

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CASE NO. 12-23065-CIV-ALTONAGA**

**FEDERAL TRADE COMMISSION,**

Plaintiff,

v.

**FITNESS BRANDS, INC.; FITNESS BRANDS  
INTERNATIONAL, INC.; TARA PRODUCTIONS,  
INC.; NEW U, INC.; DIRECT HOLDINGS  
AMERICAS, INC.; DIRECT ENTERTAINMENT  
MEDIA GROUP, INC.; JNL, INC.; JNL  
WORLDWIDE, INC.;** corporations; **MICHAEL CASEY;  
DAVID BRODESS;** individually and as officers of  
**FITNESS BRANDS INTERNATIONAL, INC.;**  
**FITNESS BRANDS, INC.; TARA BORAKOS,** individually  
and as an officer of **TARA PRODUCTIONS, INC.;** **NEW  
U, INC.;** **JENNIFER NICOLE LEE,** individually and as an  
officer of **JNL, INC.;** and **JNL WORLDWIDE, INC.,**

Defendants, and

**THE READER'S DIGEST ASSOCIATION, INC.,**

Relief Defendant.

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**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF AGAINST DEFENDANTS DIRECT HOLDINGS  
AMERICAS, INC., and DIRECT ENTERTAINMENT MEDIA GROUP, INC., and  
RELIEF DEFENDANT THE READER'S DIGEST ASSOCIATION, INC.**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), filed its Complaint for Permanent Injunction and Other Equitable Relief ("Complaint") against Defendants Fitness Brands, Inc., Fitness Brands International, Inc., Tara Productions, Inc., New U, Inc., Direct Holdings Americas, Inc., Direct Entertainment Media Group, Inc., JNL, Inc., JNL Worldwide,

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Inc., Michael Casey, David Brodess, Tara Borakos, and Jennifer Nicole Lee, and Relief Defendant The Reader's Digest Association, Inc. alleging deceptive acts or practices and false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

Defendants Direct Holdings Americas, Inc., and Direct Entertainment Media Group, Inc. (collectively, the "DEMG Defendants") and Relief Defendant The Reader's Digest Association, Inc. ("Relief Defendant"), having been represented by counsel, and acting by and through said counsel, have consented to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief ("Order") without a trial or adjudication of any issue of law or fact herein.

**NOW THEREFORE**, the Plaintiff, the DEMG Defendants, and Relief Defendant, having requested the Court to enter this Order, and the Court having considered the Order reached between the parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

#### **FINDINGS**

This is an action by the Commission instituted under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). The Commission has the authority to seek the relief contained herein.

1. The Commission's Complaint states claims upon which relief may be granted under Sections 5(a), 12, and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 52, and 53(b).
2. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over the DEMG Defendants and Relief Defendant.
3. Venue in the United States District Court for the Southern District of Florida is proper pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

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4. The alleged activities of the DEMG Defendants and Relief Defendant are “in or affecting commerce” as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. This Order is for settlement purposes and does not constitute, and shall not be interpreted to constitute, an admission by the DEMG Defendants or Relief Defendant or a finding that the law, including but not limited to the FTC Act, has been violated as alleged in the Commission’s Complaint.
6. The DEMG Defendants and Relief Defendant waive: (a) all rights to seek appellate review or otherwise challenge or contest the validity of this Order; (b) any claim that they may have against the Commission, its employees, representatives, or agents; (c) all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996); and (d) any rights to attorney’s fees that may arise under said provision of law. The Commission, the DEMG Defendants, and Relief Defendant shall each bear their own costs and attorney’s fees incurred in this action.
7. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.
8. Entry of this Order is in the public interest.
9. This Order reflects the negotiated agreement of the parties. The Commission, the DEMG Defendants, and Relief Defendant have agreed that entry of this Order settles and resolves all matters of dispute between them arising from the conduct alleged in the Commission’s Complaint as of the date of entry of this Order.

