeling of well-being is important  
10 when losing weight," added Dr. Aldan. "You can feel  
11 MillenexES working. You actually feel good while  
12 losing!"

13 \* \* \*

14 \*These statements have not been evaluated by the Food &  
15 Drug Administration. This product is not intended to  
16 diagnose, treat, cure or prevent any disease.

17 (Exhibit D, p. 168)

18 c. Virtually Automatic Weight Loss

19 [Dr. Aldan explains:] ". . . . Best of all, weight  
20 loss can begin automatically."

21 (Exhibit D, p. 169)

22 d. No Will Power? NO PROBLEM! MillenexES Lets You Eat  
23 Without Feeling Guilty

24 \* \* \*

25 "*I wanted to eat what I want to eat, without the fat  
26 sticking to my hips and thighs! That's why I tried  
27 MillenexES. It's amazing!"*

28 \* \* \*

1 "The MillenexES system works at a cellular level and  
2 prevents fat from being digested and then stored in all  
3 the wrong places.\*" Dr. Aldan continues, "You should  
4 never have to crash diet again. MillenexES can become  
5 a part of your life. This dietary supplement formula  
6 is safe, even for prolonged use, when used according to  
7 instructions.["]

8 \* \* \*

9 \*These statements have not been evaluated by the Food &  
10 Drug Administration. This product is not intended to  
11 diagnose, treat, cure or prevent any disease.

12 (Exhibit D, p. 172)

13 e. Dear Dr. Aldan:

14 I was fat in high school. I was fat all through  
15 college. . . . I'm writing this letter today with a  
16 smile on my face after just getting off my bathroom  
17 scale. Since I started the MillenexES system, I've  
18 lost 39 pounds! This is amazing! I still enjoy most  
19 of the foods I love, and the weight just kept melting  
20 off. . . .

21 Thank you,

22 Stacy Delmonica (TV actress)

23 Hey Doc!

24 I took you up on your offer to try MillenexES and I  
25 have to say it performed exactly as stated. . . .

26 After just a few weeks on MillenexES, I've lost 55  
27 pounds! . . . Thank you for this weight loss miracle!

28 Mr. Don Jeffreys & Randy

1 (Exhibit D, p. 175)

2 f. MillenexES Lets YOU Decide How Much Weight You Want To  
3 Lose

4 What's your weight loss goal?

5 Go ahead, set your goal. Save this page and look back  
6 at it

7 at it in a month after you start on the MillenexES  
8 system.

9 You'll be pleasantly surprised!

10  10 pounds

11  20 pounds

12  40 pounds

13  50 pounds

14  80 pounds +

15 (Exhibit D, p. 175)

16 g. We never thought a little pill could promote such fast  
17 and effortless weight loss. Before we knew it, I lost  
18 28 pounds and Jim lost 43 pounds and we're full of  
19 energy. We never had to follow any stupid diet.

20 This MillenexES is really going to catch on. Best of  
21 all, it's safe! What a winner! Keep up the good work,  
22 Doc. - Jim and Betty Wilson

23 (Exhibit D, p. 177)

24 21. Levey's, Ballen's and the corporate defendants'  
25 advertisements, in numerous instances, do not refer to ephedra or  
26 ephedrine and instead includes "ECA" in very small type as just  
27 one ingredient among a long list of "Fat Modulators." (Exhibit D,  
28 p. 173)

1 C. Serotril

2 22. Levey, Ballen and the corporate defendants have  
3 disseminated or have caused to be disseminated  
4 advertisements and promotional materials for Serotril,  
5 including, but not necessarily limited to, brochures titled  
6 "Serotril Sciences" attached hereto as Exhibits E-1 through  
7 E-3, which contain the following statements, among others:

8 a. Serotril A and Serotril B: Next, as part of the  
9 Serotril System you'll take Serotril A and B daily.  
10 These are not magic, miracle pills. Rather, these are  
11 pharmaceutical grade supplements which have some pretty  
12 amazing properties.

13 (Exhibit E-1, "Special Edition" of "Serotril Sciences"  
14 Vol 3 - No. 5, p. 181)

15 b. Now losing weight is so easy!  
16 PLUS - New formulas that really make a difference.  
17 (Exhibit E-1, p. 193)

18 c. Many medical researchers and professionals contributed  
19 to the formulation of the two natural components,  
20 Serotril A and Serotril B. As mentioned in the special  
21 announcement you received, the main ingredient in  
22 Serotril A (High Grade Hypericum Perforataum) has been  
23 studied and found to be beneficial for naturally  
24 stimulating serotonin production. . . .

