

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 07-80138-CR-MARRA/VITUNAC(S)

- 18 U.S.C. § 371
- 18 U.S.C. § 401(3)
- 18 U.S.C. § 1341
- 18 U.S.C. § 1343
- 18 U.S.C. § 1956
- 18 U.S.C. § 1957
- 21 U.S.C. § 331
- 21 U.S.C. § 333(a)
- 21 U.S.C. § 343(a)(1)

UNITED STATES OF AMERICA,

Plaintiff,

-versus -

GEORGE FORGIONE,
FRANK SARCONA
aka Frank Sarcone,
aka Dave Johnson,
Defendants.

SUPERSEDING INDICTMENT

The Grand Jury charges that:

BACKGROUND ALLEGATIONS

At all times relevant and material to this Superseding
Indictment:

1. Defendants GEORGE FORGIONE and FRANK SARCONA operated "The Lipoban Clinic" which sold a purported weight loss product in capsule form called "LipoBan™ Dietary Supplement" (hereafter "LipoBan"). According to the ingredient panel on the bottle's label, LipoBan contains "500 mg of pure and natural LipoSan Ultra™

Chitosan and mineral extract derived from shellfish." Chitosan is a derivative of the crushed shells of shellfish. LipoBan's recommended use is "[a]s a dietary supplement, take 2 capsules with a glass of water with lunch and dinner."

2. Defendant FRANK SARCONA utilized an internet account to conduct the operation of The Lipoban Clinic. Defendant FRANK SARCONA utilized the screen name Beachwatcher1@msn.com. When utilizing this account he often used the false name, Dave Johnson.

3. Over time, The Lipoban Clinic maintained different offices. It's offices were located at 1515 North Federal Highway, Boca Raton, Florida, an executive suite office; 22610 SW 66th Avenue, Boca Raton, Florida 33428, the residence of defendant GEORGE FORGIONE; and 6720 E. Rogers Circle, Boca Raton, Florida 33487.

4. In July 1999, in the case of the Federal Trade Commission v. SlimAmerica, Inc. et. al., United States District Court Judge Wilkie D. Ferguson ordered defendant FRANK SARCONA to post a performance bond prior to engaging, directly or indirectly, in any business related to weight loss products or services. This bond, in favor of the Federal Trade Commission (hereafter "FTC"), was to be used to compensate any person who was injured as a result of any deceptive practice, misrepresentation or violation of the Court's order. No such bond was ever posted.

5. The defendants utilized several corporate entities to market LipoBan. One of the entities was the Lipoban Clinic, Inc., which was incorporated in March 2000. Defendant GEORGE FORGIONE was

the Incorporator, Resident Agent, President and Chairman of the Board of Directors. The Lipoban Clinic, Inc. was voluntarily dissolved in December 2000.

6. National Pharmaceuticals, Inc., was incorporated in September 2000. In November 2000, National Pharmaceuticals, Inc. filed an "Application for Registration of Fictitious Name" to do business as "The Lipoban Clinic." That application was signed by defendant GEORGE FORGIONE, Vice President of National Pharmaceuticals, Inc. In July 2001, an employee of "The Lipoban Clinic," was named as secretary and director of National Pharmaceuticals, Inc. On July 16, 2002, National Pharmaceuticals, Inc., changed its name to 1515 Investment Holdings, Inc., located at 1515 North Federal Highway, Boca Raton, Florida. On July 19, 2002, National Pharmaceuticals, Inc. canceled its use of the fictitious name "The Lipoban Clinic."

7. On July 17, 2002, Lipoban (Bahamas) LTD Corporation, which had been incorporated in June 2002 in Nassau, Bahamas, filed an application to transact business in Florida. Its stated purpose was the sale of non-prescription dietary and vitamin supplements. On July 19, 2002, Lipoban (Bahamas) LTD Corporation filed applications to register "The Lipoban Clinic," and "National Pharmaceuticals, Inc." as fictitious names, each with addresses at 1515 North Federal Highway, Suite 300, Boca Raton, Florida 33432.

COUNT 1

CONSPIRACY TO COMMIT MAIL FRAUD,
WIRE FRAUD AND CRIMINAL CONTEMPT

8. The background allegations section of this Superseding Indictment is re-alleged and incorporated by reference as though fully set forth herein.

9. From in or about January 2000, through in or about October, 2004, the exact dates being unknown, in the Southern District of Florida and elsewhere, the defendants,

**GEORGE FORGIONE, and
FRANK SARCONA,
aka Frank Sarcone,
aka Dave Johnson,**

did knowingly and willfully combine, conspire, confederate and agree with persons known and unknown to the Grand Jury, to commit certain offenses against the United States, that is:

a. mail fraud, in violation of Title 18, United States Code, Section 1341;

b. wire fraud, in violation of Title 18, United States Code, Section 1343; and

c. criminal contempt of court, in violation of Title 18, United States Code, Section 401(3).

PURPOSE AND OBJECT OF THE CONSPIRACY

10. It was the purpose and object of the conspiracy for the conspirators to unlawfully enrich themselves by making false and fraudulent representations and promises to people in order to

induce them to purchase LipoBan. It was a further purpose and object of the conspiracy for the conspirators to disobey the lawful Orders of the United States District Court for the Southern District of Florida.