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### DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

1. The “Ab Circle Pro” means the Ab Circle Pro exercise device described in the Commission’s Complaint and any related accessories or supplies.
2. “DEMG Defendants” means Direct Holdings Americas, Inc.; and Direct Entertainment Media Group, Inc. and their successors and assigns, individually, collectively, or in any combination.
3. “Relief Defendant” means The Reader’s Digest Association, Inc. and its successors and assigns, individually, collectively, or in any combination
4. “Commerce” means as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. “Adequate and Well-Controlled Human Clinical Study” means a human clinical study conducted by persons qualified by training and experience to conduct such study. Such study shall be randomized, and, unless it can be demonstrated that blinding or placebo control cannot be effectively or ethically implemented given the nature of the intervention, shall be double-blind and placebo-controlled.
6. “Covered Product” means any exercise equipment, or any food, drug, or device, as the terms “food,” “drug,” and “device” are defined in Section 15 of the FTC Act, 15 U.S.C. § 55.
7. “Essentially Equivalent Product” means any product that contains the identical ingredients, except for inactive ingredients (*e.g.*, binders, colors, fillers, excipients), in the same form and dosage, and with the same route of administration (*e.g.*, orally, sublingually); *provided*

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*that* it may contain additional ingredients if reliable scientific evidence generally accepted by experts in the field demonstrates that the amount and combination of additional ingredients is unlikely to impede or inhibit the effectiveness of the ingredients in the Essentially Equivalent Product.

8. “Substantially Similar Device” means an abdominal exercise device that is substantially similar in function, appearance, and design to the Ab Circle Pro device.
9. “Document” or “Documents” means any materials listed in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or nonidentical copy is a separate Document within the meaning of the term.
10. “Endorsement” or “Testimonial” means endorsement as defined in 16 C.F.R. § 255.0(b). The two terms shall be treated identically in this Order, pursuant to 16 C.F.R. § 255.0(c).
11. “Plaintiff” means the Federal Trade Commission.
12. A requirement that any defendant “notify,” “furnish,” “submit to,” or “provide to” the Commission means that the defendant must send the necessary information via email to DEbrief@ftc.gov or by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Fitness Brands, Inc. (S.D. Fla.).

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13. The term “including” in this order shall mean “without limitation.”

14. The terms “and” and “or” in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

### **PROHIBITED REPRESENTATIONS**

#### **I.**

**THEREFORE, IT IS HEREBY ORDERED** that the DEMG Defendants, and their officers, agents, servants, and employees, and other persons in active concert and participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, in connection with the advertising, promotion, offering for sale, sale, or distribution of the Ab Circle Pro or any Substantially Similar Device, in or affecting commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, directly or indirectly, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation:

- A. That such device causes or is likely to cause rapid and substantial weight, inch, or fat loss;
- B. That such device causes or is likely to cause rapid and substantial weight, inch, or fat loss in specific, desired areas of the body, such as the abdominal area, hips, thighs, and buttocks;
- C. That if used for three minutes a day, such device:

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1. Will cause users to lose ten pounds in two weeks;
  2. Is equal to 100 sit-ups; or
  3. Provides weight or fat loss benefits that are equivalent or superior to significantly longer workouts on other exercise devices or gym equipment;
- D. That any such device makes a material contribution to any system, program, or plan that produces the results referenced in Subsections A through C of this Section;
- E. That consumers who use any such device are likely to obtain the rapid and substantial weight or fat loss obtained by consumers who give testimonials concerning such device; and
- F. That any particular testimonialist achieved specific weight loss, fat loss, or other fitness benefits unless such representation is true and not misleading.

**II.**

**IT IS FURTHER ORDERED** that the DEMG Defendants and their officers, agents, servants, and employees, and other persons in active concert and participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, are hereby permanently restrained and enjoined from representing, or assisting others in representing, directly or indirectly, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that:

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- A. Such Covered Product causes or is likely to cause rapid and substantial loss of weight, inches, or fat;
- B. Such Covered Product causes or is likely to cause weight, inch, or fat loss primarily in specific, desired areas of the body, such as the abdominal area, hips, thighs, and buttocks;
- C. Use of any such Covered Product for any period of time provides weight, inch, or fat loss benefits that are equivalent or superior to any form of exercise, including but not limited to exercising on specific devices or equipment;
- D. Such Covered Product makes a material contribution to any system, program, or plan that produces the results referenced in Subsections A through C of this Section; unless such representation is non-misleading, and, at the time of making such representation, the DEMG Defendants possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

For purposes of this Section, for any Covered Product that is a food or drug, competent and reliable scientific evidence shall consist of at least two Adequate and Well-Controlled Human Clinical Studies of such food or drug, or of an Essentially Equivalent Product, conducted by different researchers, independently of each other, that conform to acceptable designs and protocols and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.



