

GRANTED IN PART:

1. Plaintiff may file an amended complaint alleging that Enviga does not burn calories and that Plaintiff wasted money by purchasing Enviga in reliance upon the product's claim to burn calories; and

2. The amended complaint may not allege that Defendant lacked prior substantiation for the product's calorie-burning claim, as such amendment would be futile; and

3. The amended complaint may not allege, and its allegations may not rely upon, previously dismissed theories or claims; and it is further

ORDERED that Plaintiff shall file its revised amended complaint on or before June 26, 2009, and Defendant shall file any opposition to the revised document in the form of a motion on or before July 10, 2009; and it is finally

ORDERED that the parties shall confer to establish a schedule for **EXPEDITED DISCOVERY**, which shall be limited to the question of whether Enviga burns calories.

s/Renée Marie Bumb
RENÉE MARIE BUMB
UNITED STATES DISTRICT JUDGE