MANNER AND MEANS OF EXECUTING THE SCHEME

11. The manner and means by which the conspirators sought to accomplish the objects of the conspiracy included, among others, the following:

12. The defendants advertised LipoBan through mass mailings, newspaper advertising and the internet.

13. The defendants obtained mailing lists to identify potential customers throughout the country to advance their marketing campaign. The defendants then sent and caused to be sent a promotional package to potential customers by First-Class U.S. Mail that consisted of several documents, including: (1) a two-page letter that claimed to be from "Joseph Maya, M.D.," (hereinafter, the "Maya letter"); (2) a "LipoBan™ Order Form," which contained on its reverse side a "LipoBan™ Test Participation Survey"; (3) newspaper-like advertisements bearing, among other things, pictures and testimonials of individuals who allegedly used and lost substantial weight through the use of LipoBan; (4) a purported business card that identifies "Joseph Maya, M.D." (hereafter "Dr. Maya") as the "Medical Director" and "George J. Forgione" as the "Clinical Director;" and (5) a return envelope pre-addressed to "The Lipoban Clinic Inc." and to the attention of "Dr's. Maya and

Forgione."

14. The defendants' marketing campaign identified the entity through which the defendants' sold LipoBan as "The Lipoban Clinic, Inc." Defendant FRANK SARCONA would frequently misrepresent himself as Dave Johnson while conducting business on behalf of The Lipoban Clinic Inc.

15. The defendants' marketing campaign endeavored to create the false and fraudulent pretense that the "The Lipoban Clinic, Inc." was a healthcare clinic involved in medical clinical studies and the treatment of obesity. To promote this false and fraudulent pretense, the defendants placed the caduceus (the commonly-known medical insignia consisting of a winged staff with two coiled snakes) on the outside envelope of the promotional package mailed to potential customers, the Maya letter, the business card, and the return envelope. The defendants falsely identified Dr. Maya in the Maya letter and on the business card as their "Medical Director" and the program medical director, and identified "Dr. George J. Forgione" as the "Clinical Director." In reality, the addresses used for the Clinic alternated among a mail box drop, an office in an executive suite, the home of defendant GEORGE FORGIONE, and an office in an industrial area. None of the locations were set up for the interview, diagnosis, study, or treatment of any medical condition.

16. The defendants falsely represented at times on their website, that they had a team of researchers. Similarly, the

defendants represented in their advertisements and promotional material that they had "a trained staff of weight loss and nutrition professionals" on hand for free consultation to "assure" that the purchasers of the LipoBan product achieved the weight loss goal. In reality, the employees of Lipoban were primarily telephone customer service representatives hired to process orders and perform clerical work. None of the employees were trained weight loss and nutrition professionals, or medical personnel.

17. The defendants represented to consumers that "Dr. Joseph Maya's" business address, in connection with the Lipoban Clinic, was located in Florida. In reality, Dr. Maya was not licensed to practice medicine in the United States. Rather, Dr. Maya was licensed to practice medicine in Mexico and his professional offices were located in Mexico City, Mexico. Moreover, the defendants identified Dr. Maya in the advertisements and promotional package as "Joseph Maya, M.D.," when in fact Dr. Maya's true and complete name was Jose Maya Behar.

18. The defendants falsely represented in the Maya letter that Dr. Maya and his associates were collecting data in a nationwide test to determine the effectiveness of LipoBan at home without medical supervision. In reality, no such nationwide test was being conducted.

19. The defendants falsely led the "participants" to believe that they were contacted in a unique and limited request, in that the letter, bearing a first class stamp, was addressed to the

individual victim with the purported identifier "Test Subject 731-_____" (which was followed by a series of numbers and/or letters.) In reality, virtually all participants were #731 and the numbers following the initial #731 were merely codes used by the defendants to track the response to the mass mailing solicitations and advertisements.

20. In the Maya letter and in newspaper-like ads, the defendants falsely represented that LipoBan had been clinically proven to cause people to lose weight without diet or exercise. The defendants falsely asserted that by taking their product weight loss would occur rapidly, without any change in daily exercise and despite metabolism problems.

21. The defendants represented in the Maya letter and other promotional materials that two doctors, other than Dr. Maya, had endorsed LipoBan. In reality, the referenced doctors never evaluated LipoBan, but instead endorsed the use of generic chitosan as a weight loss tool only so long as it was taken in conjunction with eating a sensible diet and exercising regularly.

22. The defendants represented in the Maya letter and other promotional materials that LipoBan was "now" available without a prescription. The defendants omitted the fact that a prescription had never been required, nor would it ever be required, to obtain the LipoBan product or its ingredients.

23. The defendants represented to consumers that the company would pay \$50 for the consumer to participate in a "test survey."

Consumers who participated in the "test survey" were required to purchase the LipoBan used for the "survey." Consumers were then sent what purported to be a "TEST SURVEY" booklet. The booklet's questions included daily physical measurements and weight of the consumer, whether they used LipoBan and experienced any adverse effects, and whether they exercised. This survey was to be completed for thirty consecutive days. Completed survey booklets returned to Lipoban were examined solely by the clerical staff. The booklets were maintained for approximately 90-days and then discarded. No research survey statistics were compiled from the booklets.

24. To receive the promised \$50 participant fee, consumers were required to fulfill several requirements that were not disclosed to the consumers when they were solicited to participate in the survey. The defendants insisted on the fulfillment of these requirements in order to discourage consumers from requesting and obtaining the promised participant fee.

25. Consumers who sought a promised refund of the purchase price faced numerous hurdles that were designed by the defendants to delay and discourage refunds. For example, consumers were regularly told that they had not returned the bottles and were required to provide proof that they had been returned. Also, consumers who paid by credit card were denied a refund until they provided credit card statements as proof of payment. Consumers were falsely told this was necessary because their credit card

information was not maintained. In reality, the credit card information was maintained in the Lipoban Clinic computer system.

26. Between May 2000 and October 2004, the defendants caused tens of thousands of consumers to purchase over \$10,000,000.00 of LipoBan based on these materially false representations and omissions of material facts.