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For purposes of this Section, for any Covered Product that is exercise equipment, competent and reliable scientific evidence shall consist of at least one human clinical study that conforms to acceptable designs and protocols, is randomized, controlled, blinded to the maximum extent practicable, of at least six weeks duration, uses appropriate measuring tools, is conducted by persons qualified by training and experience to conduct and measure compliance with such a study, and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

For purposes of this Section, for any Covered Product that is not a food, drug, or exercise equipment, competent and reliable scientific evidence shall consist of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

**III.**

**IT IS FURTHER ORDERED** that the DEMG Defendants, and their officers, agents, servants, and employees, and other persons in active concert and participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, in connection with the advertising, promotion, offering for sale, sale, or distribution of any food, drug, or device, as those terms are defined in Section 15 of the FTC Act, 15 U.S.C. § 55, in or affecting commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, directly or indirectly, expressly or by implication, including through the use of a product name, endorsement,

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depiction, or illustration, any representation, other than representations covered under Section II of this Order, about the performance, efficacy, or safety of such food, drug, or device unless the representation is non-misleading, and, at the time of making such representation, the DEMG Defendants possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Section, competent and reliable scientific evidence shall consist of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

#### IV.

**IT IS FURTHER ORDERED** that the DEMG Defendants, and their officers, agents, servants, and employees, and other persons in active concert and participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not represent, or assist others in representing, in any manner, directly or indirectly, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that members of the public who use the Covered Product can generally expect to achieve the results represented by an endorser of such Covered Product unless:

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- A. Such representation is non-misleading; and
- B. At the time of making such representation, the DEMG Defendants possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Section, competent and reliable scientific evidence shall consist of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

**V.**

**EQUITABLE MONETARY RELIEF**

**IT IS FURTHER ORDERED** that:

- A. Judgment is hereby entered in favor of the Commission and against the DEMG Defendants and Relief Defendant, jointly and severally, in the amount of thirty one million, six hundred sixty seven thousand, two hundred dollars (\$31,667,200); *provided* that this judgment will be satisfied upon the DEMG Defendants' and Relief Defendant's full compliance with the conditions set forth in this Section.
- B. The DEMG Defendants and Relief Defendant are ordered to pay as follows:
  - 1. Within five (5) days of the entry of this Order, the DEMG Defendants and Relief Defendant shall pay to the FTC by electronic funds transfer the sum of Five Million Dollars (\$5,000,000).

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2. The DEMG Defendants and Relief Defendant shall pay to the FTC by electronic funds transfer an additional Five Million Dollars (\$5,000,000) within one-hundred eighty (180) days of the entry of this Order.
3. The DEMG Defendants and Relief Defendant shall pay to the FTC by electronic funds transfer an additional Three Million, Seven Hundred Forty Three Thousand, Two Hundred Sixty Six Dollars (\$3,743,266) within two-hundred seventy (270) days of the entry of this Order.
4. The payments described in Subsections B.1-3 of this Section (totaling Thirteen Million, Seven Hundred Forty Three Thousand, Two Hundred Sixty Six Dollars (\$13,743,266)), when added to the \$1,256,734 paid by co-defendants Fitness Brands, Inc., Fitness Brands International, Inc., Michael Casey, and David Brodess pursuant to a separate order in this matter, will make up a fund of \$15 million available for consumer redress or other monetary equitable relief.
5. If the Commission determines that the total amount of consumer redress to be provided, plus the costs of administration for the redress program (such redress amount plus costs of administration hereinafter referred to as "Total Redress Amount") is Fifteen Million Dollars (\$15,000,000) or less, then any difference between the Total Redress Amount and Fifteen Million Dollars (\$15,000,000) shall be deposited as equitable disgorgement to the United States Treasury.
6. If the Commission determines that the Total Redress Amount is more than Fifteen Million Dollars (\$15,000,000), the DEMG Defendants and Relief Defendant shall pay

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to the FTC by electronic funds transfer such additional monies, up to Ten Million Dollars (\$10,000,000), as are necessary to cover the Total Redress Amount. The Commission shall provide the DEMG Defendants and the Relief Defendant with notice of the need for any such payment, and the DEMG Defendants and Relief Defendant shall thereafter make such payment (1) within thirty (30) days of receiving notice from the Commission; or (2) within three-hundred sixty-five (365) days of the entry of this Order, whichever occurs later.