25 \* \* \*

26 Follow the simple rules and you will lose weight.  
27 There is no question about it -- you will lose weight  
28 with Serotril. . . . It's safe, natural, healthy and

1           it works.

2           (Exhibit E-2, Winter/Spring 1999 edition of "Serotril  
3           Sciences" Vol 2 - No. 4, p. 201)

4           d.    Barbara lost 36 lbs            Dr. J. lost 48 lbs.

5           (Text is immediately below photos) (Exhibit E-2, p.  
6           203; Exhibit E-3, Serotril brochure, p. 213)

7           e.    Overweight Person:

8           Always Hungry, Depressed, Low Energy, Sad.

9           Abnormally Low Serotonin Level

10          (Text is immediately above line graph showing dramatic  
11          changes in "Serotonin level," frequently dropping below  
12          and rising above a line labeled "Hunger Stimulation  
13          Point (Must Eat)")

14          Above: Female, 42 years old, 48 lbs. overweight. Has  
15          tried 8 different starvation diets, 3 prescription  
16          drugs, intensive exercise with little or no  
17          improvement. . . .

18          Below: Same person after 28 days on natural *Serotril*.  
19          Lost 19 lbs. so far. Looks noticeably younger. Happy,  
20          energetic again!

21          After Using *Serotril* 1 Month

22          Automatically losing weight daily. Happy & Energetic!  
23          Normal Daily Serotonin Cycle

24          (Text is immediately above second line graph, showing  
25          constant "Serotonin level," never dropping below a line  
26          labeled "Hunger Stimulation Point (Must Eat)").

27          (Exhibit E-2, p. 203; Exhibit E-3, p. 213)

28          f.    *Serotril* contains a delicate, small molecule that has

1 some very amazing properties. For years this natural  
2 miracle has been used in Europe and was proven safe.

3 \* \* \*

4 *Serotril* naturally stimulates the production of  
5 serotonin, causing spontaneous weight loss without  
6 useless dieting! Since *Serotril* is not a drug, there  
7 are no unpleasant side effects, even with prolonged  
8 usage.

9 People report losing weight quickly with *Serotril*.  
10 Even though *Serotril* is so effective, it's not a drug!  
11 This new breakthrough is now available, and without a  
12 doctor's prescription (though you should always check  
13 with your doctor before starting this or any other  
14 weight loss regimen).

15 (Exhibit E-2, p. 204)

- 16 g. The most exciting part of Dr. [Jean-Paul] Rappaport's  
17 discovery is that *Serotril* is really a "Wellness  
18 Formula." Though users are thrilled about their rapid  
19 and effortless weight loss, *Serotril* is also providing  
20 many other critically important health benefits.  
21 Like most, this reporter is most anxious to use  
22 *Serotril* for its weight-loss benefits. (After all, if  
23 *Serotril* is being used by TV stars and is natural, why  
24 not give it a try?) However, as Dr. Rappaport  
25 explained, there is much more to his discovery than  
26 just easy weight loss. Wellness!

27 (Exhibit E-2, p. 205)

- 28 h. Dear Reader:

1 I am proud of the team of scientists in France and  
2 Canada that have worked to perfect the Serotril system.  
3 This is truly a long awaited breakthrough. . . .  
4 My formula does not contain ephedrine, caffeine or any  
5 drug stimulants. Serotril is 100% natural and safe.  
6 The extremely clean and pure natural elements we  
7 discovered in Canada and Europe contribute to the  
8 quality and success of the Serotril formula. . . .

9 *Your Friend, - Dr. Jean-Paul Rappaport*

10 (Text is adjacent to photo of man in business attire  
11 leaning on desk, with caption "Jean-Paul Rappaport, MD,  
12 Paris, France") (Exhibit E-2, p. 206)

- 13 i. "Stars panic when they're getting ready to attend award  
14 shows like TV's Golden Globe because they must look  
15 their best," calmly explained Dr. Jean-Paul Rappaport.  
16 "They know that my natural weight loss formula,  
17 *Serotril*, works without dieting and without side  
18 effects that might affect their performances and  
19 careers."

