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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

TARR INC., a corporation;

AD KINGS LLC, a limited liability company;

APEX ADVERTISING LLC, a limited liability company;

BRAND DEVELOPMENT CORP., a corporation;

COASTAL ADS LLC, a limited liability company;

DELUX ADVERTISING LLC, a limited liability company;

DIAMOND ADS LLC, a limited liability company;

Case No. **'17CV2024 LAB KSC**

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

DIGITAL NUTRA LLC, a limited liability company;

EXCLUSIVE ADVERTISING LLC, a limited liability company;

IRON ADS, LLC, a limited liability company;

LEADKING ADVERTISING LLC, a limited liability company;

LEAD SEEKER, LLC, a limited liability company;

MINTS MARKETING LLC, a limited liability company;

ONYX ADS, LLC, a limited liability company;

PRODUCT CENTER, LLC, a limited liability company;

REBEM, LLC, a limited liability company;

SUPERTISER LLC, a limited liability company;

VERTICALITY ADVERTISING, LLC, a limited liability company;

WHITE DOG MARKETING, LLC, a limited liability company;

RICHARD FOWLER, individually and as an owner, officer, manager, or *de facto* principal of Tarr Inc., Ad Kings LLC, Apex Advertising LLC, Brand Development

Corp., Coastal Ads LLC, Delux Advertising LLC, Diamond Ads LLC, Digital Nutra LLC, Exclusive Advertising LLC, Iron Ads, LLC, LeadKing Advertising LLC, Lead Seeker, LLC, Mints Marketing LLC, Onyx Ads, LLC, Product Center, LLC, Rebem, LLC, Supertiser LLC, Verticality Advertising, LLC, and White Dog Marketing, LLC;

RYAN FOWLER, individually and as an owner, officer, manager, or *de facto* principal of Tarr Inc., Ad Kings LLC, Apex Advertising LLC, Brand Development Corp., Coastal Ads LLC, Delux Advertising LLC, Diamond Ads LLC, Digital Nutra LLC, Exclusive Advertising LLC, Iron Ads, LLC, LeadKing Advertising LLC, Lead Seeker, LLC, Mints Marketing LLC, Onyx Ads, LLC, Product Center, LLC, Rebem, LLC, Supertiser LLC, Verticality Advertising, LLC, and White Dog Marketing, LLC; and

NATHAN MARTINEZ, individually and as an owner, officer, manager, or *de facto* principal of Tarr Inc., Ad Kings LLC, Apex Advertising LLC, Brand Development Corp., Coastal Ads LLC, Delux Advertising LLC, Diamond Ads LLC, Digital Nutra LLC, Exclusive Advertising LLC, Iron Ads, LLC, LeadKing Advertising LLC, Lead Seeker, LLC, Mints Marketing LLC, Onyx Ads, LLC, Product Center. LLC, Rebem, LLC, Supertiser LLC, Verticality Advertising, LLC, and White Dog Marketing, LLC,

Defendants.

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), Section 5 of the Restore Online Shoppers' Confidence Act ("ROSCA"), 15 U.S.C. § 8404, and Section 918(c) of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. § 1693o(c), to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and in violation of Section 4 of ROSCA, 15 U.S.C. § 8403, Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), and other applicable provisions.

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

SUMMARY OF THE CASE

4. Defendants' business was predicated upon a scheme in which they tricked consumers into disclosing their credit and debit card information to enroll them into costly programs with undisclosed, or poorly disclosed, recurring monthly charges. Defendants deceptively induced consumers to buy their products, typically purported weight-loss, muscle-building, or wrinkle-reduction pills or creams, through both "trial offers" and "straight sales."

5. With a trial offer, consumers were promised "free" or "risk free" trials that allegedly would cost only a nominal shipping and handling fee when, in fact,

consumers who purchased a trial offer were charged the full price of the product or service (usually around $87), unless they cancelled the order within a short period of time. Conversely, with a straight sale, consumers placed an order for a set number of bottles of a product and paid the price for those bottles at the time of the order. Regardless of whether consumers ordered a trial offer or a straight sale, Defendants automatically enrolled numerous consumers in an "autoship" program, shipping them an additional supply of the product every month and, every month, charging their credit or debit cards for the cost of a month's supply of the product.

6. Defendants routinely did not disclose, or did not disclose adequately, their offers' negative option features, namely that consumers would be enrolled automatically into autoship programs; that consumers had to cancel the autoship programs within a limited time period to avoid costly recurring monthly charges; or that consumers who purchased trial offers would be charged the full cost of a month's supply of the product unless they took specific and immediate steps to cancel the trials. Defendants also failed to disclose to consumers material aspects of their cancellation and refund policies.

