

agreement are fair, just and equitable. Defendants further agree that Plaintiff's execution of this Final Judgment does not constitute an approval by the Plaintiff of their business practices.

Defendants HARRY SISKIND, individually, and PATTI MONTANA SISKIND, individually, stipulate that the State of Texas' agreement to and the Court's approval of this Final Judgment are expressly premised upon the truthfulness, accuracy, and completeness of the financial statement and information provided to the Federal Trade Commission by Defendant HARRY SISKIND, dated January 14, 2003, and supplemented thereafter by Defendant HARRY SISKIND as referenced in paragraph 12 below. Defendant PATTI MONTANA SISKIND expressly stipulates to the financial disclosures by Defendant HARRY SISKIND, as listed in paragraph 12. These financial disclosures contain material information relied upon by the State of Texas in negotiating and agreeing to the terms of this Final Judgment.

Defendants HARRY SISKIND, individually, and PATTI MONTANA SISKIND, individually, also stipulate that they will be available if needed to testify in this proceeding as the State proceeds against any other defendant in this lawsuit.

Defendants HARRY SISKIND, individually, and PATTI MONTANA SISKIND, individually, and the State of Texas stipulate to the amount of civil penalties, consumer injury, attorneys fees, and investigative costs listed in paragraphs 7, 8, and 9 below, if Defendants fail to comply with paragraphs 10 or 11 below or the Court finds that Defendants' assets were not accurately disclosed in compliance with paragraph 12 below.

Defendants HARRY SISKIND, individually, and PATTI MONTANA SISKIND, individually, and the State of Texas stipulate that Defendants' indebtedness to the State of Texas for civil penalties identified in paragraph 7 below for violations of the TDPTA and TFDCA, is nondischargeable pursuant to 11 U.S.C. §523(a)(7).

The Court, after reading the pleadings and stipulations of the parties and it appearing to the Court that all parties agree to and have approved its entry of this Final Judgment, makes the following orders under the provisions of the TFDCa and the DTPA. The Court is of the opinion that, in view of these findings, said agreement should be and is hereby in all things approved, and accordingly that this Final Judgment and Agreed Permanent Injunction should be entered.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED THAT:

1. This Court has jurisdiction, through the TFDCa and the DTPA, over the subject matter and over all parties to this action.
2. Plaintiff's Amended Original Petition states a claim for relief against Defendants HARRY SISKIND, individually, and PATTI MONTANA SISKIND, individually.
3. Venue of this matter is proper in Dallas County by virtue of the fact that Defendants were engaged in the business of advertising and selling dietary supplements in Dallas County, Texas.
4. By entering into this Final Judgment, Defendants admit no wrongdoing and this Judgment does not constitute any evidence or admission of any kind regarding any issues set forth herein, nor does it acknowledge that Defendants have engaged in any unlawful activity, nor shall it be construed as evidence that Defendants have engaged in any methods, acts, practices, uses or solicitations declared to be unlawful under the TFDCa and the DTPA. Defendants do not admit the truth of any alleged facts, any of the characterizations of Defendants' alleged conduct, or any of the conclusions set forth in Plaintiff's Original Petition or any amended pleadings pertaining to this matter.

DEFINITIONS

5. The following definitions shall be used in construing this Judgment:
- A. “Advertisement” means all representations disseminated in any manner or by any means for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, including a dietary supplement.
 - B. “Competent and reliable scientific evidence” shall mean tests, analyses, research, studies, or other evidence based upon the expertise of professionals in the relevant area, that have 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.
 - C. “Dietary supplement” is a food and is regulated by §431.001 *et seq.* of the TFDCA.
 - D. “Drug claim” means a claim that a product is designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.
 - E. “Evening Weight Loss Formula” is a liquid food, labeled as a dietary supplement, manufactured by Mark Nutritionals, Inc., and Defendant under the trade name of “Body Solutions”.
 - F. “Final Judgment” means the entire Final Judgment and Agreed Permanent Injunction.
 - G. “Food” means an article or a component of an article of used for human food or drink, and includes chewing gum.
 - H. “Label” means a display of written, printed, or graphic matter upon the immediate container of any article.
 - I. “Labeling” means all labels and other written, printed, or graphic matter upon any article or any of its containers or wrappers or accompanying such article.
 - J. “Misbranded food ” or “misbranding any food” means a food which violates section 431.082 of the TFDCA generally and specifically section 431.082 (a), (f) and (j) of the TFDCA which defines misbranded food as food in which its labeling is false or misleading in any particular,.

