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CLERK, U.S. DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SALE SLASH, LLC, a California
limited liability company,

PURISTS CHOICE LLC, a California
limited liability company,

APEX CUSTOMER CARE LLC, a
California limited liability company,

PENWAY LLC, a California limited
liability company,

Case No. 2:15-cv-03107-PA-AJW

Amended Complaint
for Permanent Injunction
and Other Equitable Relief

[Honorable District Court Judge Percy
Anderson]

1 RENVEE LLC, a California limited
2 liability company,
3
4 OPTIM PRODUCTS LLC, a California
5 limited liability company,
6
7 EDGAR BABAYAN, individually,
8
9 ARTUR BABAYAN, individually and
10 as an owner and manager of SALE
11 SLASH, LLC and PURISTS CHOICE
12 LLC, and
13
14 VAHE HAROUTOUNIAN, also known
15 as VAHEH HAROUTOUNIAN, also
16 doing business as PRISMA PROFITS,
17 individually and as manager of SALE
18 SLASH, LLC and owner of OPTIM
19 PRODUCTS LLC,
20
21 Defendants.

22 Plaintiff, the Federal Trade Commission (“FTC”), for its Amended
23 Complaint alleges:

24 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
25 Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and Section 7(a)
26 of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of
27 2003 (“CAN-SPAM Act”), 15 U.S.C. § 7706(a), to obtain temporary, preliminary,
28 and permanent injunctive relief, restitution, the refund of monies paid,
disgorgement of ill-gotten monies, immediate access, appointment of a receiver
and other equitable relief for Defendants’ acts or practices in violation of Section

1 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and the CAN-SPAM Act,
2 15 U.S.C. §§ 7701-7713.

3 **JURISDICTION AND VENUE**
4

5 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
6 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57(b), and 7706(a).

7
8 3. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and
9 15 U.S.C. § 53(b).

10 **PLAINTIFF**
11

12 4. The FTC is an independent agency of the United States Government
13 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC
14 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
15 affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C.
16 § 52, which prohibits false advertisements for food, drugs, devices, services, or
17 cosmetics in or affecting commerce. The FTC also enforces the CAN-SPAM Act
18 as if statutory violations of the CAN-SPAM Act “were an unfair or deceptive act
19 or practice proscribed under Section 18(a)(1)(B) of the [FTC Act] (15 U.S.C. 57a
20 (a)(1)(B)).” 15 U.S.C. § 7706(a).

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24 5. The FTC is authorized to initiate federal district court proceedings, by
25 its own attorneys, to enjoin violations of the FTC Act and the CAN-SPAM Act and
26 to secure such equitable relief as may be appropriate in each case, including
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1 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies.
2 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, and 7706(a).

3
4 **DEFENDANTS**

5 6. Defendant Sale Slash, LLC (“Sale Slash”) is a California limited
6 liability company with its registered address at 530 South Lake Avenue, #501,
7 Pasadena, California 91101. Sale Slash transacts or has transacted business in this
8 district and throughout the United States. At all times material to this Complaint,
9 acting alone or in concert with others, Sale Slash has advertised, marketed,
10 distributed, or sold weight-loss products to consumers throughout the United
11 States.
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15 7. Defendant Purists Choice LLC (“Purists Choice”) is a California
16 limited liability company with its registered address at 225 South Lake Avenue,
17 #300, Pasadena, California 91101. Purists Choice transacts or has transacted
18 business in this district and throughout the United States. At all times material to
19 this Complaint, acting alone or in concert with others, Purists Choice has
20 advertised, marketed, distributed, or sold weight-loss products to consumers
21 throughout the United States.
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25 8. Defendant Apex Customer Care LLC (“Apex Customer Care”) is a
26 California limited liability company with its registered address at 547 Arden
27 Avenue, Glendale, California 91203. Apex Customer Care transacts or has
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1 transacted business in this district and throughout the United States. At all times
2 material to this Complaint, acting alone or in concert with others, Apex Customer
3 Care has advertised, marketed, distributed, or sold weight-loss products to
4 consumers throughout the United States.
5

