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1 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), through its
2 undersigned attorneys, alleges as follows:

3 1. Plaintiff FTC brings this action under Section 13(b) of the Federal Trade
4 Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure a permanent injunction, consumer
5 redress, disgorgement, and other equitable relief against the Defendants for engaging in
6 deceptive acts or practices in connection with the advertising, marketing, and sale of the Fast
7 Abs “electronic massage fitness belt” (“Fast Abs”), which purportedly causes loss of inches and
8 fat, and well-defined abdominal muscles, in violation of Sections 5(a) and 12 of the FTC Act, 15
9 U.S.C. §§ 45(a) and 52.

10 **JURISDICTION AND VENUE**

11 2. This Court has subject matter jurisdiction over this matter under 15 U.S.C. §§
12 45(a), 52, and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

13 3. Venue in this district is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)
14 and (c).

15 **THE PARTIES**

16 4. Plaintiff, the Federal Trade Commission, is an independent agency of the United
17 States Government created by statute. 15 U.S.C. §§ 41-58. The Commission enforces Section
18 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
19 affecting commerce. The Commission also enforces Section 12 of the FTC Act, 15 U.S.C. § 52,
20 which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or
21 affecting commerce. The Commission may initiate federal district court proceedings to enjoin
22 violations of the FTC Act and to secure such equitable relief, including consumer redress, as
23 may be appropriate in each case. 15 U.S.C. § 53(b).

24 5. Defendant United Fitness of America, LLC (“UFA”), is a Nevada limited liability
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1 relevant to this complaint, acting individually or in concert with others, Tristar marketed and
2 sold consumer products and exercise equipment, including Fast Abs. Tristar registered the
3 Internet address "TVinventions.com," which is referenced many times in the Fast Abs

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1 among the most frequently aired infomercials in the nation. As of February 22, 2002, Fast Abs
2 infomercials had appeared more than 1,200 times. The Defendants spent approximately \$12
3 million to promote Fast Abs through infomercials from November 2001 through February 22,
4 2002.

5 **20.** The Fast Abs infomercials featured “fitness pros” and “health professionals” who
6 repeatedly demonstrated the product and touted its purported benefits. The infomercials also
7 included: (1) user testimonials; (2) scientific-looking images that purported to illustrate how
8 Fast Abs functions; (3) visual images of flabby torsos transforming into thin, lean and sculpted
9 torsos; and (4) a bevy of male and female models with exceptional abdominal definition, usually
10 dressed in revealing clothes. Exs. A & B (Fast Abs Nov. 3, 2001 infomercial videotape and
11 transcript); Exs. C & D (Fast Abs Feb. 9, 2002 infomercial videotape and transcript).

12 **21.** The advertisements and promotional materials for Fast Abs discussed in
13 paragraphs 15-20 (“Fast Abs Promotional Materials”) contained four messages about its benefits,
14 performance, and safety. Specifically, the use of Fast Abs: (1) causes loss of inches and fat, and
15 guarantees users will “lose four inches in 30 days”; (2) causes well-defined abdominal muscles,
16 *e.g.*, “rock hard abs” or “washboard abs”; (3) for 10 minutes is equivalent to 600 sit-ups and
17 more effective and efficient than regular exercise; and (4) is safe for all users and is safe for use
18 over the chest and/or pectoral area.

19 **(1) Lose inches and fat claims**

20 **22.** The Fast Abs Promotional Materials included, but were not limited to, the
21 following statements and depictions about how Fast Abs causes loss of inches and fat:

22 **a.** ON SCREEN TEXT: **“Lose 4 inches in 30 days Guaranteed!”** Ex. B at
23 30, 32, 48, 59, 60; Ex. D at 31, 33, 49, 63, 64.

24 **b.** MALE ANNOUNCER: “You’ll drop four inches in the first 30 days. We
25 guarantee it.” Ex. B at 31, 59; Ex. D at 32, 63.