PERMANENT INJUNCTION

6. **IT IS FURTHER ORDERED THAT** Defendants HARRY SISKIND, individually, and PATTI MONTANA SISKIND, individually, and any other person or entity acting in concert or participation with or on behalf of Defendants HARRY SISKIND, individually, and PATTI MONTANA SISKIND, individually, shall not in the future:

- A. Introduce into commerce Evening Weight Loss Formula or any food, including any dietary supplement, that is misbranded;
- B. Deliver for introduction into commerce Evening Weight Loss Formula or any food, including any dietary supplement, that is misbranded;
- C. Misbrand Evening Weight Loss Formula or any food, including any dietary supplement, in commerce;
- D. Disseminate any advertisement for Evening Weight Loss Formula or any food, including any dietary supplement, that is false or misleading in any particular;
- E. Manufacture within this state Evening Weight Loss Formula or any food, including any dietary supplement, that is adulterated or misbranded;
- 6. Make any representations or claims in labeling or advertisements for Evening Weight Loss Formula or any food, including any dietary supplement, unless at the time that the representation or claim is made, competent and reliable scientific evidence substantiates the representation or claim and the claim is not a drug claim;
- G. Falsely represent or advertise that Evening Weight Loss Formula or any food, including any dietary supplement, will cause users to lose weight without reducing calorie intake and/or increasing exercise;

- H. Falsely represent or advertise that Evening Weight Loss Formula or any food, including any dietary supplement, will cause users to lose weight even if users eat substantial amounts of food high in fat and calories;
- I. Falsely represent or advertise that Evening Weight Loss Formula or any food, including any dietary supplement, will cause consumers to burn a substantial amount of body fat and build a substantial amount of lean muscle mass without reducing calorie intake and/or increasing exercise;
- J. Falsely represent or advertise that Evening Weight Loss Formula or any food, including any dietary supplement, taken at bedtime and a minimum of three hours after last food consumption, will cause users to lose significantly more weight than they would lose simply by fasting for at least three hours before going to bed;
- K. Falsely represent or advertise that Evening Weight Loss Formula or any food, including any dietary supplement, will cause substantial weight loss;
- L. Falsely represent or advertise that Evening Weight Loss Formula or any food, including any dietary supplement, will cause substantial long-term or permanent weight loss;
- M. Falsely represent or advertise, expressly or by implication, that Evening Weight Loss Formula or any food, including any dietary supplement, is clinically proven to cause users (a) to lose weight;
- N. Falsely represent or advertise, expressly or by implication, that Evening Weight Loss Formula or any food, including any dietary supplement, is clinically proven to cause users to burn a substantial amount of body fat; and

- O. Falsely represent or advertise, expressly or by implication, that Evening Weight Loss Formula or any food, including any dietary supplement, is clinically proven to cause users to build a substantial amount of lean muscle mass, without reducing calorie intake and/or increasing exercise;
- P. Fail to disclose that the scientific studies for Evening Weight Loss Formula were not randomized, not blinded studies, did not meet the standards generally accepted for scientific studies, and many were not specifically related to Evening Weight Loss Formula;
- Q. Fail to disclose information concerning Evening Weight Loss Formula or any food, including any dietary supplement, which is known at the time of the transaction and failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered into had the information been disclosed; and
- R. Falsely represent or advertise that Evening Weight Loss Formula or any food, including any dietary supplement, has sponsorship, approval, characteristics, ingredients, uses, or benefits which they do not have.

MONETARY RELIEF

7. **IT IS FURTHER ORDERED THAT** Defendants HARRY SISKIND, individually, and PATTI MONTANA SISKIND, individually, shall pay Thirty-seven Million One Hundred Seventy-nine Thousand Seven Hundred Dollars (\$37,179,700.00) to the Office of the Attorney General as civil penalties pursuant to § 431.021 of the TFDCA and to DTPA

§17.47(c)(1)-(2). These civil penalties shall constitute a civil fine or penalty to and for a governmental unit and are not compensation for actual pecuniary loss, subject to paragraphs 10 and 11 below.