7. In order to induce consumers into this billing scheme in the first place, Defendants marketed their products and services through a web of deceptive advertisements and representations. Defendants' marketing claims about their products (at times made by Defendants themselves and at times through third-party advertisers on Defendants' behalf) falsely – and without appropriate substantiation – claimed that Defendants' products would lead to dramatic and rapid results, such as substantial weight loss or increased muscle mass, or nearly instantaneous wrinkle reduction. To lend a false aura of objectivity to their claims, the advertisements were frequently designed to appear to be independent news reports or magazine articles and often contained fabricated celebrity endorsements and consumer testimonials about the purported benefits of the products.

8. Defendants' scheme deceived consumers nationwide out of hundreds of millions of dollars. Plaintiff now brings this action to permanently enjoin Defendants from their unlawful conduct and to seek redress for the countless consumers harmed by Defendants' conduct.

PLAINTIFF

9. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce. The FTC also enforces ROSCA, 15 U.S.C. §§ 8401-05, which prohibits certain methods of negative option marketing on the Internet, as well as EFTA, which regulates the rights, liabilities, and responsibilities of participants in electronic fund transfer systems, 15 U.S.C. §§ 1693, *et seq.*

10. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, ROSCA, and EFTA, and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 8404, and 1693o(c).

DEFENDANTS

11. Defendant **Tarr Inc.** ("Tarr") is a California corporation with its principal place of business at 2683 Via de la Valle, #G516, Del Mar, CA 92014. Tarr transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Tarr has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Ripped Muscle X and

TNT Diet, to consumers throughout the United States, and at its office facilities has provided customer service, call center, and fulfillment services for all of the products and services at issue in this case.

12. Defendant **Ad Kings LLC** ("Ad Kings") is a California limited liability company with its principal place of business at 5455 Thoroughbred Place, San Diego, CA 92130. Ad Kings transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Ad Kings has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Bio Muscle XR and Monster Muscle X, to consumers throughout the United States.

13. Defendant **Apex Advertising LLC** ("Apex Advertising") is a California limited liability company with its principal place of business at 3960 W. Point Loma Blvd., #346, San Diego, CA 92110. Apex Advertising transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Apex Advertising has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Beauty Labs and Crème Del Mar, to consumers throughout the United States.

14. Defendant **Brand Development Corp**. ("Brand Development") is a Delaware corporation with its principal place of business at 1111 Lincoln Road, Suite 400, Miami, FL 33139. Brand Development Corp. transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Brand Development has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Dermarose Face Cream, to consumers throughout the United States.

15. Defendant **Coastal Ads LLC** ("Coastal Ads") is a Nevada limited liability company with its principal place of business at 9484 S. Eastern Ave., #192, Las Vegas, NV 89123. Coastal Ads transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Coastal Ads has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Direct Credit Scores, Fat Burn X, La Crème Anti-Wrinkle Cream, and Miracle Green Coffee, to consumers throughout the United States.

16. Defendant **Delux Advertising LLC** ("Delux Advertising") is a California limited liability company with its principal place of business at 2658 Del Mar Heights Road, #368, Del Mar, CA 92014. Delux Advertising transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Delux Advertising has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Elite Test 360, Garcinia Cambogia Slimfast, and Jacked Muscle Extreme, to consumers throughout the United States.

17. Defendant **Diamond Ads LLC** ("Diamond Ads") is a Nevada limited liability company with its principal place of business at 9811 W. Charleston Blvd., #2-553, Las Vegas, NV 89117. Diamond Ads transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Diamond Ads has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Miracle Saffron, to consumers throughout the United States.

18. Defendant **Digital Nutra LLC** ("Digital Nutra") is a Wyoming limited liability company with its principal place of business at 1621 Central Avenue, Cheyenne, WY 82001. Digital Nutra transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Digital Nutra has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Superior Muscle X and Superior Test X, to consumers throughout the United States.

19. Defendant **Exclusive Advertising LLC** ("Exclusive Advertising") is a California limited liability company with its principal place of business at 14677 Via Bettona, Suite 110-113, San Diego, CA 92127. Exclusive Advertising transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Exclusive Advertising has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Biofinite, to consumers throughout the United States.

20. Defendant **Iron Ads, LLC** ("Iron Ads") is a Nevada limited liability company with its principal place of business at 9310 S. Eastern Ave., #107-111, Las Vegas, NV 89123. Iron Ads transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Iron Ads has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Bella Labs Instant Wrinkle Reducer, to consumers throughout the United States. In addition, at times material to this Complaint, Iron Ads has provided management and consulting services to several of the other corporate entities named as Defendants in this matter related to the advertising, marketing, sales, and fulfillment for many of the products and services at issue in this case.