20 (Text is adjacent to photo of man, with caption "Dr.  
21 Jean Paul-Rappaport, France") (Exhibit E-3, p. 208)

- 22 j. New Natural "Super" Pill ---

23 The biggest break-through for weight-loss since the  
24 scale!

25 Plus, Drug Company's FEN-PHEN coverup revealed (See p.  
26 5).

27 "When you correct the biochemical cause of weight gain,  
28 you can lose weight effortlessly, without dieting

1 . . . 312-435-5544 george." (See p. 9)  
2 (Exhibit E-3, p. 207)

3 **D. CartazyneDS**

4 23. Levey, Ballen and the corporate defendants have  
5 disseminated or have caused to be disseminated advertisements and  
6 promotional materials for CartazyneDS, including, but not  
7 necessarily limited to, brochures titled "Longevity Sciences  
8 Report" attached hereto as Exhibits F-1 and F-2, which contain  
9 the following statements and depictions, among others:

10 a. Rare, Natural Formula Floods Painful Joints With  
11 Soothing Lubricants

12 Doctor's New, Tiny "Super Pill" May Actually . . .

13 Eliminate Agonizing Joint Pain In Just Days

14 Amazing Compound Called The "Cure" For Arthritis!

15 (Exhibit F-1, CartazyneDS brochure, p. 222)

16 b. The PAIN of Arthritis | Healthy! - NO More Pain!

17 Doctor's Observation | Doctor's Observation

18 ✓ Joints Swollen & Red | Joints Healthy!

19 ✓ Gross Deformities | Normal Size Again!

20 ✓ Cracking Cartilage | Cartilage Healthy!

21 ✓ SEVERE PAIN | NO PAIN!

22 (Text in left column refers to picture of arthritic  
23 hand and arthritic hand x-ray; Text in right column  
24 refers to picture of healthy hand and healthy hand x-  
25 ray) (Exhibit F-1, p. 222)

26 c. Beverly Hills Doctor Discovers Solution to Common  
27 Arthritis Pain

28 Natural combination of essential ingredients actually

1 helps rebuild new cartilage.

2 \* \* \*

3 Arthritis Sufferer Shares Her Agonizing Pain & Plea for  
4 Cure

5 She was skeptical at first, but discovers a new life  
6 when her joint pain completely ended.

7 (Exhibit F-1, p. 223)

8 d. It Can Stop Arthritis Pain & Send New Cartilage to  
9 Joints Within Days

10 Available Now Without a Prescription

11 \* \* \*

12 Dr. Leonard Rapoport, Board Certified surgeon, has for  
13 years prescribed what is now called "CartazyneDS"  
14 (cart-a-zeen, Double Strength) to his patients, friends  
15 and family who suffer from joint pain caused by  
16 osteoarthritis, the most common form of arthritis. The  
17 results have been miraculous. Within days, pain stops  
18 and new, healthy cartilage begins to develop.

19 (Text is adjacent to photo of man in white physician's  
20 coat and stethoscope pointing to vertebrae model, with  
21 caption "Dr. Leonard Rapoport, Beverly Hills  
22 Homeopathic Healthcare.") (Exhibit F-1, p. 224)

1 e. CartazyneDS Rebuilds Cartilage Naturally

2 "It's like WD-40 for your joints!"

3 In Just A Few Days Your Joint

4 Pain Could End Forever

5 Before CartazyneDS	Normal & Pain Free
6 Excess synovial fluid	Perfect fluid level
7 buildup causing	
8 tightness, discomfort	
9 inflammation &	
10 shooting <u>PAIN</u>	
11	
12 Subchronal bone	Healthy Cartilage providing
13 breaking down causing	cushion to bone - Completely
14 grinding and PAIN	PAIN FREE movement
15	
16 Worn & deteriorating	Good circulation
17 cartilage (cushion)	
18 - <u>PAIN!</u>	

19 (Text in left column refers to picture of arthritic  
20 shoulder; Text in right column refers to picture of  
21 healthy shoulder) (Exhibit F-1, p. 225)

22 \* \* \*

23 "CartazyneDS, a completely natural approach, addresses  
24 the arthritis affected cartilage and bone itself,"  
25 explains Dr. Rapoport. "You can actually begin to re-  
26 grow new, healthy, smooth cartilage. Movement can  
27 become fluid and pain free again. It doesn't just  
28 cover-up joint pain, it gets to the cause - once and

1           for all! That's the miracle."