6 9. Defendant Penway LLC (“Penway”) is a California limited liability
7 company with its registered address at 615 Pioneer Drive, Glendale, California
8 91203. Penway transacts or has transacted business in this district and throughout
9 the United States. At all times material to this Complaint, acting alone or in
10 concert with others, Penway has advertised, marketed, distributed, or sold weight-
11 loss products to consumers throughout the United States.
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14 10. Defendant Renvee LLC (“Renvee”) is a California limited liability
15 company with its registered address at 1210 South Brand Boulevard, Glendale,
16 California, 91204. Renvee transacts or has transacted business in this district and
17 throughout the United States. At all times material to this Complaint, acting alone
18 or in concert with others, Renvee has advertised, marketed, distributed, or sold
19 weight-loss products to consumers throughout the United States.
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23 11. Defendant Optim Products LLC (“Optim Products”) is a California
24 limited liability company with its registered address at 5419 Hollywood Boulevard,
25 Suite C-395, Hollywood, California, 90027. Optim Products transacts or has
26 transacted business in this district and throughout the United States. At all times
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1 material to this Complaint, acting alone or in concert with others, Optim Products
2 has advertised, marketed, distributed, or sold weight-loss products to consumers
3 throughout the United States.
4

5 12. Defendant Edgar Babayan is an individual who resides in Glendale,
6 California. At all times material to this Complaint, acting alone or in concert with
7 others, he has formulated, directed, controlled, had the authority to control, or
8 participated in the acts and practices set forth in this Complaint. Defendant Edgar
9 Babayan resides in this district and, in connection with the matters alleged herein,
10 transacts or has transacted business in this district and throughout the United
11 States. Among other things, Defendant Edgar Babayan has controlled the
12 processing of payments from consumers victimized by Defendants' practices, has
13 controlled payments to third-party marketers who advertise and market
14 Defendants' weight-loss products, including marketers who initiate unsolicited
15 commercial electronic mail messages advertising Defendants' weight-loss
16 products, and has controlled shipment of Defendants' weight-loss products to
17 consumers.
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23 13. Defendant Artur Babayan is the owner and a manager of Sale Slash
24 and Purists Choice. At all times material to this Complaint, acting alone or in
25 concert with others, he has formulated, directed, controlled, had the authority to
26 control, or participated in the acts and practices set forth in this Complaint.
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1 Defendant Artur Babayan resides in this district and, in connection with the matters
2 alleged herein, transacts or has transacted business in this district and throughout
3 the United States. Among other things, Defendant Artur Babayan has controlled
4 the operation of websites where Defendants advertise, market, and sell weight-loss
5 products, has controlled the processing of payments from consumers victimized by
6 Defendants' practices, and has controlled payments to third-party marketers who
7 advertise and market Defendants' weight-loss products, including marketers who
8 initiate unsolicited commercial electronic mail messages advertising Defendants'
9 weight-loss products.
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13 14. Defendant Vahe Haroutounian, also known as Vaheh Haroutounian,
14 and who also does business as Prisma Profits, is a manager of Sale Slash and an
15 owner of Optim Products. At all times material to this Complaint, acting alone or
16 in concert with others, he has formulated, directed, controlled, had the authority to
17 control, or participated in the acts and practices set forth in this Complaint. In
18 connection with the matters alleged herein, Defendant Haroutounian transacts or
19 has transacted business in this district and throughout the United States. Among
20 other things, Defendant Haroutounian has formulated, directed, controlled, had the
21 authority to control, or participated in the advertising and marketing of Defendants
22 Sale Slash's and Purists Choice's Weight-Loss Products, including the advertising
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1 and marketing through banner advertisements, unsolicited commercial electronic
2 mail messages, and other means.

