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1 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), in conjunction with
2 the filing of this Stipulated Final Judgment, has filed an Amended Complaint for Permanent
3 Injunction and Other Equitable Relief (the “Amended Complaint”) under Section 13(b) of the
4 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), against Defendants United
5 Fitness of America, LLC, George Sylva, eBrands commerce group, LLC, John William Kirby,
6 Jr., Tristar Products, Inc. and Kishore Mirchandani, also known as “Keith” Mirchandani.

7 The Commission and Defendants United Fitness of America, LLC, George Sylva,
8 eBrands commerce group, llc., and John William Kirby, Jr. (together the “UFA Defendants”)
9 have stipulated to the entry of this Stipulated Final Judgment and Order for Permanent
10 Injunction, Monetary Redress, and Other Equitable Relief (“Final Order”) in settlement of the
11 Commission’s Amended Complaint against the UFA Defendants. Defendants United Fitness of
12 America, LLC, and George Sylva, together with Defendants Tristar Products, Inc. and Kishore
13 Mirchandani, have also withdrawn their motions to dismiss and to transfer. The UFA
14 Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity
15 of this Final Order. The UFA Defendants also waive any claim that they may have held under
16 the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to
17 the date of this Final Order. The Court, being advised in the premises, finds as follows:

18 FINDINGS

19 1. In its Amended Complaint, the Commission alleged that the UFA Defendants
20 violated Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52. The Commission
21 sought permanent injunctive relief for alleged deceptive acts or practices by the UFA Defendants
22 in connection with the marketing and sale of the Fast Abs electronic muscle stimulation device.

23 2. The Commission has the authority under Section 13(b) of the FTC Act, 15
24 U.S.C. § 53(b), to seek the relief it has requested.

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which the advertisement is presented. *Provided further*, that in any advertisement communicated through interactive media that is presented predominantly through visual or audio means, the disclosure may be made through the same means in which the advertisement is predominantly presented. The audio disclosure must be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure must be of a size and shade, with a degree of contrast to the background against which it appears, and must appear on the screen for a duration and in a location, sufficiently noticeable for an ordinary consumer to read and comprehend it.

2. In a print advertisement, promotional material, or instructional manual, the disclosure must be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

3. On a product label, the disclosure must be in a type size and location, iOp- and locat

1 border that is a color or shade that contrasts with the background against
2 which it appears. *Provided further*, that in a multi-page insert, the
3 disclosure must appear on the cover page or first page.

4 **4.** The disclosure must be in understandable language and syntax. Nothing
5 contrary to, inconsistent with, or in mitigation of the disclosure can be
6 used in any advertisement or on any label.

7 **5.** In the case of advertisements disseminated by means of an interactive
8 electronic medium, such as software, the Internet, or online services, “in
9 close proximity” means on the same Web page, online service page, or
10 other electronic page, and proximate to the triggering representation, and
11 does not include disclosures accessed or displayed through hyperlinks,
12 pop-ups, interstitials or other means.

13 **B.** “Competent and reliable scientific evidence” means tests, analyses, research,
14 studies, or other evidence based on the expertise of professionals in the relevant
15 area, that has been conducted and evaluated in an objective manner by persons
16 qualified to do so, using procedures generally accepted in the profession to yield
17 accurate and reliable results.

18 **C.** “Corporate Defendants” means Defendants United Fitness of America, LLC and
19 eBrands commerce group, llc.

20 **D.** “EMS device” means an electrically powered device that repeatedly contracts
21 muscles by passing electrical currents through electrodes contacting the affected
22 body area.

23 **E.** “Fast Abs” means the Fast Abs electronic muscle stimulation device challenged in
24 the Amended Complaint.