2           (Exhibit F-1, p. 225)

3           f.     . . . As a surgeon, Dr. Rapoport cautions those  
4           considering hip, knee and other joint replacement. . .  
5           . [" ]I always recommend addressing joint pain first  
6           with CartazyneDS before considering surgery. The  
7           formula is completely drug free and without side  
8           effects. It is vital that doctors begin recognizing  
9           natural treatments."

10          Joint Replacement Draw Backs

- 11          ■ Temporary
- 12          ■ Very Painful
- 13          ■ Costly
- 14          ■ Questionable success rate

15          No risk or side effects with natural, drug free:

16          CartazyneDS (Double Strength)

17          Natural, Safe & Effective!

18          (Exhibit F-1, p. 228)

19          g.     [Dr. Rapoport's] research and understanding of the  
20          usage of natural remedies has presented his patients  
21          with options seldom offered by most physicians.  
22          CartazyneDS is just one of Dr. Rapoport's many  
23          commendable achievements.

24          (Exhibit F-1, p. 231)

25          h.     My Dear friend:

26          . . . . Even if you've suffered from arthritis pain for  
27          years, CartazyneDS provides precious resources so your  
28          body can rebuild cartilage and reduce painful

1 inflammation in a very short time. There is no doubt  
2 about it. CartazyneDS works! . . . .

3 Cartazyne Sciences is a division of Bentley-Myers  
4 International of Vancouver, Canada. My role as Medical  
5 Director of Bentley-Myers is to insure that you are  
6 receiving the highest quality of pharmaceutical grade  
7 ingredients in all our formulas. My team is also  
8 responsible for monitoring worldwide research involving  
9 natural products that can improve your health and raise  
10 your quality of life.

11 You are holding our latest catalog of international  
12 discoveries. Each of these formulas have gone through  
13 rigorous clinical studies. Only after my department  
14 has thoroughly reviewed these tests, do we release  
15 these formulas to you.

16 We have carefully developed these formulas to deliver  
17 benefits without side effects common with prescription  
18 drugs. I personally use many of these products daily  
19 and hope you too will take advantage of all that nature  
20 has to offer through these proven formulas. . . .

21 Thank you,

22 Leonard Rapoport, M.D., F.A.C.S.

23 (Exhibit F-2, "Longevity Sciences Report" Vol. 3 No. 4,  
24 p. 234)

1 **V. VIOLATIONS OF THE FTC ORDER**

2 **FIRST CAUSE OF ACTION**

3 Violation of FTC Order - Unsubstantiated No Side Effects Claims  
4 for Zymax and MillenexES  
5 (against Levey, Bentley Myers, Publisher's Data,  
6 and Nutritional Life)

7 24. Through the means described in Paragraphs 17 through  
8 21, Levey and the corporate defendants, in connection with the  
9 manufacturing, advertising, packaging, labeling, promotion,  
10 offering for sale, sale or distribution of Zymax and MillenexES,  
11 on numerous occasions, have represented, expressly or by  
12 implication, that:

- 13 a. Zymax, containing Ma Huang, or ephedra, has no side  
14 effects; and  
15 b. MillenexES, containing Ma Huang, or ephedra, has no  
16 side effects.

17 25. The representations set forth in Paragraph 24 were not  
18 substantiated at the time the representations were made.  
19 Therefore, Levey, Bentley Myers, Publisher's Data, and  
20 Nutritional Life have made the representations set forth in  
21 Paragraph 24 in violation of Part VI.A of the FTC Order.

22 **SECOND CAUSE OF ACTION**

23 Violation of FTC Order - False or Unsubstantiated Weight Loss  
24 Claims for Zymax and MillenexES  
25 (against Levey, Bentley Myers, Publisher's Data,  
26 and Nutritional Life)

27 26. Through the means described in Paragraphs 17 and 20,  
28 Levey and the corporate defendants, in connection with the

1 manufacturing, advertising, packaging, labeling, promotion,  
2 offering for sale, sale or distribution of Zymax and MillenexES,  
3 on numerous occasions, have represented, expressly or by  
4 implication, that:

5 a. Zymax enables users to lose substantial amounts of  
6 weight in a short period of time without the need to  
7 increase exercise or reduce caloric intake, enabling  
8 users, for example, to go from a size 14 or 12 to a  
9 size 6; and

10 b. MillenexES enables users to lose substantial amounts of  
11 weight in a short period of time without the need to  
12 increase exercise or reduce caloric intake, enabling  
13 users, for example, to lose 30 to 50 pounds or more.