OVERT ACTS

27. In furtherance of the conspiracy and to achieve the objects thereof, at least one of the co-conspirators committed or caused to be committed, in the Southern District of Florida, and elsewhere, at least one of the following overt acts, among others:

a. On or about January 9, 2000, defendant FRANK SARCONA caused Dr. Jose Maya, in Mexico, to e-mail him Maya's contact information.

b. On or about March 21, 2000, defendant GEORGE FORGIONE established a mail drop by signing a United States Postal Service "Application for Delivery of Mail Through Agent" on behalf of "The Lipoban Clinic, Inc."

c. On or about May 6, 2000, defendant GEORGE FORGIONE signed an agreement with "Joseph Maya, M.D.", of Mexico.

d. On or about June 1, 2000, defendant FRANK SARCONA signed a "Consulting Agreement" with The Lipoban Clinic Inc. which included in section "2(d)" a discussion of an adverse determination against him in connection with the Federal Trade Commission and the requirement for the posting of a \$5 million performance bond or an order of the Court altering the bond requirement.

e. On or about October 11, 2000, defendant GEORGE FORGIONE, identifying himself as incorporator, president, and chairman of the board of directors; signed Articles of Dissolution for "The Lipoban Clinic, Inc."

f. On or about October 11, 2000, defendant GEORGE FORGIONE, identifying himself as vice president of National Pharmaceuticals, Inc., signed an application to register "The Lipoban Clinic," at 1515 North Federal Highway, suite 300, Boca Raton, Florida as a "fictitious name" owned by National Pharmaceuticals, Inc.

g. On or about December 8, 2000, defendant FRANK SARCONA telephoned Wilke Resources, Inc. stating that he was working with the Lipoban Clinic, which was selling 5,000 to 10,000 bottles per month of a chitosan product, and requested complete information about LipoSan Ultra with a view towards switching to that product.

h. On or about December 12, 2000, defendant FRANK SARCONA, in the guise of Dave Johnson, called Wilke Resources, Inc., advising that the Lipoban Clinic would be ordering LipoSan Ultra.

i. On or about December 21, 2000, defendant FRANK SARCONA, in the guise of Dave Johnson, called Wilke Resources, Inc., and introduced Wilke Resources, Inc. to defendant GEORGE FORGIONE, presenting him as the owner of the Lipoban Clinic.

j. On or about December 24, 2000, defendant GEORGE FORGIONE signed a business questionnaire for the Better Business Bureau identifying himself as president of the Lipoban Clinic and falsely identifying "Joseph Maya, M.D." as "51% shareholder."

k. On or about March 27, 2001, defendant GEORGE FORGIONE responded to an inquiry from the Florida Department of Agriculture and Consumer Services regarding a consumer complaint and falsely identified "Joseph Maya, M.D." as the owner of The Lipoban Clinic, Inc.

l. On or about December 27, 2001, defendant FRANK SARCONA, in the guise of Dave Johnson, e-mailed Sunshine Communications Services in connection with the monitoring and tracking of customer responses to LipoBan advertisements.

m. On or about May 10, 2002, defendant GEORGE FORGIONE signed a five year lease, on behalf of National Pharmaceuticals, Inc., for Bay #22 at 6720 East Rogers Circle, Boca Raton, Florida 33487 to be used as "...office, storage and distribution of Vitamins and for no other purposes or uses whatsoever..."

n. On or about May 16, 2002, defendant FRANK SARCONA, in the guise of Dave Johnson, on behalf of the Lipoban Clinic Inc. entered into an agreement with Electronic Marketing Services, Inc. to market LipoBan through the internet.

o. On or about May 30, 2002, defendant FRANK SARCONA, in the guise of Dave Johnson, discussed the encapsulation of LipoSan Ultra for the Lipoban Clinic with Wilke Resources, Inc.

p. On or about May 30, 2002, the defendants caused Wilke Resources, Inc. to e-mail "Dave Johnson" at the Lipoban Clinic and identify two Florida companies that could encapsulate LipoSan Ultra for them.

q. On or about and between August 30, 2002 and September 20, 2002, defendant FRANK SARCONA, in the guise of Dave Johnson, placed and caused to be placed LipoBan advertisements in various print media including the Arizona Republic, the Philadelphia Inquirer, the Billings Gazette, the Winston-Salem Journal, and the Naples News.

r. On or about September 20, 2002, the defendants obtained the "Beauty Visions Worldwide" mailing list in order to mail LipoBan solicitations to consumers whose names appeared on the list.

s. On or about January 27, 2003, the defendants obtained the "Psychic Predictions Silver Chart" mailing list in order to mail LipoBan solicitations to female consumers whose names appeared on the list.

t. On or about March 24, 2003, defendant FRANK SARCONA, in the guise of Dave Johnson, placed and caused to be placed a LipoBan advertisement in the Fort Lauderdale Sun Sentinel.

u. On or about and between September 16, 2003 and September 29, 2003, the defendants obtained the "Canyon Astrology" mailing list in order to mail LipoBan solicitations to female consumers whose names appeared on the list.

v. On or about July 7, 2004, defendant FRANK SARCONA e-mailed an employee of Lipoban Clinic, directing payment to Novus Print Media.

w. On or about August 30, 2004, defendant FRANK SARCONA, utilizing the identity of Dave Johnson, e-mailed a message to the

account representative at Novus Print Media discussing the "...Lipoban Test Ads (News America)" and directed it to be expanded to a circulation of 2.5 million.

x. On or about October 1, 2004, defendant FRANK SARCONA, utilizing the identity of Dave Johnson, e-mailed a message to the account representative at Novus Print Media stating that Lipoban Clinic check #5305, in the amount of \$18,307.60, would be mailed to Novus Print Media.

y. On or about October 4, 2004, the defendants caused mail to be sent to a person in New Mexico, addressed to "Test Subject No. 731LG-M523," including a letter from Dr. Maya, Dr. Maya's business card, and other advertising pieces.

z. On or about October 7, 2004, the defendants caused mail to be sent to a person in Iowa, addressed to "Test Subject No. 731-1012," including a letter from Dr. Maya, Dr. Maya's business card, and other advertising pieces which stated *inter alia* that the product "absorbs and binds" fat so that it would "allow people to lose their excess weight and inches without torturous dieting or exercising," and that the customer could experience the loss of "15,25,35 ... even 50 or more unwanted pounds gone without dieting as you eat the foods you love!"