8. **IT IS FURTHER ORDERED THAT** Defendants HARRY SISKIND, individually, and PATTI MONTANA SISKIND, individually, restore One Hundred Seventy-nine Million Forty-nine Thousand Eight Hundred Seventy-three Dollars (\$179,049,873.00) to identifiable persons, or, in the alternative, award judgment for damages to compensate for such losses, subject to paragraphs 10 and 11 below.

9. **IT IS FURTHER ORDERED THAT** Defendants HARRY SISKIND, individually, and PATTI MONTANA SISKIND, individually, shall pay Two Hundred Thirty Thousand Dollars (\$230,000.00) to the Office of the Attorney General as attorneys fees and investigative costs under § 431.047 of the TFDCA and the TEX. GOVT. CODE §402.006 (c) and to cover the investigative costs pursuant to § 431.047 of the TFDCA for the Texas Department of Health, subject to paragraphs 10 and 11 below.

10. **IT IS FURTHER ORDERED** that ninety-one (91) days following receipt by the State of Texas from Defendants HARRY SISKIND, individually, and PATTI MONTANA SISKIND, individually, of the total sum of Four Hundred Fifty Thousand Dollars (\$450,000.00) to the Office of the Attorney General as outlined in paragraph 11 below, with Two Hundred Thousand Dollars (\$200,000.00) payable as civil penalties pursuant to § 431.021 of the TFDCA and to DTPA §17.47(c)(1)-(2); with Two Hundred Thirty Thousand Dollars (\$230,000.00) designated as attorneys fees and investigative costs under § 431.047 of the TFDCA and the TEX. GOVT. CODE §402.006 (c); and Twenty Thousand Dollars (\$20,000.00) to the Texas Department of Health to cover the investigative costs pursuant to § 431.047 of the TFDCA, the State of

Texas shall consider the monetary portion of the Final Judgment, as ordered in paragraphs 7, 8, and 9 above, satisfied in full unless the State has evidence that this Final Judgment should be reopened as outlined in paragraph 12 below. The State of Texas then may reopen this Final Judgment for the sole purpose of allowing the State of Texas to modify the monetary liability of Defendants.

11. **IT IS FURTHER ORDERED** that Defendants HARRY SISKIND, individually, and PATTI MONTANA SISKIND, individually, shall be liable for payment in the amount of Four Hundred Fifty Thousand Dollars (\$450,000.00) as described in paragraph 10 above, such payment to be made in the following manner:

- A. Within ten (10) days of the date of entry of this Final Judgment, Defendants HARRY SISKIND and PATTI MONTANA SISKIND shall pay Ninety-five Thousand Dollars (\$95,000.00) to the State of Texas in the form of a certified or cashier's check made payable to the State of Texas;
- B. Within ninety (90) days of the date of entry of this Final Judgment, Defendants HARRY SISKIND and PATTI MONTANA SISKIND shall pay an additional One Hundred Five Thousand Dollars (\$105,000.00) to the State of Texas in the form of a certified or cashier's check made payable to the State of Texas; and
- C. Within eighteen (18) months of the date of entry of this Final Judgment, Defendants HARRY SISKIND and PATTI MONTANA SISKIND shall pay an additional Two Hundred Fifty Thousand Dollars (\$250,000.00) to the State of Texas in the form of a certified or cashier's check made payable to the State of Texas.

Time is of the essence for the payment specified above. In the event that Defendants HARRY SISKIND and PATTI MONTANA SISKIND do not fulfill, or only partially fulfill, the payment obligations set forth in this paragraph 11, they shall jointly and severally immediately be liable for payment of the entire amount of this Final Judgment as detailed in paragraphs 7, 8, and 9, less any payments already made. Notwithstanding any other provision of this Final Judgment, Defendants agree that, if they fail to meet the payment obligations set forth in this paragraph 11, the facts as alleged in the State of Texas' Second Amended Original Petition filed in this matter shall be taken as true in any subsequent litigation filed by the State of Texas to enforce its rights pursuant to this Final Judgment, including, but not limited to, a non-dischargeability complaint in any subsequent bankruptcy proceeding.