14 27. The representations set forth in Paragraph 26 are false  
15 or were not substantiated at the time the representations were  
16 made. Therefore, Levey, Bentley Myers, Publisher's Data, and  
17 Nutritional Life have made the representations set forth in  
18 Paragraph 26 in violation of Parts II.B and VI.A of the FTC  
19 Order.

20 **THIRD CAUSE OF ACTION**

21 Violation of FTC Order - Unsubstantiated Clinical Study Claims  
22 for Zymax and MillenexES

23 (against Levey, Bentley Myers, Publisher's Data,  
24 and Nutritional Life)

25 28. Through the means described in Paragraphs 17 and 20,  
26 Levey and the corporate defendants, in connection with the  
27 manufacturing, advertising, packaging, labeling, promotion,  
28 offering for sale, sale or distribution of Zymax and MillenexES,

1 on numerous occasions, have represented, expressly or by  
2 implication, that:

3 a. Clinical studies prove that Zymax enables users to lose  
4 substantial amounts of weight in a short period of time  
5 without the need to increase exercise or reduce caloric  
6 intake; and

7 b. Clinical studies prove that MillenexES enables users to  
8 lose substantial amounts of weight in a short period of  
9 time without the need to increase exercise or reduce  
10 caloric intake.

11 29. The representations set forth in Paragraph 28 were not  
12 substantiated at the time the representations were made.  
13 Therefore, Levey, Bentley Myers, Publisher's Data, and  
14 Nutritional Life have made the representations set forth in  
15 Paragraph 28 in violation of Part VI.A of the FTC Order.

16 **FOURTH CAUSE OF ACTION**

17 Violation of FTC Order - False or Unsubstantiated Weight Loss  
18 Claims for Serotril  
19 (against Levey, Bentley Myers, Publisher's Data,  
20 and Nutritional Life)

21 30. Through the means described in Paragraph 22, Levey and  
22 the corporate defendants, in connection with the manufacturing,  
23 advertising, packaging, labeling, promotion, offering for sale,  
24 sale or distribution of Serotril, on numerous occasions, have  
25 represented, expressly or by implication, that Serotril enables  
26 users to lose substantial amounts of weight in a short period of  
27 time without the need to increase exercise or reduce caloric  
28 intake.



1 profession to yield accurate and reliable results.

2 34. Therefore, Levey, Bentley Myers, Publisher's Data, and  
3 Nutritional Life have made the representations set forth in  
4 Paragraph 32 in violation of Part VII.C. of the FTC Order.

5 **SIXTH CAUSE OF ACTION**

6 Violation of FTC Order - Unsubstantiated Efficacy Claims for  
7 CartazyneDS

8 (against Levey, Bentley Myers, Publisher's Data,  
9 and Nutritional Life)

10 35. Through the means described in Paragraph 23, Levey and  
11 the corporate defendants, in connection with the manufacturing,  
12 advertising, packaging, labeling, promotion, offering for sale,  
13 sale or distribution of CartazyneDS, on numerous occasions, have  
14 represented, expressly or by implication, that:

- 15 a. CartazyneDS cures arthritis;  
16 b. CartazyneDS rebuilds cartilage in human joints within  
17 days; and  
18 c. CartazyneDS is an effective alternative to joint  
19 replacement surgery.

20 36. The representations set forth in Paragraph 35 were not  
21 substantiated at the time the representations were made.  
22 Therefore, Levey, Bentley Myers, Publisher's Data, and  
23 Nutritional Life have made the representations set forth in  
24 Paragraph 35 in violation of Part VI.A of the FTC Order.



1 **EIGHTH CAUSE OF ACTION**

2 Violation of FTC Order - Failure to Notify FTC of New Business  
3 Affiliation  
4 (against Levey)

5 39. After the FTC Order became final in 1993, Levey became  
6 an owner, officer, employee, and/or consultant for defendants  
7 Bentley Myers and Publishers' Data some time prior to 2001. By a  
8 letter dated May 8, 2001, from his attorney, Levey provided  
9 written notice to the FTC of his affiliation with Bentley Myers  
10 and Publishers' Data.

