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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, Jr.;
6 Tristar Products, Inc. (“Tristar”); and Kishore Mirchandani, also known as “Keith” Mirchandani
7 (“Mirchandani”).

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13 withdrawn their motions to dismiss and to transfer.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

18 FINDINGS

19 1. In its Amended Complaint, the Commission alleged that the Tristar 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 Tristar
22 Defendants in connection with the marketing and sale of the Fast Abs electronic muscle
23 stimulation device.

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

2 **3.** This Court has jurisdiction over the subject matter of this action and over all of
3 the parties. Venue in the District of Nevada is proper.

4 **4.** The Amended Complaint states a claim upon which relief may be granted against
5 the Tristar Defendants.

6 **5.** The activities of the Tristar Defendants as alleged in the Commission's Amended
7 Complaint were or are in or affecting commerce, as defined in Section 4 of the FTC Act, 15
8 U.S.C. § 44.

9 **6.** The Commission and the Tristar Defendants stipulate and agree to this Final
10 Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all
11 matters in dispute arising from the Amended Complaint to the date of entry of this Final Order.

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1 consumer redress and to pay any attendant costs for the administration of any
2 redress fund. If direct redress to consumers is wholly or partially impracticable or
3 funds remain after redress is completed, the FTC may apply any remaining funds
4 for such other equitable relief (including consumer information remedies) as it
5 determines to be reasonably related to the Tristar Defendants' practices alleged in
6 the Amended Complaint. Any funds not used for equitable relief shall be
7 deposited to the Treasury as disgorgement. The Tristar Defendants shall have no
8 right to challenge the FTC's choice of remedies under this Part. No portion of the
9 payment pursuant to this Part shall be deemed a payment of any fine, penalty or
10 punitive assessment.

11 **RIGHT TO REOPEN**

12 **II.**

13 **IT IS FURTHER ORDERED** that Plaintiff's agreement to this Final Order is expressly
14 premised upon the Tristar Defendants' financial condition, as represented in the sworn financial
15 statements provided by the Tristar Defendants to the FTC and listed in *Appendix A*. The
16 financial statements listed in *Appendix A* include material information upon which the
17 Commission relied in negotiating and consenting to this Final Order. If, upon motion by the
18 Commission, a Court should find that either Tristar Defendant made a material misrepresentation
19 or omitted material information concerning its financial condition, then this Final Order shall be
20 reopened for the purpose of requiring payment from the Tristar Defendant(s) who made the
21 misrepresentation to the Commission monetary redress in the amount of Six Million Eight
22 Hundred and Thirty-Three Thousand dollars (\$6,833,000), which the Tristar Defendants agree is
23 the total net amount paid by consumers to purchase Fast Abs products in retail stores, less the
24 sum of any amounts paid to the FTC by the Tristar Defendants after the date of this Final Order.

1 *Provided*, however, that in all other respects this judgment shall remain in full force and effect,
2 unless otherwise ordered by the Court; and *provided further*, that proceedings instituted under
3 this Part are in addition to, and not in lieu of, any other civil or criminal remedies as may be
4 provided by law, including any other proceedings that the FTC may initiate to enforce this Final
5 Order.

6 **PROHIBITED REPRESENTATIONS**

7 **III.**

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

- 15 **A.** Any such device causes or promotes loss of inches or fat;
- 16 **B.** Any such device causes or promotes well-defined abdominal muscles, including
17 through the use of terms such as “rock hard abs,” “washboard abs,” “chiseled
18 abs,” “cut abs,” “well-developed abs,” and/or any other terms with substantially
19 similar meaning;
- 20 **C.** Use of any such device for any period of time is equivalent to or superior to
21 abdominal exercises such as sit-ups, crunches, or any substantially similar
22 exercises;
- 23 **D.** Any such device is safe for use over the chest and/or pectoral area; or
- 24 **E.** Any such device makes a material contribution to any system, program, or plan
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1 whether acting directly or through any corporation, subsidiary, division, or other entity, in
2 connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or
3 distribution of any dietary supplement, food, drug, cosmetic or device are hereby permanently
4 enjoined from making any representations about the absolute or comparative health benefits,
5 performance, efficacy, safety, or side effects of any such product unless, at the time the
6 representation is made, the Tristar Defendants possess and rely upon competent and reliable
7 scientific evidence that substantiates the representation.