3
4 15. Defendants Sale Slash, Purists Choice, Apex Customer Care, Penway,
5 Renveen, and Optim Products (collectively, “Corporate Defendants”) have operated
6 as a common enterprise while engaging in the deceptive acts and practices and
7 other violations of law alleged below. Defendants have conducted the business
8 practices described below through an interrelated network of companies that have
9 common ownership, officers, managers, business functions, and office locations,
10 and that commingled funds. Because these Corporate Defendants have operated as
11 a common enterprise, each of them is jointly and severally liable for the acts and
12 practices alleged below. Defendants Edgar Babayan, Artur Babayan, and Vahe
13 Haroutounian have formulated, directed, controlled, had the authority to control, or
14 participated in the acts and practices of the Corporate Defendants that constitute
15 the common enterprise.
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20 **COMMERCE**

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22 16. At all times material to this Complaint, Defendants have maintained a
23 substantial course of trade in or affecting commerce, as “commerce” is defined in
24 Section 4 of the FTC Act, 15 U.S.C. § 44.
25

26 **DEFINITIONS**

1 17. “**Electronic mail message**” (or “email”) means a message sent to a
2 unique electronic mail address. 15 U.S.C. § 7702(6).

3 18. “**Electronic mail address**” means a destination, commonly expressed
4 as a string of characters, consisting of a unique user name or mailbox (commonly
5 referred to as the “local part”) and a reference to an Internet domain (commonly
6 referred to as the “domain part”), whether or not displayed, to which an electronic
7 mail message can be sent or delivered. 15 U.S.C. § 7702(5).

8 19. “**Commercial electronic mail message**” means any electronic mail
9 message the primary purpose of which is the commercial advertisement or
10 promotion of a commercial product or service (including the content on an Internet
11 website operated for commercial purposes). 15 U.S.C. § 7702(2).

12 20. “**Header Information**” means the source, destination, and routing
13 information attached to an electronic mail message, including the originating
14 domain name and originating electronic mail address, and any other information
15 that appears in the line identifying, or purporting to identify, a person initiating the
16 message. 15 U.S.C. § 7702(8).

17 21. “**Initiate,**” when used with respect to a commercial electronic mail
18 message, means to originate or transmit such message or to procure the origination
19 or transmission of such message. 15 U.S.C. § 7702(9).

1 22. **“Procure,”** when used with respect to the initiation of a commercial
2 electronic mail message, means intentionally to pay or provide other consideration
3 to, or induce, another person to initiate such a message on one’s behalf. 15 U.S.C.
4 § 7702(12).

6 23. **“Protected Computer”** means a computer which is used in or
7 affecting interstate or foreign commerce or communication, including a computer
8 located outside the United States that is used in a manner that affects interstate or
9 foreign commerce or communication of the United States. 15 U.S.C. § 7702(13).

11 24. **“Sender”** means a person who initiates a commercial electronic mail
12 message and whose product, service, or Internet Web site is advertised or
13 promoted by the message. 15 U.S.C. § 7702(16).

16 **DEFENDANTS’ BUSINESS ACTIVITIES**

17 **Defendants’ Affiliate Marketing Practices**

18 25. Since at least 2012, Defendants have advertised, marketed, promoted,
19 and sold various products to consumers throughout the United States, including
20 weight-loss products, which include but are not limited to Premium Green Coffee,
21 Pure Garcinia Cambogia, Premium White Kidney Bean Extract, Pure Forskolin
22 Extract, and Pure Caralluma Fimbriata Extract (collectively, the “Weight-Loss
23 Products”).
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1 26. Defendants have advertised, marketed, promoted and sold the Weight-
2 Loss Products through websites they own and operate, including
3 premiumgreencoffee.com, puregarciniacambogia.com,
4 buywhitekidneybeanextractdirect.com, buyforskolinextractdirect.com, and
5 buycarallumafimbriataextractdirect.com.
6