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1 statements listed in *Appendix A* include material information upon which the Commission relied
2 in negotiating and consenting to this Final Order. If, upon motion by the Commission, a Court
3 should find that any of the UFA Defendants made a material misrepresentation or omitted
4 material information concerning its financial condition, then this Final Order shall be reopened
5 for the purpose of requiring payment from the UFA Defendant(s) who made the
6 misrepresentation to the Commission of additional monetary redress in the amount of Sixty-Four
7 Million, Four Hundred and Forty-Two Thousand dollars (\$64,442,000), which the UFA
8 Defendants agree is the total net amount paid by consumers to purchase Fast Abs products, less
9 the sum of any amounts paid to the FTC by the UFA Defendants after the date of this Final
10 Order. *Provided*, however, that in all other respects this judgment shall remain in full force and
11 effect, unless otherwise ordered by the Court; and *provided further*, that proceedings instituted
12 under this Part are in addition to, and not in lieu of, any other civil or criminal remedies as may
13 be provided by law, including any other proceedings that the FTC may initiate to enforce this
14 Final Order.

15 **PROHIBITED REPRESENTATIONS**

16 **III.**

17 **IT IS FURTHER ORDERED** that the UFA Defendants, their successors and assigns,
18 and their officers, agents, servants, and employees, and all persons or entities in active concert or
19 participation with them who receive actual notice of this Final Order by personal service or
20 otherwise, whether acting directly or through any corporation, subsidiary, division, or other
21 entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale,
22 sale, or distribution of Fast Abs, or any substantially similar device, are hereby permanently
23 enjoined from representing, in any manner, expressly or by implication, that:

24 **A.** Any such device causes or promotes loss of inches or fat;

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C. Use of any such product for any period of time is equivalent to or superior to abdominal exercises such as sit-ups, crunches, or any substantially similar exercises;

D. Any EMS device is safe for use over the chest and/or pectoral area; or

E. Any such product makes a material contribution to any system, program, or plan that produces the results referenced in Subparts A-C of this Part.

V.

IT IS FURTHER ORDERED that the UFA Defendants, their successors and assigns, and their officers, agents, servants, and employees, and all persons or entities in active concert or

1 misrepresenting, expressly or by implication, the existence, contents, validity, results,
2 conclusions, or interpretations of any test, study, or research.

3 **REQUIRED DISCLOSURES**

4 **VII.**

5 **IT IS FURTHER ORDERED** that the UFA Defendants, their successors and assigns,
6 and their officers, agents, servants, and employees, and all persons or entities in active concert or
7 participation with them who receive actual notice of this Final Order by personal service or
8 otherwise, whether acting directly or through any corporation, subsidiary, division, or other
9 entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale,

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require for such devices. *Provided, however,*

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1 tentative final or final standard promulgated by the Food and Drug
2 Administration, or under any new drug application approved by the Food and
3 Drug Administration;

4 **B.**

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Associate Director for Enforcement
Federal Trade Commission

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1 contracts for personal services from the Individual Defendants and (b) has
2 responsibilities with respect to the subject matter of this Final Order. The
3 Individual Defendants shall secure from each such person a signed and dated
4 statement acknowledging receipt of the Final Order within thirty (30) days after
5 the date of service of the Final Order or the commencement of the employment
6 relationship.

7 **ACKNOWLEDGMENT OF RECEIPT OF FINAL ORDER BY DEFENDANTS**

8 **XIV.**

9 **IT IS FURTHER ORDERED** that each of the UFA Defendants, within five (5) business
10 days of receipt of this Final Order as entered by the Court, must submit to the Commission a
11 truthful sworn statement acknowledging receipt of this Final Order.

12 **TAXPAYER IDENTIFICATION NUMBERS**

13 **XV.**

14 **IT IS FURTHER ORDERED** that each of the UFA Defendants must, in accordance
15 with 31 U.S.C. § 7701, furnish to the FTC his or its respective taxpayer identifying number
16 (social security number or employer identification number), which shall be used for purposes of
17 collecting and reporting on any delinquent amount arising out of any of the UFA Defendant's
18 relationship with the government.

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Attorneys for Defendants:

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& CIVILETTI, LLP.
1201 New York Ave., N.W., Ste.1000
Washington, D.C. 20005
(202) 962-4800

Dated: _____, 2003

Dated: _____, 2003

IT IS SO ORDERED

KENT J. DAWSON
UNITED STATES DISTRICT

DATED: _____

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Appendix A

Sworn Financial Statements Provided by Defendants to the FTC

United Fitness of America, dated April 29, 2003
eBrands commerce group, llc, dated April 30, 2003
George Sylva, dated May 15, 2002
John William. Kirby, Jr., dated March 24, 2003