All in violation of Title 18, United States Code, Section 371.

COUNTS 2-26
MAIL FRAUD

28. The allegations contained in paragraphs 1-7, 10 and 12-27

are re-alleged and incorporated by reference as though fully set forth herein.

29. From in or about January 2000, through in or about October 2004, at Palm Beach County, in the Southern District of Florida and elsewhere, the defendants,

**GEORGE FORGIONE, and
FRANK SARCONA,
aka Frank Sarcone,
aka Dave Johnson,**

did knowingly and willfully devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations and promises, knowing that the pretenses, representations and promises were false when made, as more particularly described in the allegations contained in paragraphs 1-7, 10 and 12-27 of Count 1 of this Superseding Indictment.

30. On or about the dates enumerated as to each count, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by false and fraudulent pretenses, representations and promises, and attempting to do so, the defendants did knowingly cause to be sent and delivered by the United States Postal Service and by private and commercial interstate carrier, according to the direction thereon, mail matter, as more particularly described below:

COUNT	DATE	DESCRIPTION OF MAILING
2	December 12, 2002	Three bottles of LipoBan were mailed to R.C. in Covington, Louisiana.
3	Between November 17, 2003 and November 26, 2003	M.B. of Gaithersburg, Maryland mailed her check #287 in the amount of \$67.90 to the Lipoban Clinic, Boca Raton, FL.
4	January 9, 2004	J.P. of Council Bluffs, Iowa mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
5	March 24, 2004	G.A. of Buford, Georgia mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
6	April 27, 2004	J.S. of Olympia, Washington mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
7	May 3, 2004	M.C. of Santa Cruz, California mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
8	June 25, 2004	L.J. of Battlecreek, Michigan mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
9	July 8, 2004	M.F. of Fayetteville, Tennessee, mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
10	July 8, 2004	D.H. of Albert, Kansas mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
11	July 9, 2004	N.B. of Goldsboro, North Carolina mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
12	July 13, 2004	S.R. of Belton, Texas mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.

13	July 14, 2004	J.W. of Oconto, Wisconsin mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
14	July 22, 2004	S.S. of Winthrop, Maine mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
15	July 28, 2004	D.H. of Lompac, California mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
16	August 2, 2004	A.A. of Concordia, Kansas mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
17	August 2, 2004	A.B. of Kimball, Michigan mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
18	August 2, 2004	P.M. of Marion, Iowa mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
19	August 7, 2004	L.A. of Neda, Iowa mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
20	August 12, 2004	J.H. of Wausau, Wisconsin mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
21	August 12, 2004	R.W. of Choctaw, Oklahoma mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
22	August 17, 2004	J.F. of Sartell, Minnesota mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
23	August 18, 2004	L.P. of Vancouver, Washington mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
24	August 20, 2004	D.J. of Earlville, New York mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.

25	August 21, 2004	R.D. of Pocatello, Idaho mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.
26	August 23, 2004	A.S. of Benton, Arkansas, mailed a Lipoban Clinic Inc. Test Survey to the Lipoban Clinic, Boca Raton, FL.

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS 27-29
WIRE FRAUD

31. The allegations contained in paragraphs 1-7, 10 and 12-27 are re-alleged and incorporated by reference as if fully set forth herein.

32. From in or about January 2000, through in or about October 2004, at Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

GEORGE FORGIONE, and
FRANK SARCONA,
aka Frank Sarcone,
aka Dave Johnson,

did knowingly and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, knowing that the pretenses, representations and promises were false when made, as more particularly described in the allegations contained in paragraphs 1-7, 10 and 12-27 of Count 1 of this Superseding Indictment.

33. On or about the dates enumerated as to each count, the

defendants, for the purposes of executing the aforesaid scheme and artifice to defraud and for obtaining money by means of materially false and fraudulent pretenses, representations and promises, did knowingly cause to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures and sounds as more particularly described below:

COUNT	DATE	DESCRIPTION OF WIRE COMMUNICATION
27	December 9, 2002	An order for LipoBan was placed via www.lipobansolution.com by a person in Louisiana.
28	June 21, 2004	The wiring of \$67.90 from D.H.'s account at CoastalHills Federal Credit Union in Lompac, California to The Lipoban Clinic Inc. Bank of America account in Florida.
29	August 17, 2004	An order for LipoBan was placed via www.lipobansolution.com by M.B. from BelAir, Maryland.

All in violation of Title 18, United States Code, Sections 1343 and 2.

MONEY LAUNDERING BACKGROUND ALLEGATIONS

At all times relevant and material to this Superseding Indictment:

34. On August 22, 1997, NATIONAL MARKETING DATA INC. was incorporated in the State of Florida. Defendant FRANK SARCONA was the director and registered agent

35. In April 1998, NATIONAL MARKETING DATA INC. opened a business checking account at First Union National Bank (hereafter "First Union") which later was known as Wachovia Bank N.A.

(hereafter "Wachovia"). The account remained open through 2004. Defendant FRANK SARCONA was the only authorized signatory on the account.