21. Defendant **LeadKing Advertising LLC** ("LeadKing Advertising") is a Nevada limited liability company with its principal place of business at 9310 S. Eastern Ave., #107-111, Las Vegas, NV 89123. LeadKing Advertising transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, LeadKing Advertising has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Miracle Muscle, Miracle Phytoceramides, and Secret Anti-Aging Plan, to consumers throughout the United States.

22. Defendant **Lead Seeker LLC** ("Lead Seeker") is a Nevada limited liability company with its principal place of business at 817 Las Vegas Blvd., #109-371, Las Vegas, NV 89123. Lead Seeker transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Lead Seeker has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Fat Shred X, Flawless Raspberry Ketone, Lean Body Trainer, Miracle Garcinia Cambogia, Memory Plus, and Miracle Cleanse to consumers throughout the United States.

23. Defendant **Mints Marketing LLC** ("Mints Marketing") is a Nevada limited liability company with its principal place of business at 452 E. Silverado Ranch Blvd., #443, Las Vegas, NV 89163. Mints Marketing transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Mints Marketing has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Forskolin Belly Buster and Perfect Age Skin Care, to consumers throughout the United States.

24. Defendant **Onyx Ads, LLC** ("Onyx Ads") is a California limited liability company with its principal place of business at 3830 Valley Centre Dr., Suite #660, San Diego, CA 92130. Onyx Ads transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Onyx Ads has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including My Healthy Fitness Plan and Ultimate Muscle Black Edition, to consumers throughout the United States.

25. Defendant **Product Center, LLC** ("Product Center") is a Delaware limited liability company with its principal place of business at 1111 Lincoln Road, Suite 400, Miami Beach, FL 33139. Product Center transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Product Center has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Dermarose Eye Serum, to consumers throughout the United States.

26. Defendant **Rebem, LLC** ("Rebem") is a Nevada limited liability company with its principal place of business at 6130 W. Flamingo Road, Suite 839, Las Vegas, NV 89103. Rebem transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Rebem has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Cellublast, to consumers throughout the United States.

27. Defendant **Supertiser LLC** ("Supertiser") is a Puerto Rico limited liability company with its principal place of business at 78 Kings Court, Company Street, San Juan, PR 00911. Supertiser transacts or has transacted business in this district and throughout the United States. At times material to this Complaint,

acting alone or in concert with others, Supertiser has provided management and consulting services to several of the other corporate entities named as Defendants in this matter related to the advertising, marketing, sales, and fulfillment for many of the products and services at issue in this case.

28. Defendant **Verticality Advertising, LLC** ("Verticality Advertising") is a Nevada limited liability company with its principal place of business at 9850 S. Maryland Pkwy., Suite A5-117, Las Vegas, NV 89183. Verticality Advertising transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Verticality Advertising has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Alpha Rush Pro and Green Coffee Fat Burn, to consumers throughout the United States.

29. Defendant **White Dog Marketing LLC** ("White Dog Marketing") is a Nevada limited liability company with its principal place of business at 10620 S. Hiland Pkwy, #122, Las Vegas, NV 89141. White Dog Marketing transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, White Dog Marketing has advertised, marketed, promoted, distributed, offered to sell, or sold certain of the products or services at issue in this case, including Brain Storm Elite, to consumers throughout the United States.

30. Defendant **Richard Fowler** is an owner, officer, or manager of, or has a controlling interest in, Tarr, Ad Kings, Apex Advertising, Brand Development, Coastal Ads, Delux Advertising, Diamond Ads, Digital Nutra, Exclusive Advertising, Iron Ads, LeadKing Advertising, Lead Seeker, Mints Marketing, Onyx Ads, Product Center, Rebem, Supertiser, Verticality Advertising, and White Dog Marketing (collectively, the "Corporate Defendants"). 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 the acts and practices of each of the Corporate Defendants, as set forth in this Complaint. Defendant Richard Fowler, at times material to this Complaint, has resided in this district and, in connection with the matters alleged herein, has transacted business in this district and throughout the United States. Among other things, Defendant Richard Fowler has controlled the overall operations and finances of the Corporate Defendants.

31. Defendant **Ryan Fowler** is an owner, officer, or manager of, or has a controlling interest in, each of the Corporate Defendants. 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 the acts and practices of each of the Corporate Defendants, as set forth in this Complaint. Defendant Ryan Fowler, at times material to this Complaint, has resided in this district and, in connection with the matters alleged herein, has transacted business in this district and throughout the United States. Among other things, Defendant Ryan Fowler has controlled the customer service and call center operations of Tarr, which handled the customer service and call center functions for all of the products and services at issue in this case.

