WILLARD K. TOM General Counsel KERRY O'BRIEN, (Calif. Bar No. 149264) LINDA K. BADGER (Calif. Bar No. 122209) Federal Trade Commission 901 Market Street, Ste. 570 San Francisco, CA 94103 (415) 848-5100 (voice) SEP 0 5 2012 (415) 848-5184 (fax) kobrien@ftc.gov RICHARD W. WIEKING CLERK, U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA badger@ftc.gov 7 Attorneys for Plaintiff Federal Trade Commission 9 UNITED STATES DISTRICT COURT 10 NORTHERN DISTRICT OF CALIFORNIA 11 San Francisco Division 12 13 FEDERAL TRADE COMMISSION, 14 Plaintiff, 15 16 RMB GROUP, LLC, limited liability COMPLAINT FOR PERMANENT 17 company, INJUNCTION AND OTHER **EQUITABLE RELIEF** 18 HOWARD BRENNER, individually 19 and as an officer of RMB GROUP, LLC,-and 20 BRUCE BRENNER, individually and 21 as an officer of RMB GROUP, LLC, 22 Defendants. 23 24 Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint 25 alleges: 26 1. The FTC brings this action under Section 13(b) of the Federal Trade 27 Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain permanent injunctive 28 elief, rescission or reformation of contracts, restitution, the refund of monies Complaint

1	paid, disgorgement of ill-gotten monies, and other equitable relief for		
2	Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15		
3	U.S.C. § 45(a), in connection with the advertising, marketing and sale of various		
4	pest-control products, which purportedly treat and prevent bed bugs.		
5	JURISDICTION AND VENUE		
6	2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§		
7	1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).		
8	3. Venue is proper in this district under 28 U.S.C. § 1391(b) and 15		
9	U.S.C. § 53(b).		
10	INTRADISTRICT ASSIGNMENT		
11	4. Defendants have advertised their products in the County of San		
12	Francisco.		
13	PLAINTIFF		
14	5. The FTC is an independent agency of the United States Government		
15	created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the		
16	FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices		
17	n or affecting commerce.		
18	6. The FTC is authorized to initiate federal district court proceedings,		
19	by its own attorneys, to enjoin violations of the FTC Act and to secure such		
20	equitable relief as may be appropriate in each case, including rescission or		
21	reformation of contracts, restitution, the refund of monies paid, and the		
22	disgorgement of ill-gotten monies. 15 U.S.C. § 53(b).		
23	DEFENDANTS		
24	7. Defendant RMB Group, LLC, is a Florida limited liability company		
25	with its principal place of business at 474 SE Southwood Trail, Stuart, FL. RMB		
26	Group, LLC, transacts or has transacted business in this district and throughout		
27	the United States. At all times material to this Complaint, acting alone or in		
28	concert with others, RMB Group, LLC, has advertised, marketed, distributed, or		
	Complaint Page -2-		

sold pest-control products to consumers throughout the United States.

- 8. Defendant Howard Brenner is the president of RMB Group, LLC. Howard Brenner also is a fifty percent owner in the company. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in he acts and practices of RMB Group, LLC, including the acts and practices set forth in this Complaint. Howard Brenner knew or should have known that the acts and practices alleged herein were occurring and were deceptive. Howard Brenner, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.
- 9. Defendant Bruce Brenner is the chief operating officer of RMB Group, LLC. Bruce Brenner also is a fifty percent owner in the company. At all limes material to this Complaint, acting alone or in concert with others, he has 14 formulated, directed, controlled, had the authority to control, or participated in he acts and practices of RMB Group, LLC, including the acts and practices set forth in this Complaint. Bruce Brenner knew or should have known that the acts and practices alleged herein were occurring and were deceptive. Bruce Brenner, n connection with the matters alleged herein, transacts or has transacted business In this district and throughout the United States.

COMMERCE

10. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined n Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

DEFENDANTS' PRODUCTS

Since at least 2010, and continuing thereafter, Defendants have manufactured, advertised, promoted, offered for sale, sold, or distributed "Rest Easy" to consumers throughout the United States.