36. The Lipoban Clinic maintained checking accounts at Bank of America, including account #0034-4026-0290. Defendant GEORGE FORGIONE was an authorized signatory on the accounts.

37. National Pharmaceuticals maintained a checking account at Bank One, account #1006565970. Defendant GEORGE FORGIONE was an authorized signatory on the account. Defendant GEORGE FORGIONE was also an authorized signatory on 1776 Foundation's Bank of America account #0034-4353-7690.

38. Amtrust Bank, Bank of America, Bank One, Citibank, FirstBank, First Union, and Wachovia, were banks whose deposits were at all times insured by the Federal Deposit Insurance Corporation.

COUNT 30
CONSPIRACY TO COMMIT MONEY LAUNDERING

39. The allegations contained in paragraphs 1-7, 10, 12-27 and 34-38 are re-alleged and incorporated by reference as if fully set forth herein.

40. From in or about January 2000, through in or about October 2004, the exact dates being unknown, at Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

GEORGE FORGIONE, and
FRANK SARCONA,
aka Frank Sarcone,
aka Dave Johnson,

did knowingly combine, conspire, confederate and agree with each other and with others known and unknown to the Grand Jury, to commit offenses against the United States, that is:

a. to conduct and attempt to conduct a financial transaction affecting interstate commerce which involved the proceeds of a specified unlawful activity, namely, mail and wire fraud, in violation of Title 18, United States Code, Sections 1341 and 1343, with the intent to promote the carrying on of said specified unlawful activity in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i);

b. to conduct and attempt to conduct a financial transaction affecting interstate commerce which involved the proceeds of a specified unlawful activity, namely, mail and wire fraud, in violation of Title 18, United States Code, Sections 1341 and 1343, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of the specified unlawful activity in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i); and

c. to engage and attempt to engage in a monetary transaction by through or to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a value greater than \$10,000, such property having been derived from a specified unlawful activity, namely, mail and wire fraud, in violation of

Title 18, United States Code, Sections 1341 and 1343, in violation of Title 18, United States Code, Section 1957.

All in violation of Title 18, United States Code, Section 1956(h).

COUNTS 31-38
MONEY LAUNDERING
(PROMOTION)

41. The allegations set forth in paragraphs 1-7, 10, 12-27 and 34-38 are re-alleged and incorporated by reference as if fully set forth herein.

42. On or about the dates enumerated as to each count, at Palm Beach County, in the Southern District of Florida, and elsewhere the defendants,

GEORGE FORGIONE, and
FRANK SARCONA,
aka Frank Sarcone,
aka Dave Johnson,

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, which involved the proceeds of a specified unlawful activity, that is, mail and wire fraud, in violation of Title 18, United States Code, Sections 1341 and 1343, with the intent to promote the carrying on of the specified unlawful activity, and while conducting and attempting to conduct such financial transaction, knew that the property involved in the financial transaction, in the approximate amounts set forth below, represented the proceeds of some form of unlawful activity:

COUNT	APPROXIMATE DATE	FINANCIAL TRANSACTION
31	Between September 27, 2002 and October 7, 2002	Check 2710 from The Lipoban Clinic Inc., Bank of America account # 0034-4026-0290, in the amount of \$51,093.73, to Novus Print Media.
32	Between August 8, 2003 and August 11, 2003	Check 3860 from The Lipoban Clinic Inc., Bank of America account# 0034-4026-0290, in the amount of \$32,726.00, to U.S. Automated Mail.
33	Between October 31, 2003 and November 5, 2003	Check 4100 from The Lipoban Clinic Inc., Bank of America account# 0034-4026-0290, in the amount of \$30,108.00 to Vanson Halosource.
34	Between October 31, 2003 and November 5, 2003	Check 4090 from The Lipoban Clinic Inc., Bank of America account# 0034-4026-0290, in the amount of \$19,565.70, to Country Marketing Inc.
35	Between April 2, 2004 and April 7, 2004	Check 4620 from The Lipoban Clinic Inc., Bank of America account# 0034-4026-0290, in the amount of \$46,462.98, to Novus Print Media.
36	Between April 7, 2004 and April 15, 2004	Check 4622 from The Lipoban Clinic Inc., Bank of America account# 0034-4026-0290, in the amount of \$52,019.58, to Novus Print Media.
37	Between April 20, 2004 and April 21, 2004	Electronic funds transfer from The Lipoban Clinic Inc., Bank of America account # 0034-4026-0290, in the amount of \$97,746.48 to American Express.

38	Between June 11, 2004 and June 17, 2004	Check 4898 from The Lipoban Clinic Inc., Bank of America account# 0034-4026-0290, in the amount of \$28,674.26, to PAL Laboratories.
----	---	--

All in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 2.

COUNTS 39-40
MONEY LAUNDERING
(CONCEALMENT)

43. The allegations set forth in paragraphs 1-7, 10, 12-27 and 34-38 are re-alleged and incorporated by reference as if fully set forth herein.

44. On or about the dates enumerated as to each count, at Palm Beach County, in the Southern District of Florida and elsewhere, the defendant, as specified below, did knowingly conduct and attempt to conduct a financial transaction affecting interstate commerce, as set forth in each count below, which transaction involved the proceeds of a specified unlawful activity, namely, mail and wire fraud, in violation of Title 18, United States Code, Sections 1341 and 1343, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of the specified unlawful activity:

COUNT	DATE	DEFENDANT	FINANCIAL TRANSACTION
39	September 5, 2002	GEORGE FORGIONE	A wire transfer from the 1776 Foundation Bank of America account #0034-4353-7690, in the amount of \$85,000.00, to The Private Trust Corp., Att: Lipoban Ltd., in Nassau Bahamas.
40	Between October 22, 2004 and October 25, 2004	GEORGE FORGIONE	Check #1061 from the 1776 Foundation Bank of America account #0034-4353-7690, in the amount of \$15,500.00 to purchase Bank of America cashier check #3772238 payable to M. Farr.