7 27. Defendants also advertise, market, and promote their Weight-Loss
8 Products through “affiliate” marketers. These affiliate marketers attract consumers
9 to Defendants’ websites through various forms of marketing, including through
10 banner advertisements placed on third-party websites and through unsolicited
11 commercial electronic mail messages.
12

13 28. Since at least 2013, Defendants have placed, or have hired affiliate
14 marketers who have placed, banner advertisements on third-party websites or
15 among search engine results. These advertisements attract consumers to websites
16 where Defendants advertise, market, promote, and sell the Weight-Loss Products.
17 These banner advertisements entice consumers with claims like, “1 Tip for a tiny
18 belly: Cut down on a bit of your belly every day by following this 1 old weird tip,”
19 or “Garcinia Cambogia Exposed – Miracle Diet or Scam?”
20

21 29. Since at least 2013, Defendants also have sent, or have hired affiliate
22 marketers who have sent, unsolicited commercial electronic mail messages to
23 consumers that appear to have been sent by consumers’ friends, family members,
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1 or other contacts. These messages are in fact paid advertisements promoting
2 Defendants' Weight-Loss Products and contain links that lead consumers to
3 Defendants' websites.
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5 30. Consumers who click on links in these banner advertisements and
6 unsolicited commercial electronic mail messages are taken to fake news websites,
7 which are owned and operated by Defendants' affiliate marketers. These fake
8 news websites appear to be objective news reports about Defendants' Weight-Loss
9 Products. In fact, they are paid advertisements that advance false weight-loss
10 claims and contain links to Defendants' websites, where consumers can purchase
11 Defendants' products.
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14 31. Defendants pay a fee or commission to their affiliate marketer for
15 each consumer who, after having clicked on one of the affiliate marketer's
16 advertisements, purchases a Weight-Loss Product on Defendants' websites.
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19 32. Consumers can receive Defendants' unsolicited commercial electronic
20 mail messages and navigate their banner advertisements and linked websites from
21 a desktop or laptop computer or from a mobile device.
22

23 **Defendants' Spam Email Campaign**

24 33. Since at least January 2013, Defendants have initiated unsolicited
25 commercial electronic mail messages to induce consumers to click on links in the
26 messages.
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1 34. In numerous instances, Defendants have initiated unsolicited
2 commercial electronic mail messages that include header information, including
3 the originating electronic mail address or the sender's name, indicating that the
4 sender of the message is someone who is known to the recipient, such as a friend
5 or family member. The subject headings of these messages also list the purported
6 sender's name, reinforcing the impression that the recipient of the message knows
7 the sender.
8

9
10 35. The body of Defendants' commercial electronic mail messages
11 consists of a brief message accompanied by a hyperlink, such as:
12

13 Hi! It's incredible! [link]

14 Breaking news: [link]

15 Hi! Have you already seen it? [link]

16 Hi! [link] Oprah says it's excellent!

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19 36. The hyperlinks included in these messages, if clicked, take consumers
20 to a fake news website.
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22 37. Defendants are "initiators" of these commercial electronic mail
23 messages, which they either have originated or transmitted themselves, or have
24 procured the origination or transmission of, through payments or other
25 consideration, or inducements.
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1 38. Defendants also are “senders” of these commercial electronic mail
2 messages, which they have initiated and which advertise or promote Defendants’
3 websites.
4

5 39. Defendants’ commercial electronic mail messages are not sent by the
6 persons whose names or electronic mail addresses are listed in the header
7 information and subject heading. These messages are not sent by persons known
8 to the recipients of the messages. Rather, in numerous instances, Defendants have
9 initiated commercial electronic mail messages, described above, containing false or
10 misleading header information—specifically, header information suggesting that
11 the emails were sent by persons known to the recipients. In numerous instances,
12 Defendants have initiated these commercial electronic mail messages from email
13 accounts that have been illegally accessed or to contact lists that have been
14 illegally accessed.
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19 40. Moreover, in numerous instances, Defendants have initiated
20 commercial electronic mail messages that contain subject headers that misrepresent
21 the content or subject matter of the message. In particular, the subject headers of
22 these commercial electronic mail messages misrepresent that the same purported
23 sender who is falsely identified in the email’s header has composed the email.
24 These subject headers state, for example, “From [purported sender].”
25
26

