

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA,  
et al.,

Plaintiffs,

-vs-

No. 90-839-Civ-T-17C

HEALTH CARE PRODUCTS, INC.,  
d/b/a Anderson Pharmacals,  
et al.,

Defendants.

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STIPULATION AND SETTLEMENT AGREEMENT

This Agreement is made and entered into between the parties as a stipulated settlement of the issues set forth in the Verified Complaint for Injunctive Relief and for Civil Remedies filed in the above-styled cause.

WHEREAS, as a result of an investigation into the sale of the guar gum based product Cal-Ban 3000, it is alleged that the Defendants herein have engaged in conduct which constitutes or will constitute a violation of 18 U.S.C. Section 1341 and/or 18 U.S.C. Section 1343. It is further alleged that the sale of Cal-Ban 3000 by the Defendants is by means of false representation contrary to the decision of this Court in Case No. 87-1310-Civ-T-13 in the United States District Court for the Middle District of Florida, Tampa Division. It is further alleged that Defendants herein have violated 39 U.S.C. Section 3012(a)1 and have violated 39 U.S.C. Section 3012(a)2. Finally, it is

alleged that the fraudulent scheme of Defendants defrauds members of the public through the promotion, distribution and sale of Cal-Ban 3000 by means of false representation and that the advertising for said product is false and misleading; and

WHEREAS, the aforementioned allegations allegedly occurred through Defendants' use of the written media, wire, radio, television and the U. S. Postal Service; and

WHEREAS, the United States of America, the U. S. Postal Service and the Defendants desire to settle and resolve all claims, contentions and rights of the parties without the necessity of the Defendants filing an Answer herein which is hereby waived; and

WHEREAS, the parties agree and stipulate that the hereinafter described actions to be taken by the parties shall individually and collectively constitute good, adequate and sufficient consideration for the agreements and obligations of all parties to this Agreement,

THEREFORE, the parties hereby stipulate and agree to the following terms and conditions of settlement:

1. Pursuant to 39 U.S.C. Section 3012 the Defendants agree to pay to the U. S. Postal Service the total sum of TWENTY-FIVE THOUSAND AND NO/100 (\$25,000.00) DOLLARS within ten (10) days of the date of the entry of the order approving this settlement.

2. Defendants agree they will no longer promote, sell or distribute Cal-Ban 3000 or any other guar gum based weight loss product in the United States.

3. The U. S. Postal Service and the Defendants will cause to be dismissed by way of voluntary dismissal Civil Action No. 90-0795 (D.D.C.) pursuant to Fed.R.Civ.P. 41(a)(1)(ii). The dismissal sought will be with prejudice and action will be taken within ten (10) days of the court's approval of this settlement.

4. The parties herein stipulate to a dismissal of this case which will dismiss with prejudice the issues framed by the pleadings. The parties herein agree that this settlement was entered into by way of compromise and this Agreement and any order resulting from this Agreement will not be considered as an admission of any violation or wrongdoing.

5. The United States of America agrees that it will not (except as provided in Paragraph 6) prosecute any civil or criminal action against Health Care Products, Inc., Health Care Products, Inc. d/b/a Anderson Pharmacals, Barbara W. Larkins, Elbert C. Anderson a/k/a Carl Anderson, Ronald E. Anderson, or any employees of Health Care Products, Inc. for any activities arising out of the promotion, sale, or distribution of Cal-Ban 3000 or the investigation referred to herein.

6. The parties herein agree that this settlement and the dismissal with prejudice of the issues framed by the pleadings will not affect the Internal Revenue Service with regard to action, if any, that the Internal Revenue Service contemplates or has initiated against any of the Defendants herein. This settlement will also not affect the action initiated by the Food and

Drug Administration through a Regulatory Letter dated July 25, 1990.

7. The parties stipulate and agree to the entry of a Permanent Injunction by this Court which provides for the following:

(a) Health Care Products, Inc. and its principals (Barbara W. Larkins, Elbert C. Anderson a/k/a Carl Anderson and Ronald E. Anderson) will refrain from using false or misleading advertising in any commercial enterprise.

(b) Health Care Products, Inc. and its principals will not promote, sell or distribute Cal-Ban 3000 or any other guar gum base weight loss product in the United States. Provided, however, that this provision shall not prevent the Defendants from the bulk sale of guar gum to others for any purpose other than as a significant (more than 10% by volume) ingredient in a weight loss product.

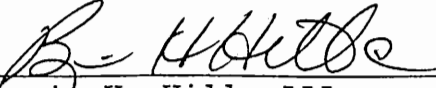
(c) If Health Care Products, Inc. or one of its principals promotes any pill other than Cal-Ban 3000 for use

in weight loss, the promotional material shall make clear that the weight loss to be expected will come from following an increased exercise plan, and/or a reduced calorie eating plan with the diet product. There will be no representation in the promotional material that the diet product, alone, will in and of itself cause weight loss.

(d) In the event the United States of America or the U. S. Postal Service becomes informed and believes that Defendants, or any of them, are violating any provision of this settlement, prior to initiating any civil action under this agreement, they shall give any such Defendant written notice by registered mail of the nature of the alleged violation and thirty (30) days to undertake correction thereof. If any such Defendant fails to undertake and diligently pursue appropriate corrective activities, the United States of America or the U. S. Postal Service may then institute such legal

action as appropriate under the law.


8. The parties agree that the provisions of the Temporary Restraining Order and the Amended Temporary Restraining Order, both of which were entered by this Court and extended by stipulation of the parties on July 16, 1990, shall be lifted and set aside except as set forth in this Agreement.



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Dated this 24 day of August, 1990.



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Dated this 24 day of August, 1990



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Dated this 24<sup>th</sup> day of August, 1990.

*Elbert C. Anderson a/k/a Carl Anderson*

Elbert C. Anderson a/k/a Carl Anderson  
19235 U. S. Highway 14 North  
Lutz, Florida 33549

Dated this 24<sup>th</sup> day of August, 1990.