D. In order to secure the payment of Defendants HARRY SISKIND and PATTI MONTANA SISKIND's indebtedness to the State of Texas, within five (5) days of the entry of this Final Judgment, Defendants HARRY SISKIND and PATTI MONTANA SISKIND shall cause to be transferred to the State of Texas security interests in each item of property described in Attachment A as security for the payments required to be made by Defendants under this Final Judgment. The Defendants shall furnish to the Assistant Attorney General signing this Judgment an executed statement sufficient to perfect the filing and recording of security interests in the property described in Attachment A under the appropriate state laws. The State of Texas will release its security interests (a) in all property described in Attachment A upon receipt of all payments required by paragraphs 10 and 11 or (b) in individual items of property as necessary to effectuate the good faith transfer of an interest in such property, provided that all proceeds received by Defendants HARRY SISKIND and PATTI MONTANA SISKIND, pursuant to such transfer are paid immediately to the State of Texas.

E. All funds paid to the State of Texas pursuant to this Final Judgment shall be deposited and first allocated to the amounts owing to the Texas Department of Health, then to attorneys fees and costs of investigation, and then to civil penalties in the amounts identified in paragraph 10 above.

12. **IT IS FURTHER ORDERED** that Defendants HARRY SISKIND and PATTI MONTANA SISKIND's agreement to and the Court's approval of this Final Judgment are expressly premised upon the truthfulness, accuracy, and completeness of the financial statements and information provided to the Federal Trade Commission by Defendant Harry Siskind, dated January 14, 2003, and supplemented thereafter by Defendant Harry Siskind through documents submitted in letters dated January 6, 2003, March 28, 2003, and May 29, 2003, and by Defendant Harry Siskind's sworn statement taken June 23, 2003, which contain material information relied upon by the State of Texas in negotiating and agreeing to the terms of this Final Judgment.

13. **IT IS FURTHER ORDERED** that if the State of Texas has evidence that the above-referenced financial statements and information given by Defendant HARRY SISKIND to the Federal Trade Commission failed to disclose any material asset the value of which exceeds \$1,000.00 materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the State of Texas may reopen this Final Judgment for the sole purpose of allowing the State of Texas to modify the monetary liability of Defendants. If the Court finds that Defendants failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall reinstate the suspended judgment against Defendants HARRY SISKIND and PATTI MONTANA SISKIND, in favor of the State of Texas, in the amounts listed in paragraphs 7, 8, and 9 above. All other terms of this

Final Judgment shall remain in full force and effect unless otherwise ordered by the Court. For the purposes of reopening or enforcing this Final Judgment, Defendants HARRY SISKIND and PATTI MONTANA SISKIND waive any right to contest any of the allegations set forth in Plaintiff's Second Amended Petition filed in this matter.

14. The clerk of the Court is authorized to issue such writs of execution or other process necessary to collect and enforce this Final Judgment, subject to paragraphs 10 and 11 above.

15. The Court retains jurisdiction to enforce this Final Judgment.

16. All costs of court in this matter are to be paid by Defendants HARRY SISKIND and PATTI MONTANA SISKIND.

17. It is agreed and understood that this Final Judgment shall in no way affect the rights of individual citizens.

18. All relief not granted herein is hereby denied.

Signed this _____ day of _____, 2003.

DISTRICT JUDGE

THE UNDERSIGNED, WHO HAVE THE AUTHORITY TO CONSENT AND SIGN ON BEHALF OF THE PARTIES IN THIS ACTION, HEREBY CONSENT TO THE FORM AND CONTENTS OF THE FOREGOING FINAL JUDGMENT AND AGREED PERMANENT INJUNCTION AND TO ITS ENTRY:

Signed this _____ day of _____, 2003.

Defendants HARRY SISKIND, individually, and PATTI MONTANA SISKIND, individually

HARRY SISKIND, individually

PATTI MONTANA SISKIND, individually

Approved as to form:

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ATTACHMENT A
TO FINAL JUDGMENT AND PERMANENT INJUNCTION AND SETTLEMENT OF
CLAIMS FOR MONETARY RELIEF
BETWEEN HARRY and PATTI SISKIND AND THE STATE OF TEXAS

1. Real property and improvements located at 418 Shadow Bluff, San Antonio, Bexar County, Texas.
2. Automobiles:
 - a. 2002 Ford Thunderbird, Registration: Texas; VIN _____.
 - b. 2002 Escalade, Registration: Texas; VIN _____.
3. Lot 58, NCB 12059, Santikos Embassy Oaks, In The City of San Antonio, Bexar County, Texas, According To Plat Thereof Recorded In Vol. 9551, Page 74, Deed And Plat Records Of Bexar County, Texas (second lien only).