27 41. In numerous instances, Defendants have initiated commercial
28

1 electronic mail messages that do not include any notification to recipients of their
2 ability to decline receiving future commercial electronic mail messages from
3 Defendants, and do not include a reply email address or other mechanism that
4 recipients can use to decline receiving future commercial electronic mail messages
5 from Defendants.
6

7
8 42. In numerous instances, Defendants have initiated commercial
9 electronic mail messages that do not include a valid physical postal address of the
10 sender.
11

12 **Fake News Websites**

13 43. Consumers who click on the hyperlinks in Defendants'
14 advertisements, including their banner advertisements and commercial electronic
15 mail messages, are taken to websites designed to look like news reports about one
16 of the Weight-Loss Products. The websites purport to provide objective
17 investigative reports about one of the Weight-Loss Products. The supposed
18 authors of the reports claim to have tested the products on themselves and
19 experienced dramatic weight loss, such as 23 pounds in 1 month or 36 pounds in 9
20 weeks.
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24 44. Defendants' unsolicited commercial electronic mail messages contain
25 links to fake news websites with addresses like diet.com-wb4.net and diet.com-8s9.net. These websites include headlines such as "Insider Report: Oprah and
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1 Other Celebrities Lose 4 lbs / Week of Belly Fat With This Secret That Our
2 Readers Can Try Now!” The websites often include the names, logos, or images
3 of Oprah Winfrey and the television show “The Doctors,” suggesting that the
4 Weight-Loss Products have been reviewed or endorsed by those personalities.
5

6 45. Surrounding the reports are what appear to be profiles of ordinary
7 consumers who have tried the Weight-Loss Products, like “Kristy Miami, FL” and
8 “Jennifer from San Diego, CA.” These profiles set forth additional claims of
9 significant weight loss, such as 28 pounds in 5 weeks, that are supported by
10 “before” and “after” photos showing consumers who appear to have become
11 noticeably slimmer. The fake news reports have links that lead to Defendants’
12 websites, where consumers can purchase the Weight-Loss Products.
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16 46. Similarly, Defendants’ banner advertisements contain links to
17 websites with addresses like healthconsumerreviews.com and
18 healthlifestylereview.com. These websites include headlines like, “SPECIAL
19 REPORT: Lose 23 lbs of Belly Fat in 1 Month with This Diet Cleanse that
20 Celebrities Use. Exclusive Offer for Readers.” Beneath this headline is what
21 appears to be an investigative report authored by a reporter or commentator
22 pictured on the website. The supposed author of the report claims to have tested
23 the products on herself and experienced dramatic and positive weight-loss.
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1 Following the reports are “responses” or “comments” that appear to be
2 independent statements made by ordinary consumers.

3 47. In fact, the news reports linked to by Defendants’ unsolicited
4 commercial electronic mail messages and banner advertisements are fake.
5 Defendants’ Weight-Loss Products were never reviewed or endorsed by “The
6 Doctors” or Oprah Winfrey. Reporters or consumers portrayed on the sites are
7 fictional and never conducted the tests or experienced the results described in the
8 reports. The reports and consumers’ tales of weight-loss remain the same
9 regardless of which of Defendants’ various Weight-Loss Products is being
10 marketed. The websites are not objective news reports but rather are paid
11 advertisements, maintained by Defendants’ affiliate marketers for Defendants.
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16 Defendants’ Merchant Websites

17 48. Consumers who click on the links in the fake news reports are taken
18 to websites where Defendants sell their Weight-Loss Products. On their websites,
19 Defendants reinforce the fake news websites’ representation that their Weight-Loss
20 Products have been shown on television or otherwise have been reviewed or
21 endorsed by The Doctors or Oprah Winfrey. For example, the Defendants
22 prominently claim:
23
24
25

26 **ATTENTION:** Due to recently being featured on T.V. we
27 cannot guarantee supply. As of [date website visited] we
28 currently have product IN STOCK and ship within 24 hours of
purchase.