11 40. Levey failed to notify the Commission within thirty  
12 (30) days of his affiliation with the new business or employment,  
13 i.e., that he became an owner, officer, employee, and/or  
14 consultant for defendants Bentley Myers and Publishers' Data,  
15 thereby violating Part XII of the FTC Order.

16 **VI. VIOLATIONS OF THE FTC ACT**

17 41. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),  
18 prohibits unfair or deceptive acts or practices in or affecting  
19 commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a),  
20 prohibits the dissemination of any false advertisement in or  
21 affecting commerce for the purpose of inducing, or which is  
22 likely to induce, the purchase of food, drugs, devices, or  
23 cosmetics. For the purposes of Section 12 of the FTC Act, 15  
24 U.S.C. § 52, Zymax, MillenexES, Serotril, and CartazynDS are  
25 each either a "food" or "drug" pursuant to Section 15(b) and (c)  
26 of the FTC Act, 15 U.S.C. § 55(b) and (c). As set forth below,  
27 Levey, Ballen and the corporate defendants have engaged in such  
28 unlawful practices in connection with the manufacturing,

1 advertising, packaging, labeling, promotion, offering for sale,  
2 sale, or distribution of Zymax, MillenexES, Serotril and  
3 CartazyneDS.

4 **NINTH CAUSE OF ACTION**

5 False or Unsubstantiated Claims for Zymax, MillenexES, Serotril  
6 and CartazyneDS

7 (against Levey, Ballen and the corporate defendants)

8 42. Through the means described in Paragraphs 17, 20, 22  
9 and 23, Levey, Ballen and the corporate defendants, on numerous  
10 occasions, have represented that:

- 11 a. Zymax enables users to lose substantial amounts of  
12 weight in a short period of time without the need to  
13 increase exercise or reduce caloric intake;
- 14 b. MillenexES enables users to lose substantial amounts of  
15 weight in a short period of time without the need to  
16 increase exercise or reduce caloric intake;
- 17 c. Serotril enables users to lose substantial amounts of  
18 weight in a short period of time without the need to  
19 increase exercise or reduce caloric intake;
- 20 d. Clinical studies prove that Zymax enables users to lose  
21 substantial amounts of weight in a short period of time  
22 without the need to increase exercise or reduce caloric  
23 intake;
- 24 e. Clinical studies prove that MillenexES enables users to  
25 lose substantial amounts of weight in a short period of  
26 time without the need to increase exercise or reduce  
27 caloric intake;
- 28 f. Zymax has no side effects;

- 1 g. MillenexES has no side effects;  
2 h. CartazyneDS cures arthritis;  
3 i. CartazyneDS rebuilds cartilage in human joints within  
4 days; and  
5 j. CartazyneDS is an effective alternative to joint  
6 replacement surgery.

7 43. The representations set forth in Subparagraphs 42.a  
8 through 42.e are false or were not substantiated at the time the  
9 representations were made. The representations set forth in  
10 Subparagraphs 42.f through 42.j were not substantiated at the  
11 time the representations were made. Therefore, the making of the  
12 representations set forth in Paragraph 42 constitutes a deceptive  
13 practice, and the making of false advertisements, in or affecting  
14 commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15  
15 U.S.C. §§ 45(a) and 52.

16 **TENTH CAUSE OF ACTION**

17 Fictitious Product Endorsements and Testimonials  
18 (against Levey, Ballen and the corporate defendants)

19 44. Through the means described in Paragraphs 17, 20, and  
20 22, Levey, Ballen and the corporate defendants, on numerous  
21 occasions, have represented, expressly or by implication:

- 22 a. That "Dr. David Perry," "Dr. Jean-Paul Rappaport," and  
23 "Dr. Robert Aldan" are actual experts providing  
24 endorsements pertaining to the efficacy and the lack of  
25 side effects of Zymax, MillenexES, and Serotril,  
26 respectively; and  
27 b. That persons depicted or described in the  
28 advertisements, including, but not limited to, "Barb

1 and Jim Zaine," "Nancy W.," "Alice Wilcox," in Zymax  
2 advertisements, "Don Jeffreys & Randy" and "Jim and  
3 Betty Wilson" in the MillenexES advertisements,  
4 "Barabara" and "Dr. J." in the Serotril advertisements,  
5 and others not specifically identified, are existing  
6 persons whose actual and current opinions, findings,  
7 beliefs, and/or experiences are related in the  
8 advertisements.