All in violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2.

COUNTS 41-49
MONEY LAUNDERING
(TRANSACTION OVER \$10,000)

45. The allegations set forth in paragraphs 1-7, 10, 12-27 and 34-38 are re-alleged and incorporated by reference as if fully set forth herein.

46. On or about the dates enumerated in each count, in Palm Beach County, in the Southern District of Florida and elsewhere the defendant, as set forth in each count below, did knowingly engage and attempt to engage in a monetary transaction by, through and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a value greater than \$10,000 such

property having been derived from a specified unlawful activity, as further set forth below:

COUNT	DATE	DEFENDANT	MONETARY TRANSACTION
41	November 20, 2002	GEORGE FORGIONE	National Pharmaceuticals Inc. Check #1216, drawn on Bank One account #1006565970, to purchase Bank One official check #197649697 in the amount of \$145,000.00 payable to Lipoban Ltd.
42	December 24, 2002	FRANK SARCONA	Derek John Smith check #1007 drawn on Bank of America account #0054- 8687-8000 in the amount of \$45,000.00 deposited into Lipoban Clinic Inc. account #0034-4026-0290 at Bank of America.
43	Between March 25, 2003 and March 31, 2003	FRANK SARCONA	Derek Smith check #104 drawn on AmTrust Bank account #00710043902 in the amount of \$25,000.00 deposited into the Re/Max Dream Properties Escrow account #7191379499 at FirstBank.

44	April 10, 2003	GEORGE FORGIONE	National Pharmaceuticals Inc. Check #1221, drawn on Bank One account #1006565970, to purchase Bank One official check #197772840 in the amount of \$100,000.00 payable to Lipoban Ltd.
45	September 2, 2003	GEORGE FORGIONE	National Pharmaceuticals Inc. Check #1231, drawn on Bank One account #1006565970, in the amount of \$14,000.00 to purchase Bank One official checks #961913500, 961913501, 961913502, and 961913503.
46	October 9, 2003	GEORGE FORGIONE	National Pharmaceuticals Inc. Check #1282, drawn on Bank One account #1006565970, in the amount of \$70,880.00 deposited into the Lipoban Clinic Inc. account #0034-4026- 0290 at Bank of America.

47	June 4, 2004	FRANK SARCONA	National Marketing Data Inc. Check #1598 drawn on Wachovia Bank N.A. (formerly known as First Union National Bank) account #2090002913462 in the amount of \$45,000.00 deposited into the account of Derek John Smith Bank of America account #0054-8687-8000.
48	June 17, 2004	FRANK SARCONA	Derek John Smith check #1120 drawn on Bank of America account #0054-8687-8000 in the amount of \$42,482.14 deposited into K. Brock's account at Bank of America.
49	August 16, 2004	GEORGE FORGIONE	National Pharmaceuticals Inc. Check #1289, drawn on Bank One account #1006565970, to purchase Bank One official check #223350234 in the amount of \$131,000.00.

All in violation of Title 18, United States Codes, Sections 1957 and 2.

MISBRANDING OF FOOD BACKGROUND ALLEGATIONS

At all times relevant and material to this Superseding Indictment:

47. The Food and Drug Administration (hereafter "FDA") is an agency of the United States Department of Health and Human

Services. It is responsible for the protection of the health and safety of the American public by enforcing the provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§301 et seq. (the "FDCA"), to ensure, among other things, that food products, including dietary supplements, are safe and bear truthful and non-misleading labeling.

48. The FDCA prohibits the introduction or delivery of a food that is misbranded.

49. A dietary supplement is deemed to be a food within the meaning of the FDCA.

50. A food is deemed to be misbranded under the FDCA if its labeling is false or misleading in any particular.

51. Pursuant to 21 C.F.R. §1.21, the labeling of a food shall be deemed to be misleading if it fails to reveal facts that are:

1. Material in light of other representations made or suggested by statement, word, design, device, or any combination thereof; or
2. Material with respect to consequences which may result from use of the article under: (i) The conditions prescribed in such labeling...

COUNTS 50-59

INTRODUCTION OF A MISBRANDED FOOD

(21 U.S.C. §§ 331(a), 343(a), and 333(a) (2))

52. The allegations of paragraphs 1-7, 10, 12-27 and 47-51 are re-alleged and incorporated herein by reference.

53. On or about the dates enumerated as to each count below,

at Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

**GEORGE FORGIONE, and
FRANK SARCONA,
aka Frank Sarcone,
aka Dave Johnson,**

did, with the intent to defraud or mislead, introduce, deliver for introduction, and cause the introduction and delivery for introduction into interstate commerce the dietary supplement LipoBan™, a food within the meaning of 21 U.S.C. §321(f), which was misbranded within the meaning of 21 U.S.C. §343(a)(1) in that it bore labeling that was false and misleading in one or more particulars, including: LipoBan™ allows you to lose all of your excess weight and inches without torturous dieting or changing what you eat; LipoBan™ was now available without a prescription, or words to that effect; LipoBan™ was clinically proven to allow people to lose their excess weight inches without torturous dieting or exercising; in recent clinical studies 335 people lost a great deal of weight by simply adding the LipoBan™ ingredient to their normal meals; in yet another clinical study participants lost an average of 8 percent of their entire body weight in just 4 weeks; one well known and respected medical doctor wrote, "The Fat Absorber (LipoBan™) works beautifully" and "[m]y patients report losing weight without the hardship of rigorous diet regimens or excessive exercise;" a prominent medical doctor with over 40 years of experience practicing medicine "has never seen anything that can

produce results like (LipoBan™) the Fat Absorber."