1 ON SCREEN IMAGE: Flabby female torso in profile morphing into a lean and fit torso.

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3 c. MALE ANNOUNCER: “People everywhere are sitting back and relaxing
4 while they firm up, slim down, and shed inches quickly.” Ex. B at 4, 23, 54; Ex. D at 4,
23-24, 45, 57.

5 d. KATHY DERRY [previously introduced as “[o]ne of America’s leading
6 fitness pros”]: “If for any reason you’re not completely satisfied with your new leaner,
7 tighter shape, simply return it for a complete refund of the purchase price, no questions
8 asked.” Ex. B at 21.

9 ON SCREEN IMAGES: Men without shirts and women with bare midriffs, all sporting
10 lean, well-defined abdominal muscles.

11 e. ON SCREEN IMAGE: “Before” and “After” photographs and images of
12 male and female torsos transforming from flabby to lean and fit.

13 [A message of “Unique results, your results may vary” fleetingly appears in fine print near the
14 bottom of the screen. Ex. B at 52. The February version of the infomercial flashes
15 “Unique Results. Your results will vary.” Ex. D at 54. In both versions, this small light blue text is
16 poorly contrasted against a medium blue screen and is accompanied by background
17 sounds and images.]

18 PETER VIRGILE [previously introduced as a “top personal trainer”]: “Just look at these
19 Fast Abs results achieved by all these people in just two weeks. Fantastic results.” Ex. B
20 at 53; Ex. D at 54-55.

21 f. KAREN [purported Fast Abs user]: “In the last 14 days, I’ve lost three and
22 a half pounds and two and a half inches off my waist and an inch off my hips.”

23 ON SCREEN IMAGE: Woman’s torso in profile featuring a flabby belly and buttocks
24 morphing into a lean and fit profile. Ex. B at 20; Ex. D at 20.

25 ON SCREEN TEXT: “Lost 3½ inches total! 14-day results!”

26 g. HEATHER [purported Fast Abs user]: “In the last 14 days, I’ve lost two
and half inches off my waist and two inches off my hips.”

ON SCREEN TEXT: “Before and After photographs . . . Lost 4½ inches total! 14-
Day Results!”

ON SCREEN IMAGE: Woman’s torso in profile featuring a flabby belly and buttocks
morphing into a lean and fit profile.

[Same messages and display characteristics described in ¶ 18(e) appear at Ex. B at 10;
Ex. D at 11.]

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h. UNIDENTIFIED MALE [purported Fast Abs user]: “With Fast Abs, I’ve been able to zap my love handles.” Ex. B at 20; Ex. D at 20.

i. UNIDENTIFIED MALE [purported Fast Abs user]: “I lost an inch and half in my hips. I lost two and half in my waist.”

ON SCREEN TEXT: “**Before and After photographs . . . Lost 4 inches total! 14-Day Results!**”

ON SCREEN IMAGE: Typical male torso transforms into lean and sculpted torso.

[Same messages and display characteristics described in ¶ 18 (e) appear at Ex. B at 20; Ex. D at 20.]

j. PERSONAL FITNESS TRAINER: “It really, really helps strengthen the muscle, tone the muscle, get rid of cellulite.” Ex. B at 14.

k. KATHY DERRY: “People really can see great results quickly and easily with Fast Abs. The secret is EMS, electronic muscle stimulation.

1 ON SCREEN IMAGE: Flabby stomach muscles replaced with visibly defined abs.

2 c. KATHY DERRY: “In just minutes a day, with Fast Abs, you’ll be
3 building, toning, shaping, and defining your entire body.”

4 ON SCREEN IMAGE: Men and women with sculpted torsos. Ex. B at 34; Ex. D at 35.

5 d. PERSONAL FITNESS TRAINER: “A lot of my clients want to get the cuts
6 and the definition and this is amazing if you want to do that.” Ex. B at 14; Ex. D at 14.

7 e. KATHY DERRY: “The simple, fast, easy, effective tool to help tool and
8 reshape your body and help get those washboard lean sexy abs is finally here. With Fast
9 Abs, we’ll guarantee fast results with no sweat.” Ex. B at 52; Ex. D at 54.