8 **VI.**

9 **IT IS FURTHER ORDERED** that the Tristar Defendants, their successors and assigns,
10 and their officers, agents, servants, and employees, and all persons or entities in active concert or
11 participation with them who receive actual notice of this Final Order by personal service or
12 otherwise, whether acting directly or through any corporation, subsidiary, division, or other
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1 A. (1) In any external packaging or labeling; and (2) in close proximity to any safety
2 representation about the EMS device in any advertisement (other than television
3 or radio advertisements), promotional material, or telephone, or electronic
4 communication; the following:

5 **WARNING:** This product uses electrical muscle stimulation. Do
6 not use this device if you have a cardiac pacemaker, implanted
7 defibrillator, or other implanted metallic or electronic device. This
8 device could cause lethal rhythm disturbances to the heart in
9 susceptible individuals. Apply stimulation only to normal, intact,
10 clean skin. Do not apply stimulation over open wounds or over
11 swollen, infected, or inflamed areas or skin eruptions, *e.g.*,
12 phlebitis, thrombophlebitis, varicose veins, etc. Do not apply
13 stimulation over, or in close proximity to, cancerous lesions. The
14 safety of electrical stimulation during pregnancy has not been
15 established.

16 unless, at the time the representation is made, the Tristar Defendants possess and
17 rely upon competent and reliable scientific evidence that such device is safe for
18 all users and produces no adverse side effects. This requirement is in addition to,
19 and not in lieu of, any disclosures that the Food and Drug Administration may
20 require for such devices. *Provided, however,* that, if the Tristar Defendants
21 possess competent and reliable scientific evidence that the EMS device is safe for
22 users with a particular condition, the Tristar Defendants may remove that
23 particular condition from the disclosure required by this Final Order. *Provided*
24 *further,* that if the Tristar Defendants believe other uses of the EMS device or
25 health conditions may pose health risks, those uses or conditions may be added to
26 the warning. *Provided further,* that if the Food and Drug Administration issues a
final rule requiring a warning on the labeling of the EMS device, the Tristar
Defendants must substitute that warning label for the disclosures required in this
Part.

1 **B.** In close proximity to any safety representation about the EMS device in any
2 television or radio advertisement, the following:

3 **WARNING:** This product uses electronic muscle stimulation and
4 is not safe for all users, particularly those with implanted metallic
5 or electronic devices. Review the health and safety warnings on
6 our website, [domain name of website], or call us toll-free at [toll-
7 free telephone number], before buying this product.

8 unless, at the time the representation is made, the Tristar Defendants possess and
9 rely upon competent and reliable scientific evidence that the EMS device is safe
10 for all users and produces no adverse side effects. *Provided that*, for a period of
11 time beginning with the date of the first broadcast of any such television or radio
12 advertisement for any EMS device that contains a safety representation about the
13 device and ending no sooner than thirty days after the last broadcast, the Tristar
14 Defendants must maintain both a toll-free telephone number consumers can call
15 to obtain the warning set forth in Subpart A, of this Part, and a website that
16 clearly and prominently sets forth the full text of such warning on the home page
17 or teaser page.

18 **FOOD AND DRUG ADMINISTRATION**

19 **VIII.**

20 **IT IS FURTHER ORDERED** that nothing in this Final Order shall prohibit the Tristar
21 Defendants full teHER Oing Wrtiva00093 wusVIII.

1 device under any premarket approval application or premarket notification
2 approved or cleared by the Food and Drug Administration; or

- 3 **C.** Any product that is specifically permitted in labeling for such product by
4 regulations promulgated by the Food and Drug Administration pursuant to the
5 Nutrition Labeling and Education Act of 1990.