COUNT	DATE	TO WHOM PRODUCT INTRODUCED
50	December 12, 2002	R.C. in Covington, Louisiana.
51	December 11, 2003	J.P. of Council Bluffs, Iowa
52	February 17, 2004	G.A. of Buford, Georgia.
53	March 4, 2004	J.S. of Olympia, Washington.
54	April 2, 2004	M.C. of Santa Cruz, California.
55	May 18, 2004	L.J. of Battlecreek, Michigan.
56	June 9, 2004	D.H. of Albert, Kansas.
57	June 9, 2004	N.B. of Goldsboro, North Carolina.
58	July 20, 2004	R.M. of Lindenhurst, New York
59	August 17, 2004	M.B. of Bel Air, Maryland

All in violation of Title 21, United States Code §§331(a), 343(a)(1), and 333(a)(2); and Title 18, United States Code, Section 2.

COUNT 60
CRIMINAL CONTEMPT

54. The allegations of paragraphs 1-7, 10, 12-27, 34-38 and 47-51 are re-alleged and incorporated herein by reference.

55. Beginning in or around January 2000 and continuing to October 2004, in connection with the sale of LipoBan as set forth in Count 1 of this Superseding Indictment, at Palm Beach County, in the Southern District of Florida and elsewhere, the defendant,

FRANK SARCONA,
aka Frank Sarcone,
aka Dave Johnson,

knowingly and willfully disobeyed and resisted a lawful order of

the United States District Court for the Southern District of Florida, entered on or about June 30, 1999 in case number 97-6072-CIV-FERGUSON, namely Ancillary Equitable Relief paragraph (a) of the Order, by failing to post a performance bond in the amount of \$5 million before engaging directly or indirectly in any business related to weight loss products or services, or in marketing of any product or services anywhere in the United States.

All in violation of Title 18, United States Code, Section 401(3).

COUNT 61
CRIMINAL CONTEMPT

56. The allegations of paragraphs 1-7, 10, 12-27, 34-38 and 47-51 are re-alleged and incorporated herein by reference.

57. Beginning in or around January 2000 and continuing to October 2004, in connection with the sale of LipoBan as set forth in Count 1 of this Superseding Indictment, at Palm Beach County, in the Southern District of Florida and elsewhere, the defendant,

FRANK SARCONA,
aka Frank Sarcone,
aka Dave Johnson,

knowingly and willfully disobeyed and resisted a lawful order of the United States District Court for the Southern District of Florida, entered on or about June 30, 1999 in case number 97-6072-CIV-FERGUSON, namely the paragraph making permanent the preliminary injunction previously entered in said case, by failing to comply with the bond provisions as set forth in Section V of the July 2,

1997 preliminary injunction.

All in violation of Title 18, United States Code, Section 401(3).

COUNT 62
CRIMINAL CONTEMPT

58. The allegations of paragraphs 1-7, 10, 12-27, 34-38 and 47-51 are re-alleged and incorporated herein by reference.

59. Beginning in or around January 2000 and continuing to October 2004, in connection with the sale of LipoBan as set forth in Count 1 of this Superseding Indictment, at Palm Beach County, in the Southern District of Florida and elsewhere, the defendant,

FRANK SARCONA,
aka Frank Sarcone,
aka Dave Johnson,

knowingly and willfully disobeyed and resisted a lawful order of the United States District Court for the Southern District of Florida, entered on or about June 30, 1999 in case number 97-6072-CIV-FERGUSON, namely the paragraph making permanent the preliminary injunction previously entered in said case, by engaging in the prohibited business practices set forth in Section I of the July 2, 1997 preliminary injunction.

All in violation of Title 18, United States Code, Section 401(3).

CRIMINAL FORFEITURE

MAIL AND WIRE FRAUD FORFEITURE ALLEGATION

1. The allegations of Counts One through Twenty-nine of this

Superseding Indictment are re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeitures to the United States of America pursuant to the provisions of Title 28 United States Code Section 2461 and Title 18 United States Code Section 981(a)(1)(C) and the procedures outlined at Title 21 United States Code Section 853.

2. As a result of the offenses, alleged in Counts One to Twenty-nine, defendants George Forgione and Frank Sarcona shall forfeit to the United States all property, real and personal, constituting proceeds obtained from the afore stated offenses and all property traceable to such property, including but not limited to the following property:

a. \$10,000,000.00 in United States currency and all interest and proceeds traceable thereto, in that such sum in aggregate is property which was proceeds of the afore stated offenses in violation of Title 18, United States Code Sections 371, 1341 and 1343.

b. Real property as follows:

(1) The real property commonly known as 22610 S.W. 66TH AVENUE, BOCA RATON, FLORIDA and is currently titled and legally described as:

Lot 24, Block 8, Sandalfoot Cove Section 2 according to the Plat thereof, as recorded in Plat Book 29, Page 15, Public Records of Palm Beach County.

(2) The real property commonly known as 10763 Buttonwood Lake

Drive, Boca Raton, Florida, and is legally described as:

Lot 28, Block 1 of BOCA CHASE TRACT 4, according to the Plat thereof, as recorded in Plat Book 70, Page 144, of the Public Records of Palm Beach County, Florida.

c. Other property as follows:

- (1) One 1999 Forty Seven Foot Fountain Serial Number FGQ47345D899 and Myco Trailer Serial Number 4JFBS473XTB003396
- (2) All Proceeds from Bank of America Cashier's Check Number 3709426 (\$25,000)
- (3) All Currency and Proceeds in Nassau Educators Federal Credit Union Account Number 5367100000

MONEY LAUNDERING FORFEITURE ALLEGATIONS

1. The allegations of Counts One through Forty-nine of this Superseding Indictment are realleged and by this reference fully incorporated herein for the purpose of alleging forfeitures to the United States of America pursuant to the provisions of Title 18, United States Code, Section 982.