10 ON SCREEN IMAGE: Sculpted male and female torsos followed by close-up of Fast
11 Abs belt on pulsating abdomen.

12 f. KATHY DERRY: “I’ll guarantee you’ll firm that saggy midriff, tone those
13 flabby love handles and lose that belly that’s been embarrassing you for years. Reshape
14 all your problem areas or simply return Fast Abs, no questions asked. You deserve to
15 have the body you’ve always imagined and now you don’t have to spend all day at the
16 gym to get it.” Ex. B at 53.

17 g. MALE ANNOUNCER: “Do you want rock hard abs, taut, toned muscles
18 without sweating for hours? Well now you can. Introducing Fast Abs—the complete
19 no-sweat workout system.” Ex. E (web commercial transcript); Ex. F (same text depicted
20 on TVinventions.com).

21 ON SCREEN TEXT: “**No Sweat Workout!**”

22 ON SCREEN IMAGE: Male torso displaying “washboard” abs and two bikini-clad
23 female torsos displaying lean and muscular abs.

24 h. MALE ANNOUNCER: “Now you can get rock hard abs with no sweat.
25 Tone arms and shoulders, define hips and thighs. All in just minutes a day. Fast Abs
26 does all the work for you.” Ex. E (web infomercial transcript); Ex. F (same text depicted
on TVinventions.com).

ON SCREEN TEXT: “**Fast Abs Does All the Work!**”

i. “Use the whole system for the ultimate in body sculpting and body building.
Abs, back, triceps, biceps. Customize your program for weight loss and muscle
definition.” Ex. G (print ads).

j. Application for Mode 1, “Lightning Pulse”: “Women: Flattening lower
abs[,] Men: Chiseling upper and lower abs.” Ex. H at 8 (instruction booklet).

(3) Equivalent to sit-ups, more efficient than exercise claims

1 **24.** The Fast Abs Promotional Materials included, but were not limited to, the
2 following statements and depictions about how using Fast Abs (a) for ten minutes equals 600 sit
3 ups, and (b) is more effective and efficient than regular exercise:

4 **a.** KATHY DERRY: “In fact, just 10 minutes of Fast Abs is like doing 600
5 sit-ups. Imagine that. 600 sit-ups.”

6 ON SCREEN TEXT: “**10 minutes = 600 sit ups.**”

7 ON SCREEN IMAGE: Woman struggling to perform a sit-up. Ex. B at 11; *see also* Ex.
8 B at 5, 23, 35, 43, 50, 54-55.

9 [The February Infomercial replaces the audio and text references to “sit-ups” with the
10 phrase “**muscle contractions.**” Ex. D at 5, 12, 24, 36, 45, 52, 57. However, each
11 reference to “**600 muscle contractions**” is still accompanied by a visual image of a
12 woman struggling to do a sit-up. *Id.*]

13 **b.** KATHY DERRY: “Tests have proven that this unique isometric action can
14 be 30% more effective than anything you can do on your own with normal exercise.”
15 Ex. B at 11, 24, 34-35; *see id.* at 16 and 24 (similar statements).

16 ON SCREEN TEXT: “**Unique Isometric Action! 30% More Effective Than Normal
17 Exercise!**” Ex. B at 11, 34-35; *see id.* at 16 and 24 (similar statements).

18 **c.** DR. DONALD FURNIVAL [introduced as a chiropractor specializing in
19 “natural healthcare”]: “There are several studies that have been done that show that
20 electrical muscle stimulation is more effective and more efficient than regular working
21 out or going to the gym. When you go to the gym, you are exercising everything, and
22 that brings on fatigue. You don’t get that with Fast Abs.” Ex. B at 15.

23 ON SCREEN IMAGE: Black and white images of men and women performing exercise
24 with expressions of discomfort.

25 **d.** Just **10** = **600**
 MINUTES SIT-UPS

26 Ex. G at 2 (print ads).

e. “Just 10 minutes can equal 600 sit-ups!” *Id.*

f. “Just 10 minutes can equal 600 ab contractions!” *Id.* at 3.

g. “Just 10 minutes with Fast Abs is the equivalent of 600 muscle
 contractions.” Ex. F (TVinventions.com).