1 49. Defendants’ websites also reinforce the false weight-loss claims.

2 These websites feature prominent weight-loss claims like, “Enhance Your Diet and
3 Lose Weight Fast!,” “Want to burn fat quicker and more efficiently?,” “ARE YOU
4 *ready to LOSE WEIGHT?*” and “Rapid Belly Melt without *diet or exercise.*”
5

6 Defendants’ websites also include prominent images of young, thin women who
7 are wearing bikinis or holding tape measures around their waists. In some
8 instances, Defendants’ websites recount purported testimonials from consumers
9 that support the message to consumers that Defendants’ products will result in
10 rapid and substantial weight loss. Defendants further entice consumers to purchase
11 their products with the bold statement, “CLAIM YOUR FREE BOTTLE
12 TODAY!”
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16 50. Defendants require consumers who wish to order their Weight-Loss
17 Products to enter their contact information, including name, address, telephone
18 number, and email address. Consumers must also click on a button prominently
19 labeled “RUSH MY ORDER.” Upon clicking on the button, Defendants’ websites
20 take consumers to a payment page.
21
22

23 51. Defendants’ payment page prompts consumers to choose the quantity
24 of Defendants’ Weight-Loss Products they wish to order. To purchase
25 Defendants’ Weight-Loss Products, consumers must also enter their credit or debit
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1 card payment information. Consumers must then click a button bearing the same
2 “RUSH MY ORDER” label as the original landing page on Defendants’ websites.

3
4 52. Defendants have disseminated, or caused to be disseminated,
5 advertisements for the Weight-Loss Products. In these advertisements, Defendants
6 have claimed that taking the Weight-Loss Products causes rapid and substantial
7 weight loss.
8

9 53. In truth and in fact, the Weight-Loss Products do not cause rapid and
10 substantial weight loss, nor do Defendants possess and rely upon a reasonable basis
11 to substantiate representations that consumers who use the Weight-Loss Products
12 will rapidly lose a substantial amount of weight.
13
14

15 **VIOLATIONS OF THE FTC ACT**

16 54. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or
17 deceptive acts or practices in or affecting commerce.”
18

19 55. Misrepresentations or deceptive omissions of material fact constitute
20 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.
21

22 56. Section 12 of the FTC Act, 15 U.S.C. § 52, prohibits the
23 dissemination of any false advertisement in or affecting commerce for the purpose
24 of inducing, or which is likely to induce, the purchase of food, drugs, devices,
25 services, or cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C.
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1 § 52, the Weight-Loss Products are either “food[s]” or “drug[s]” as defined in
2 Section 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b), (c).

3
4 **Count I**

5 **Misrepresentations Concerning Defendants’ Weight-Loss Products**

6 57. Through the means described in Paragraphs 25 through 53,
7
8 Defendants have represented, directly or indirectly, expressly or by implication,
9 that use of Defendants’ Weight-Loss Products will result in rapid and substantial
10 weight loss without diet or exercise, including losing as much as 23 pounds in 1
11 month or 36 pounds in 9 weeks.

13 58. The representations set forth in paragraph 57 are false, misleading, or
14 were not substantiated at the time the representations were made.