9 45. The representations set forth in Paragraph 44 are  
10 false. Therefore, the making of the representations set forth in  
11 Paragraph 44 constitutes a deceptive practice, and the making of  
12 false advertisements, in or affecting commerce, in violation of  
13 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

#### 14 **ELEVENTH CAUSE OF ACTION**

15 False Demonstrations for Zymax and CartazyneDS  
16 (against Levey, Ballen and the corporate defendants)

17 46. Through the means described in Paragraphs 17 and 23,  
18 Levey, Ballen and the corporate defendants, on numerous  
19 occasions, have represented, expressly or by implication:

- 20 a. That the results shown in "before/after" photographs or  
21 visual images of a person's unclothed backside depicted  
22 in advertisements for Zymax accurately represent the  
23 performance of Zymax in causing substantial weight  
24 loss; and
- 25 b. That the results shown in "before/after" pictures,  
26 medical illustrations, and other visual images,  
27 including x-ray film, depicted in the advertisements  
28 for CartazyneDS accurately represent the performance of



1 more than \$11,000 for each such violation of the FTC Order that  
2 occurs on or after November 20, 1996.

3 51. Sections 5(1) and 13(b) of the FTC Act, 15 U.S.C. §§  
4 45(1) and 53(b), authorize this Court to issue a permanent  
5 injunction against Ballen and the corporate defendants violating  
6 the FTC Order, the FTC Act, and to grant ancillary relief,  
7 including consumer redress, disgorgement, and restitution to  
8 prevent and remedy any violations of any provision of law  
9 enforced by the Commission.

10 52. This Court, in the exercise of its equitable  
11 jurisdiction, may award other ancillary relief to remedy the  
12 injury caused by Levey's, Ballen's and the corporate defendants'  
13 violations of the law.

14 **IX. PRAYER FOR RELIEF**

15 WHEREFORE, plaintiff requests that this Court, pursuant to  
16 15 U.S.C. §§ 45(a), 45(1), 53(b), and 56(a), and pursuant to this  
17 Court's own equitable powers:

18 1. Enter judgment against defendants Lisa Levey, in her  
19 capacity as personal representative of the Estate of Michael  
20 Levey, Ballen and the corporate defendants and in favor of  
21 plaintiff for each violation alleged in this Complaint;

22 2. Award plaintiff monetary civil penalties from defendant  
23 Lisa Levey, in her capacity as personal representative of the  
24 Estate of Michael Levey, and the corporate defendants for each  
25 violation of the FTC Order alleged in this Complaint;

26 3. Permanently enjoin the corporate defendants from  
27 violating the FTC Order issued in FTC Docket No. C-3459;

28 4. Permanently enjoin Ballen and the corporate defendants

1 from engaging in, or assisting others engaged in, violations of  
2 the FTC Act;

3         5. Award such relief as the Court finds necessary to  
4 redress injury to consumers resulting from Levey's, Ballen's and  
5 the corporate defendants' violations of the FTC Order and the FTC  
6 Act; including, but not limited to, rescission of contracts, the  
7 refund of monies paid, and the disgorgement of ill-gotten monies;

8         6. Award plaintiff the costs of bringing this action, as  
9 well as such other and additional relief as the Court may  
10 determine to be just and proper; and

11         7. Grant such equitable relief as the Court may determine  
12 to be just and proper.

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Respectfully Submitted

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INDEX OF EXHIBITS

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- Exhibit A. FTC Administrative Complaint
- Exhibit B. FTC Administrative Order
- Exhibit C-1. March 2002 edition of "Plastic Surgery Magazine" (Zymax)
- Exhibit C-2. February-March 2001 edition of "Plastic Surgery Magazine" (Zymax)
- Exhibit C-3. February 2000 edition of "Plastic Surgery Magazine" (Zymax)
- Exhibit D. Summer 2001 edition of "Diet News" (MillenexES)
- Exhibit E-1. "Special Edition" of "Serotril Sciences" Vol 3 - No. 5 (Serotril)
- Exhibit E-2. Winter/Spring 1999 edition of "Serotril Sciences" Vol 2 - No. 4 (Serotril)
- Exhibit E-3. Serotril brochure
- Exhibit F-1. CartazyneDS brochure
- Exhibit F-2. "Longevity Sciences Report" Vol. 3 No. 4 (CartazyneDS)