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2 **h.** “The FAST ABS system uses gentle electric pulses to stimulate nerves that
3 produce muscle contractions. The pulses can be regulated to tone, or to build muscles
4 just the way crunches and resistance exercises do.” Ex. H at 3 (instruction booklet).

5 **i.** “The key to a targeted workout is based on the number of repetitions and
6 length of each muscle contraction through sit-ups, crunches and resistance training. The
7 Fast Abs system uses this principle to help you get the type of muscle workout you
8 want.” Ex. H at 7 (instruction booklet).

9 **(4) Safety**

10 **25.** The Fast Abs Promotional Materials included, but were not limited to, the
11 following statements and depictions about how Fast Abs is safe for all users and safe to use over
12 the chest:

13 **a.** DR. FURNIVAL: “I would recommend Fast Abs because . . . [s]econdly,
14 it is the safest possible way that you can develop your musculoskeletal system.” Ex. B at
15 16.

16 **b.** KATHY DERRY: “Fast Abs is perfect for everyone who wants to have
17 perfect abs. It was designed to fit the needs of people at all different fitness levels.
18 Doctors have found that it is safe and effective for people because of its unique design
19 and breakthrough technology.” Ex. B at 51; Ex. D at 53-54.

20 [A message of “Do not use during pregnancy, if you use a pace maker or if you have a cardiac or other medical
21 condition that would prevent you from using EMS technology.” fleetingly appears in fine print near the
22 bottom of the screen. Ex. B at 51; Ex. D at 53 (similar statement). The small white text
23 is poorly contrasted against a screen that changes background several times and contains
24 many images.]

25 **c.** KATHY DERRY: “This tiny transformer [referring to the unit] sends out
26 safe, gentle impulses that trigger your motor nerves and activate deep muscle
contractions.” Ex. B at 11; Ex. D at 11; *see* Ex. B at 24, 34; Ex. D at 25, 35, 58 (similar
statements by Kathy Derry or Male Announcer).

d. MALE ANNOUNCER: “Simply slip the Fast Abs belt around the desired
muscle group, and the Fast Abs microprocessor [the unit] sends out safe, gentle,
massage-like impulses that stimulate muscle contractions to tone and firm muscle.”
Ex. E (web commercial transcript); Ex. F (same text depicted on TVinventions.com).

e. PETER VIRGILE: “And not only does it give your abs a great workout,
you can use Fast Abs all over your body, toning and shaping your hips and your arms,
your thighs, your chest and your calves.”

ON SCREEN TEXT: “**Total Body Workout!**” Ex. B at 35; Ex. D at 36.

- Pregnant
- Inflammation of veins (including phlebitis or serious varicose veins.)
- Inflamed tissue from recent injury or disease (including recent scar tissue)

Ex. H at 4. Consumers did not receive this list of contraindications until after they had purchased the device and received the instruction booklet.

The Defendants' Purported 30-Day Money-Back Guarantee and One-Year Product Warranty

27. The Fast Abs Promotional Materials included, but were not limited to, the following statements and depictions about a 30-day money-back guarantee and a one-year product warranty:

a. KATHY DERRY: "Plus, Fast Abs will let you try the product for 30 days. Get the results we're talking about or you don't pay. That's because Fast Abs comes back[ed] with our 30-day fast results money-back guarantee. If, for any reason, you're not completely satisfied with your new[,] leaner, tighter shape, simply return it for a complete refund of the purchase price, no questions asked."

ON SCREEN TEXT: "**30-DAY Risk Free Money Back Guarantee.**" Ex. B at 21; *see also* Ex. B at 4, 23, 30-33, 43, 47-49, 53-54, 5dr'2ames

1 responsible for handling returns or customer service. In some cases, consumers dialed the
2 telephone numbers displayed during Fast Abs infomercials and reached telephone
3 representatives who refused to provide return information and/or provided consumers with a so-
4 called “customer service” telephone number, which was either continuously busy or put them on
5 “hold” for extended periods of time.