16 59. Therefore, the making of the representations set forth in Paragraph 57
17 of this Complaint constitutes a deceptive act or practice and the making of false
18 advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of
19 the FTC Act, 15 U.S.C. §§ 45(a) & 52.
20

21
22 **Count II**

23 **Misrepresentations (False Endorsements)**

24 60. Through the means described in Paragraphs 25 through 53,
25
26 Defendants have represented, directly or indirectly, expressly or by implication,
27
28

1 that the Weight-Loss Products are used, endorsed, or approved by specifically
2 identified celebrities such as Oprah and The Doctors.

3 61. The representations set forth in paragraph 60 are false and misleading.
4

5 62. Therefore, the making of the representations as set forth in Paragraph
6 60 of this Complaint constitutes a deceptive act or practice, in or affecting
7
8 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

9 **VIOLATIONS OF THE CAN-SPAM ACT**

10 63. The CAN-SPAM Act became effective on January 1, 2004, and has
11
12 since remained in full force and effect.

13 64. Section 5(a)(1) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(1), states:
14

15 It is unlawful for any person to initiate the transmission,
16 to a protected computer, of a commercial electronic mail
17 message . . . that contains, or is accompanied by, header
18 information that is materially false or materially
19 misleading.

20 65. Section 5(a)(6) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(6),
21 states:

22 For purposes of [section 5(a)(1)], the term “materially”,
23 when used with respect to false or misleading header
24 information, includes the alteration or concealment of
25 header information in a manner that would impair the
26 ability of an Internet access service processing the
27 message on behalf of a recipient, a person alleging a
28 violation of this section, or a law enforcement agency to
identify, locate, or respond to a person who initiated the
electronic mail message or to investigate the alleged

1 violation, or the ability of a recipient of the message to
2 respond to a person who initiated the electronic message.

3 66. Section 5(a)(2) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(2),
4 states:

5 It is unlawful for any person to initiate the transmission
6 to a protected computer of a commercial electronic mail
7 message if such person has actual knowledge, or
8 knowledge fairly implied on the basis of objective
9 circumstances, that a subject heading of the message
10 would be likely to mislead a recipient, acting reasonably
11 under the circumstances, about a material fact regarding
12 the content or subject matter of the message (consistent
with the criteria used in enforcement of Section 5 of the
Federal Trade Commission Act (15 U.S.C. § 45)).

13 67. Section 7(e) of the CAN-SPAM Act, 15 U.S.C. § 7706(e), states that
14 in any action to enforce compliance through an injunction with Section 5(a)(2) and
15 other specified sections of the CAN-SPAM Act, the FTC need not allege or prove
16 the state of mind required by such sections.
17

18 68. Section 5(a)(3)(A) of the CAN-SPAM Act, 15 U.S.C.
19 § 7704(a)(3)(A), states:

20 It is unlawful for any person to initiate the transmission
21 to a protected computer of a commercial electronic mail
22 message that does not contain a functioning return
23 electronic mail address or other Internet-based
24 mechanism, clearly and conspicuously displayed, that—

25 (i) a recipient may use to submit, in a
26 manner specified in the message, a reply electronic
27 mail message or other form of Internet-based
28 communication requesting not to receive future
commercial electronic mail messages from that

1 sender at the electronic mail address where the
2 message was received; and
3 (ii) remains capable of receiving such
4 messages or communications for no less than 30
5 days after the transmission of the original message.

6 69. Section 5(a)(5)(A) of the CAN-SPAM Act, 15 U.S.C.

7 § 7704(a)(5)(A), states:

8 It is unlawful for any person to initiate the transmission
9 of any commercial electronic mail message to a protected
10 computer unless the message provides:

11 (i) clear and conspicuous identification
12 that the message is an advertisement or
13 solicitation;

14 (ii) clear and conspicuous notice of the
15 opportunity under [section 5(a)(3)] to decline to
16 receive further commercial electronic mail
17 messages from the sender; and

18 (iii) a valid physical postal address of the
19 sender.