6 **COMPLIANCE REPORTING BY DEFENDANTS**

7 **IX.**

8 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this
9 Final Order may be monitored:

- 10 **A.** For a period of three (3) years from the date of entry of this Final Order,
11 **1.** Mirchandani shall notify the Commission of the following: (a) any
12 changes in his residence, mailing addresses, and telephone numbers,
13 within ten (10) days of the date of such change; (b) any changes in his
14 employment status (including self-employment) within ten (10) days of

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1 **COMPLIANCE MONITORING**

2 **X.**

3 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating
4 compliance with any provision of this Final Order:

5 **A.** Within ten (10) days of receipt of written notice from a representative of the
6 Commission, the Tristar Defendants shall submit additional written reports, sworn
7 to under penalty of perjury; produce documents for inspection and copying;
8 appear for deposition; and/or provide entry during normal business hours to any
9 business location in such Defendant's possession or direct or indirect control to
10 inspect the business operation;

11 **B.** In addition, the Commission is authorized to monitor compliance with this Final
12 Order by all other lawful means, including but not limited to the following:

- 13 **1.** obtaining discovery from any person, without further leave of court, using
14 the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
15 **2.** posing as consumers and suppliers to the Tristar Defendants, their
16 employees, or any other entity managed or controlled in whole or in part
17 by either Defendant, without the necessity of identification or prior notice;

18 *Provided that* nothing in this Final Order shall limit the Commission's lawful use
19 of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C.
20 §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or
21 information relevant to unfair or deceptive acts or practices in or affecting
22 commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

23 **C.** The Tristar Defendants shall permit representatives of the Commission to
24 interview any employer, consultant, independent contractor, representative, agent,

1 or employee who has agreed to such an interview, relating in any way to any
2 conduct subject to this Final Order. The person interviewed may have counsel
3 present.

4 **RECORD KEEPING PROVISIONS**

5 **XI.**

6 **IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of
7 this Final Order, the Tristar Defendants and any business where either or both of the Tristar
8 Defendant(s), individually or together, are the majority owner or otherwise manage or control
9 the business, are hereby restrained and enjoined from failing to create and retain the following
10 records in connection with the manufacturing, labeling, advertising, promotion, offering for sale,
11 sale, or distribution of Fast Abs, any other EMS device, or any dietary supplement, food, drug,
12 cosmetic or device for which representations regarding the absolute or comparative health
13 benefits, performance, efficacy, safety, or side effects of any such product are made:

- 14 **A.** Accounting records that reflect the cost of goods or services sold, revenues
15 generated, and the disbursement of such revenues;
- 16 **B.** Personnel records accurately reflecting: (a) the name, address, and telephone
17 number of each person employed in any capacity by such business, including as
18 an independent contractor; (b) that person's job title or position; (c) the date upon
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1 **Defendants:**

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4 KISHORE MIRCHANDANI, also
5 known as "KEITH" MIRCHANDANI,
6 individually and as President/CEO of TRISTAR PRODUCTS, INC.
7 (home address:)
8 32 Emerson Rd.
9 Morris Plains, NJ 07950
10 (corporate address:)
11 4 Century Dr.
12 Parsippany, NJ 07054

8 **Attorneys for Defendants:**

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10 _____
11 DENNIS L. KENNEDY
12 LIONEL SAWYER & COLLINS
13 300 South Fourth St., Suite 1700
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Washington, D.C. 20005
(202) 962-4800

14 **IT IS SO ORDERED**

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18 KENT J. DAWSON
19 UNITED STATES DISTRICT

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Appendix A

Sworn Financial Statements Provided by Defendants to the FTC

1. Corporate Financial Disclosure Form of Tristar Products, Inc., signed May 20, 2002; and
2. Individual Financial Disclosure Form of Kishore Mirchandani, signed May 23, 2002.