C. In the event that the DEMG Defendants and Relief Defendant fail to make a required payment when due, or the Commission is not allowed to retain any payment, the entire judgment amount (\$31,667,200), less any amount previously paid by the DEMG Defendants and Relief Defendant, shall immediately become due and payable as to all DEMG Defendants and Relief Defendant. Interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance. Time is of the essence for the payments specified in this Section.

D. The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of the following financial statements and documents of the DEMG Defendants and Relief Defendant, along with all attachments, exhibits, schedules, forms, and statements attached thereto:

1. Documents bearing the following Document Control Numbers: FTC – FIN-001 through 004; RDA-FTC-1657 through 1723; RDA-FTC-1724 through 1787;

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- RDA-FTC-0112 through 1656; RDA-FTC-0001 through 0111; RDA-FTC-1788 through 1880; RDA-FTC-1881 through 84; RDA-FTC-1885 through 86; RDA-FTC-1887; RDA-FTC-1888 through 89; and RDA-FTC-1890 through 94;
2. Form 10-Q filed by RDA Holding Co. with the Securities and Exchange Commission on November 10, 2011 for the period ending September 30, 2011;
  3. Form 10-K filed by RDA Holding Co. with the Securities and Exchange Commission on March 29, 2012 for the period ending December 31, 2011
  4. Form 8-K filed by RDA Holding Co. with the Securities and Exchange Commission on April 3, 2012;
  5. Exhibits 1 through 5 to the Financial Condition Analysis by Justin McLean, Managing Principal, Analysis Group, Inc.;
  6. Pages 2 through 9 of, and the Appendix to, the Financial Presentation to the Federal Trade Commission, December 9, 2011;
  7. Term Loan Credit and Guarantee Agreement, Dated as of August 12, 2011, among RDA Holding Co., The Reader's Digest Association, Inc., The Other Guarantors Named Herein, The Lenders Party Hereto, and Luxor Capital Group, LP as Administrative Agent (Execution Copy); and
  8. Indenture, Dated as of February 11, 2010, RD Escrow Corporation, The Reader's Digest Association, Inc., RDA Holding Co., The Subsidiary Guarantors Parties Hereto, Wells Fargo Bank, National Association, as Trustee, and Wilmington Trust FSB, as Collateral Agent, Floating Rate Senior Secured Notes due 2017 (Execution Copy).

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The DEMG Defendants and Relief Defendant stipulate that all of the materials referenced above are truthful, accurate, and complete in all material respects as of the date of such information, provided, however, that with respect to the financial forecasts and forward-looking statements and projections submitted to the Commission, the DEMG Defendants and Relief Defendant stipulate only that they were prepared in good faith using the reasonable judgment of the DEMG Defendants and Relief Defendant as to the future financial performance of the DEMG Defendants and Relief Defendant. These documents contain material information upon which the Commission relied in negotiating and agreeing to the terms of this Order.

- E. If, upon motion by the Commission, a Court determines that, with respect to any of the materials referenced above, (a) any DEMG Defendant or Relief Defendant made a material misrepresentation or omitted material information concerning its financial condition; or (b) any of the financial forecasts and forward-looking statements and projections submitted to the Commission by the DEMG Defendants and Relief Defendant were not prepared in good faith using the reasonable judgment of the DEMG Defendants and Relief Defendant as to the future financial performance of the DEMG Defendants and Relief Defendant, the entire judgment amount (\$31,667,200), less any amount previously paid by the DEMG Defendants and Relief Defendant, shall immediately become due and payable as to all DEMG Defendants and Relief Defendant. Interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance.

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*Provided* that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies, as may be provided by law, including but not limited to contempt proceedings, or any other proceedings that the Commission may initiate to enforce this Order.

- F. All funds paid pursuant to this Order shall be deposited into an account administered by the Commission or its agents to be used for equitable relief, including, but not limited to, consumer redress, and any attendant expenses for the administration of such equitable relief. If the Commission determines, in its sole discretion, that direct redress to consumers is wholly or partially impracticable, or funds remain after the redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the DEMG Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. The DEMG Defendants and Relief Defendant shall have no right to challenge the Commission's choice of remedies under this Section. The DEMG Defendants and Relief Defendant shall have no right to contest the manner of distribution chosen by the Commission. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.
- G. The DEMG Defendants and Relief Defendant relinquish all dominion, control, and title to the funds paid, to the fullest extent permitted by law. The DEMG Defendants and Relief



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Defendant shall make no claim to, or demand return of the funds, directly or indirectly, through counsel or otherwise.