20 70. Section 7(a) of the CAN-SPAM Act, 15 U.S.C. § 7706(a), states:

21 [This Act] shall be enforced by the [FTC] as if the
22 violation of this [Act] were an unfair or deceptive act or
23 practice proscribed under section 18a(1)(B) of [the FTC
24 Act] (15 U.S.C. 57a(a)(1)(B)).

25 **Count III**

26 **Materially False or Misleading Header Information**

27 71. In numerous instances, Defendants have initiated the transmission, to
28 protected computers, of commercial electronic mail messages that contained, or

1 were accompanied by, header information that is materially false or materially
2 misleading.

3 72. Defendants' acts or practices, as described in paragraph 71 above,
4 violate 15 U.S.C § 7704(a)(1).
5

6 **Count IV**

7 **Misleading Subject Heading**

8
9 73. In numerous instances, Defendants have initiated the transmission, to
10 protected computers, of commercial electronic mail messages that contained
11 subject headings that would be likely to mislead a recipient, acting reasonably
12 under the circumstances, about a material fact regarding the contents or subject
13 matter of the message.
14
15

16 74. Defendants' acts or practices, as described in paragraph 73 above,
17 violate 15 U.S.C. § 7704(a)(2).
18

19 **Count V**

20 **Failure to Provide Opt-Out and Notice of Opt-Out**

21
22 75. In numerous instances, Defendants have initiated the transmission, to
23 protected computers, of commercial electronic mail messages that do not include:

24 a. a clear and conspicuous notice of the recipient's opportunity to
25 decline to receive further commercial electronic mail messages from Defendants at
26 the recipient's electronic mail address; and/or
27
28

1 or practices. Absent injunctive relief by this Court, Defendants are likely to
2 continue to injure consumers, reap unjust enrichment, and harm the public interest.

3
4 **THIS COURT’S POWER TO GRANT RELIEF**

5 80. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
6 to grant injunctive and such other relief as the Court may deem appropriate to halt
7 and redress violations of any provision of law enforced by the FTC. The Court, in
8 the exercise of its equitable jurisdiction, may award ancillary relief, including
9 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies,
10 to prevent and remedy any violation of any provision of law enforced by the FTC.
11

12
13 81. Section 19 of the FTC Act, 15 U.S.C. § 57b, and the CAN-SPAM
14 Act, 15 U.S.C. § 7706, authorize this Court to grant such relief as the Court finds
15 necessary to redress injury to consumers resulting from Defendant’s violations of
16 the CAN-SPAM Act, including the refund of money.
17

18
19 **PRAYER FOR RELIEF**

20 Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act,
21 15 U.S.C. §§ 53(b) and 57b, and Section 7(a) of the CAN-SPAM Act, 15 U.S.C.
22 § 7706, and the Court’s own equitable powers, requests that the Court:
23

24 A. Award Plaintiff such preliminary injunctive and ancillary relief as
25 may be necessary to avert the likelihood of consumer injury during the pendency
26 of this action and to preserve the possibility of effective final relief, including but
27
28

1 not limited to, temporary and preliminary injunctions, an order freezing assets,
2 immediate access, and an appointment of a receiver;

3 B. Enter a permanent injunction to prevent future violations of the FTC
4 Act and the CAN-SPAM Act by Defendants;

6 C. Award such relief as the Court finds necessary to redress injury to
7 consumers resulting from Defendant's violations of the FTC Act and the
8 CAN-SPAM Act, including but not limited to, restitution, the refund of monies
9 paid, and the disgorgement of ill-gotten monies; and
10

11 D. Award Plaintiff the costs of bringing this action, as well as such other
12 and additional relief as the Court may determine to be just and proper.
13

14 Respectfully submitted,

15
16
17 Jonathan E. Nuechterlein
18 General Counsel

19 Dated: October 7, 2015

20 /s/ Matthew H. Wernz
21 Matthew H. Wernz, IL Bar #6294061
22 Attorney for Plaintiff
23 FEDERAL TRADE COMMISSION
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