6 **29.** The Fast Abs infomercials repeatedly claimed that Fast Abs is backed by a “full
7 **one-year** limited warranty.” Ex. B at 32, 47, 60; Ex. D at 32, 49, 64 (emphasis added).
8 However, when some consumers received the device from the UFA Defendants, it was
9 accompanied by a “Fast Abs **Thirty (30) Day** Limited Warranty” card that explicitly disclaimed
10 all other “written or express warrant[ies].” Ex. I (emphasis added). This 30-day warranty ran
11 “from the original date of purchase.” *Id.*

12 **THE DEFENDANTS’ VIOLATIONS OF THE FTC ACT**

13 **30.** Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts
14 or practices in or affecting commerce. Section 12 of the FTC Act, 15 U.S.C. § 52(a), prohibits
15 the dissemination of any false advertisement in or affecting commerce for the purpose of
16 inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or
17 cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, Fast Abs is a
18 “device” pursuant to Section 15(d) of the FTC Act, 15 U.S.C. § 55(d). As set forth below, the
19 Defendants engaged in such unlawful practices in connection with the marketing and sale of Fast
20 Abs.

21 **COUNT ONE** 22 **FALSE CLAIMS - LOSS OF INCHES AND FAT** 23 **(All Defendants)**

24 **31.** Through the means described in Paragraphs 14-22, the Defendants represented,
25 expressly or by implication, that Fast Abs causes loss of inches and fat.
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32. In truth and in fact, Fast Abs does not cause loss of inches and fat. Therefore, the making of the representations set forth in Paragraph 31 constitutes a deceptive practice, and

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COUNT FOUR
FALSE CLAIMS - SAFE FOR USE OVER CHEST AREA
(All Defendants)

37. Through the means described in Paragraphs 14-21 and 25, the Defendants

1 affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and
2 52.

3 **COUNT SIX**
4 **FALSE CLAIMS – FAILURE TO PROVIDE A ONE-YEAR LIMITED WARRANTY**
5 **(UFA Defendants)**

6 **41.** Through the means described in Paragraphs 14-20 and 27-29, the UFA
7 Defendants represented, expressly or by implication, that Fast Abs came with a “full one-year
8 limited warranty.”

9 **42.** In truth and in fact, the Fast Abs devices sold by the UFA Defendants did not
10 come with a full one-year limited warranty. The UFA Defendants substituted a 30-day warranty
11 that explicitly disclaimed all other “written or express warrant[ies]” for the represented one-year
12 limited warranty. Therefore, the making of the representation set forth in Paragraph 41
13 constitutes a deceptive practice in or affecting commerce, in violation of Section 5(a) of the FTC
14 Act, 15 U.S.C. § 45(a).

15 **COUNT SEVEN**
16 **FALSE CLAIMS – FAILURE TO PROVIDE EFFECTIVE MEANS TO CLAIM**
17 **REFUND**
18 **(UFA Defendants)**

19 **43.** Through the means described in Paragraphs 14-20 and 27-28, the UFA
20 Defendants represented, expressly or by implication, that customers dissatisfied with the Fast
21 Abs product could easily return the product within 30 days for a full refund of the purchase
22 price, less shipping and handling.

23 **44.** In truth and in fact, in numerous instances, customers dissatisfied with the Fast
24 Abs product were not able to easily return the product within 30 days for a full refund of the
25 purchase price, less shipping and handling. Therefore, the making of the representation set forth
26 in Paragraph 43 constitutes a deceptive practice in or affecting commerce, in violation of Section
5(a) of the FTC Act, 15 U.S.C. § 45(a).

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CONSUMER INJURY

45. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss and may suffer physical injury as a result of the Defendants’ unlawful acts or practices. In addition, the Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, the Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT’S POWER TO GRANT RELIEF

46. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy injury caused by the Defendants’ law violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court’s own equitable powers, requests that this Court:

1. Permanently enjoin the Defendants from violating Sections 5(a) and 12 of the FTC Act as alleged herein, including committing such violations in connection with the advertising or sale of food, drugs, dietary supplements, devices, cosmetics, or other products, services or programs;