- H. The DEMG Defendants and Relief Defendant agree that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including, but not limited to, a nondischargeability complaint in any bankruptcy case. The DEMG Defendants and Relief Defendant further stipulate and agree that the facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall have collateral estoppel effect for such purposes.
- I. In accordance with 31 U.S.C. § 7701, the DEMG Defendants and Relief Defendant are hereby required, unless they have done so already, to furnish to the Commission their taxpayer identifying numbers, which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of the DEMG Defendants' or Relief Defendant's relationship with the government.
- J. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

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**VI.**

**CONSUMER LIST**

**IT IS FURTHER ORDERED** that:

- A. Within fifteen (15) days of the entry of this Order, the DEMG Defendants shall provide to the Commission a list of all consumers who have purchased the Ab Circle Pro, to the extent such information is in the DEMG Defendants' possession, custody, or control. The list shall be in searchable and sortable electronic format and shall include, to the extent possible, the following information for each consumer: name, address, phone number, email address, date of purchase, products purchased (including any related accessories or supplies) and total dollar amount of purchase (including tax and shipping and handling charges); and
- B. The DEMG Defendants, and their officers, agents, servants, and employees, and other persons in active concert and participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, are permanently restrained and enjoined from:
  1. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, Social Security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person that was obtained by any

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DEMG Defendant prior to entry of this Order in connection with the marketing and sale of the Ab Circle Pro; and

2. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after they have provided such customer information to the Commission pursuant to subsection A of this Section, except that any DEMG Defendant's database of consumers of the Ab Circle Pro must be preserved until consumer redress is complete and notice is provided by a Commission representative that the data may be destroyed. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

*Provided, however,* that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order, or needed for legal defense or for non-marketing, customer service purposes.

**VII.**

**ORDER ACKNOWLEDGMENTS**

**IT IS FURTHER ORDERED** that the DEMG Defendants obtain acknowledgments of receipt of this Order:

- A. Each DEMG Defendant, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

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- B. For five (5) years after entry of this Order, each DEMG Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and managers with responsibilities with respect to the subject matter of this Order; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which a DEMG Defendant delivered a copy of this Order, that DEMG Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

**VIII.**

**COMPLIANCE REPORTING**

**IT IS FURTHER ORDERED** that the DEMG Defendants make timely submissions to the Commission:

- A. One hundred eighty (180) days after entry of this Order, each DEMG Defendant must submit a compliance report, sworn under penalty of perjury. Each DEMG Defendant must:
1. Designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with that DEMG Defendant;

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2. Identify all of that DEMG Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
  3. Describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other defendant in this case;
  4. Describe in detail whether and how that DEMG Defendant is in compliance with each Section of this Order; and
  5. Provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;
- B. For twenty (20) years following entry of this Order, each DEMG Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:
1. Any designated point of contact; or
  2. The structure of any DEMG Defendant or any entity that DEMG Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. Each DEMG Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within fourteen (14) days of its filing.

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- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 18 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on:\_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Fitness Brands, Inc. (S.D. Fla.).

## **IX.**

### **RECORDKEEPING**

**IT IS FURTHER ORDERED** that the DEMG Defendants must create certain records for twenty (20) years after entry of the Order and retain each such record for five (5) years. Specifically, each DEMG Defendant, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Covered Product, must maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;

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- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Customer files showing the names, addresses, telephone numbers, dollar amounts paid, and the quantity and description of goods or services purchased;
- D. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- F. A copy of each advertisement or other marketing material.

**X.**

**COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring the DEMG Defendants' compliance with this Order, including any failure to transfer any assets as required by this Order:

- A. Within fourteen (14) days of receipt of a written request from a representative of the Commission, each DEMG Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

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- B. For matters concerning this Order, the Commission is authorized to communicate directly with each DEMG Defendant. The DEMG Defendants must permit representatives of the Commission to interview any employee or other person affiliated with any DEMG Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to the DEMG Defendants or any individual or entity affiliated with the DEMG Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

**XI.**

**RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

**DONE AND ORDERED** in Miami, Florida, this 27th day of August, 2012.

  
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**CECILIA M. ALTONAGA**  
**UNITED STATES DISTRICT JUDGE**