2. As a result of the offenses, alleged in Counts Thirty through Forty-nine defendants George Forgione and Frank Sarcona shall forfeit to the United States all property, real and personal, involved in the afore stated offenses and all property traceable to such property, as to which property the said defendants are jointly and severally liable, including, but not limited to:

a. \$10,000,000.00 in United States currency and all interest and proceeds traceable thereto, in that such sum in aggregate is property which was involved in the afore stated offenses or is traceable to such property, in violation of Title 18, United States Code, Sections 1956 and 1957.

b. Real property listed below:

(1) The real property commonly known as Parcel No. 6A-6 Estate Lilliendahl & Marienhoj, No. 3 Little Northside Quarter, St. Thomas, U.S. Virgin Islands and legally described as: Parcel No. 6A-6 Estate Lilliendahl & Marienhoj, No. 3 Little Northside Quarter, St. Thomas, U.S. Virgin Islands as shown on PWD No. F9-633-T60, consisting of 1.01 U.S. acres, more or less.

(2) The real property commonly known as 10763 Buttonwood Lake Drive, Boca Raton, Florida, and is legally described as: Lot 28, Block 1 of BOCA CHASE TRACT 4, according to the Plat thereof, as recorded in Plat Book 70, Page 144, of the Public Records of Palm Beach County, Florida.

c. Other property as follows:

(1) All Proceeds from Bank of America Cashier's Check Number 3709426 (\$25,000)

b. If the property described above as being subject to forfeiture, as a result of any act or omission of the defendant,

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with

a third person;

(3) has been placed beyond the jurisdiction of the Court;

(4) has been substantially diminished in value; or


(5) has been commingled with other property which cannot be subdivided without difficulty;


it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

All pursuant to Title 28 United States Code, Section 2461, Title 18 United States Code, Sections 981(a)(1)(C), 982(a)(1), and Title 21 United States Code, Section 853.

A true bill.

Foreperson


R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY


KERRY S. BARON
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: GEORGE FORGIONE

Case No: 07-80138-CR-Marra/Vitunac(s)

Count #: 1

18 U.S.C. §371

***Max. Penalty:** 5 years imprisonment; \$250,000.00 Fine

Counts #: 2 - 26

18 U.S.C. §1341

***Max. Penalty:** 20 years imprisonment; \$250,000.00 Fine

Counts #: 27 - 29

18 U.S.C. §1343

***Max. Penalty:** 20 years imprisonment; \$250,000.00 Fine

Count #: 30

18 U.S.C. §1956 (h)

***Max. Penalty:** 20 years imprisonment;
The greater of \$500,000.00 or twice the value of the property involved

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: GEORGE FORGIONE

Case No: 07-80138-CR-Marra/Vitunac(s)

Counts #: 31 - 38

18 U.S.C. §1956

***Max. Penalty:** 20 years imprisonment;
The greater of \$500,000.00 or twice the value of the property involved

Counts #: 39 - 40

18 U.S.C. §1956

***Max. Penalty:** 20 years imprisonment;
The greater of \$500,000.00 or twice the value of the property involved

Counts #: 41, 44 - 46, 49

18 U.S.C. §1957

***Max. Penalty:** 10 years imprisonment; \$250,000.00 Fine

Count #: 50 - 59

21 U.S.C. §§331(a), 343(a), and 333(a)(2)

***Max. Penalty:** 3 years imprisonment; 250,000.00 Fine

Count #:

***Max. Penalty:**

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: FRANK SARCONA,
a/k/a Frank Sarcone, a/k/a Dave Johnson

Case No: 07-80138-CR-Marra/Vitunac(s)

Count #: 1

18 U.S.C. §371

***Max. Penalty:** 5 years imprisonment; \$250,000.00 Fine

Counts #: 2 - 26

18 U.S.C. §1341

***Max. Penalty:** 20 years imprisonment; \$250,000.00 Fine

Counts #: 27 - 29

18 U.S.C. §1343

***Max. Penalty:** 20 years imprisonment; \$250,000.00 Fine

Count #: 30

18 U.S.C. §1956 (h)

***Max. Penalty:** 20 years imprisonment;
The greater of \$500,000.00 or twice the value of the property involved

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: FRANK SARCONA,
a/k/a Frank Sarcone, a/k/a Dave Johnson

Case No: 07-80138-CR-Marra/Vitunac(s)

Counts #: 31 - 38

18 U.S.C. §1956

***Max. Penalty:** 20 years imprisonment;
The greater of \$500,000.00 or twice the value of the property involved;

Counts #: 42 - 43

18 U.S.C. §1957

***Max. Penalty:** 10 years imprisonment; \$250,000.00 Fine

Counts #: 47 - 48

18 U.S.C. §1957

***Max. Penalty:** 10 years imprisonment; \$250,000.00 Fine

Counts #: 50 - 59

21 U. S. C. §§331(a), 343(a)(1), and 333(a)(2)

***Max. Penalty:** 3 years imprisonment; \$250,000.00 Fine

Counts #: 60 - 62

18 U.S.C. §401(3)

***Max. Penalty:** Life imprisonment; \$250,000.00 Fine

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

Case No. 07-800138-CR-Marra/Vitunac(s)

GEORGE FORGIONE

DEFENDANT

Pretrial Detention is recommended as to defendant.



KERRY BARON
ASSISTANT UNITED STATES ATTORNEY