Complaint

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]	12.	12. Rest Easy purportedly consists of a liquid solution whose active					
2	ngredients are sodium laurel sulfate, cinnamon oil, lemongrass oil, peppermint						
3	pil, and clove oil.						
4	13.	Const	amers have purchased Rest Easy from various third parties,				
5	such as Bed Bath & Beyond, Walgreens, and Big Lots.						
6	14.	The re	The retail price of Rest Easy has ranged from \$6.99 to \$9.99 for the				
7	6 oz. trigger bottle, \$5.00 to \$7.99 for the 2 oz. twin pack, and \$50.00 for the						
8	gallon jug.						
9	DEFENDANTS' ADVERTISEMENTS						
10	15.	To in	duce consumers to purchase Rest Easy products, Defendants				
11	nave created, prepared, disseminated, or caused to be disseminated,						
12	advertisements and other marketing materials, including, but not limited to, the						
13	attached Exhibits A to D. These materials contain, among other things, the						
14	following statements:						
15		a.	2 oz. Twin Pack Packaging (Exhibit A) and 16 oz. Trigger Bottle Packaging (Exhibit B)				
16 17			"Rest Easy Kills & Repels Bed Bugs				
18			Rest Assured				
19			Bed Bugs No More!				
20			Spray around bed to create a barrier."				
21		b.	http://www.resteasy4bedbugs.com, accessed 12/28/2011 (Exhibit C) (excerpts from website)				
22			"Rest Easy				
23	Kills & Repels Bed Bugs"						
24	The webpage features a testimonial, which contains the following statements: "I have used Rest Easy for about a year now. I LOVE this product because it makes me feel certain that I am preventing bedbugs from becoming an issue in my hadroom and in my home. The clear wint that I spray ground						
25							
26		bedroom and in my home. The clear mist that I spray around my bed and also on the floor area around my bed seems to ki					
27		anything that would come into that area I want to make sure that my living experience is not affected by [bed bugs]. I would use Rest Easy no matter where I lived or when I travel.					
28			Really has taken the worry away from having bedbugs while				

Page -4-

Complaint

1	living in NYC."
2	"FREQUENTLY ASKED QUESTIONS
3	
4	Q: Can I spray it on my bed?
5	A. Spraying Rest Easy on a bed is not necessary but spraying around the bed to create a barrier is recommended
6	
7	Q. How does Rest Easy work?
8	A. Unlike pesticides and insecticides that insects ingest, bed bugs are killed with Rest Easy by having the oils attach itself [sic] to the body of the bed bugs [sic] and dissolves [sic] the
0	shell."
1	"PRODUCTS
2	2 oz. Twin Pack
3	Now there's no need to run over your bed at the hotel with a fine tooth comb. Simply follow the directions and Rest
4	Easy! Use for peace of mind at home or when traveling!
5	16 oz. Trigger Sprayer Keep in your home to keep potential infestations at bay. Don't let your home be overrun by these obnoxious pests!
7	let your nome be overrun by these obnoxious pesis:
8	Gallon Jugs
9	For commercial use in apartments, hotels, and more. Never have to deal with another tenant complaint and clear away the
20	looming threat of lawsuits. Don't let your business be a victim of a growing and serious concern!"
21	"WHY REST EASY?
22	WHI REST EAST:
23	• Rest Easy is HIGHLY effective, killing 90% of bedbugs
24	within 2 seconds of contact, and the rest within 30 minutes (a study by one of the two leading universities on bedbugs indicates that pyrethrins / pyrethroids are NOT effective)
26	Rest Easy, while providing a repellency effect as long as the
27	vapors from treatment continue to give off a cinnamon scent (up to one week)"
8.	

Page -5-

Complaint

1 http://www.resteasy4bedbugs.com/index.php, accessed c. 12/28/2011 (Exhibit D: screen shots of video appearing on 2 website) This webpage features a video at the top of the page, which contains the following statements: "Did you Know Bed 3 bugs can survive up to 10 months without feeding. They can 4 lay between 5 and 12 eggs per day. . . per bug! Why take a chance on being their next meal when you travel? Or having 5 your business shut down because somebody unwittingly brought them in? Rest Easy . . . is a real GREEN All-Natural, 6 Non-Pesticide, designed as a preventative for just these potential problems. Rest Easy And rest assured, bed bugs no 7 more!" 8 9 VIOLATIONS OF THE FTC ACT 10 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or 16. 11 deceptive acts or practices in or affecting commerce." 12 Misrepresentations or deceptive omissions of material fact constitute 17. 13 deceptive acts or practices prohibited by Section 5(a) of the FTC Act. 14 Count I 15 Unsubstantiated Bed Bug Claims 16 18. Through the means described in Paragraph 15, Defendants have 17 epresented, directly or indirectly, expressly or by implication, that: 18 a. Rest Easy kills bed bugs; 19 b. Rest Easy repels bed bugs; and 20 By spraying Rest Easy around a bed, a consumer can create a c. 21 barrier against bed bugs. 22 19. The representations set forth in Paragraph 18 were not substantiated 23 at the time they were made. 24 20. Therefore, the making of the representations set forth in Paragraph 25 8 constitutes a deceptive act or practice, in or affecting commerce, in violation 26 of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). 27

Complaint

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Page -6-

CONSUMER INJURY

21. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

22. 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 any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

- a. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;
- b. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
- c. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

1		Respectfully submitted,
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3	Dated: 9/5/12	WILLARD K. TOM General Counsel
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Page -8-

Complaint