32. Defendant **Nathan Martinez** is an owner, officer, or manager of, or has a controlling interest in, each of the Corporate Defendants. 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 the acts and practices of each of the Corporate Defendants, as set forth in this Complaint. Defendant Martinez, at times material to this Complaint, has resided in this district and, in connection with the matters alleged herein, has transacted business in this district and throughout the United States. Among other things, he

has controlled the development of the websites that were used to sell the products and services at issue in this case.

COMMON ENTERPRISE

33. The Corporate Defendants operated as a common enterprise while engaging in the deceptive, unfair, and unlawful acts and practices and other violations of law alleged below. Defendants conducted the business practices described below through an interrelated network of companies that were under common control and had common ownership, officers, managers, employees, and office locations. Through this common network, the companies acquired, fulfilled, advertised, marketed, and sold their products, and they utilized a common call center and customer service center that engaged in the same sales techniques across the different products and services. Further, the companies commingled funds and relied upon a centralized recordkeeping system. Because these Corporate Defendants operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below.

34. Defendants Richard Fowler, Ryan Fowler, and Nathan Martinez (collectively, the "Individual Defendants") formulated, directed, controlled, had authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

COMMERCE

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

DEFENDANTS' BUSINESS ACTIVITIES

Defendants' Establishment of the Corporate Entities

36. Through a web of corporate entities, Defendants advertised, marketed, promoted, distributed, and sold more than forty different products and services

since at least late 2010 (the "Products"). Most of the Products fall into one of three categories: (1) alleged weight-loss supplements; (2) purported muscle-building supplements; and (3) claimed wrinkle-reducing or removing supplements or topical creams.

37. The Individual Defendants controlled at least nineteen entities, each of which, with the exception of Supertiser, sold one or more Products. The Individual Defendants themselves were jointly the sole owners of several of the earliest-formed entities, including Tarr, Diamond Ads, Iron Ads, LeadKing Advertising, Lead Seeker, and Verticality Advertising.

38. As the enterprise expanded and new entities were created, the Individual Defendants used secretaries, unpaid interns, and family friends to serve as nominal owners of the newly-formed entities. However, the Individual Defendants controlled the operations of these entities pursuant to consulting agreements. Under those agreements, the substantial majority of each entity's profits (typically from 75% to 95%) was transferred to another entity – initially, Iron Ads, and later, Supertiser – in which each Individual Defendant held a one-third ownership interest. With the exception of Tarr, none of the other entities had any employees, and the entities relied on Tarr employees and the Individual Defendants to conduct their operations.

39. Defendants advertised, marketed, promoted, and sold their Products online through websites they owned and operated, including but not limited to alpharushpro.com, beautylabs.com, bellalabs.com, biofinite.com, brainstormelite.com, cellublast.com, cremedelmar.com, dermaroseskincare.com, directcreditscores.com, elitetest360.com, fatburnx.com, fatshredx.com, flawlessraspberryketone.com, forskolinbellybuster.com, garciniacambogiaslimfast.com, greencoffeefatburn.com, jackedmusclex.com, lacremeskincare.com, leanbodytrainer.com, miraclegarciniacambogia.com,

miraclegreencoffee.com, miraclemuscleusa.com, miraclephytoceramides.com, miraclesaffron.com, myhealthyfitnessplan.com, perfectageskincare.com, rippedmusclex.com, secretantiagingplan.com, superiormusclex.com, superiortestx.com, thememoryplus.com, tntdiet.com, trymiraclecleanse.com, and ultimatemuscleblackedition.com.

40. Defendants advertised, marketed, promoted, distributed, or sold the Products under a variety of brand names, including Alpha Rush Pro, Beauty Labs, Bella Labs Instant Wrinkle Reducer, Biofinite, Brain Storm Elite, Cellublast, Crème del Mar, Dermarose Eye Serum, Dermarose Face Cream, Direct Credit Scores, Elite Test 360, Fat Burn X, Fat Shred X, Flawless Raspberry Ketone, Forskolin Belly Buster, Garcinia Cambogia Slim Fast, Green Coffee Fat Burn, Jacked Muscle X, La Crème Anti-Wrinkle Cream, Lean Body Trainer, Miracle Garcinia Cambogia, Miracle Green Coffee, Miracle Muscle, Miracle Phytoceramides, Miracle Saffron, My Healthy Fitness Plan, Perfect Age Skin Care, Ripped Muscle X, Secret Anti-Aging Plan, Superior Muscle X, Superior Test X, The Memory Plus, TNT Diet, Try Miracle Cleanse, and Ultimate Muscle Black Edition.

Defendants' Affiliate Marketing Practices

41. Defendants also advertised, marketed, and promoted their Products through "affiliate marketers." Defendants hired affiliate marketers through third parties known as "affiliate networks," which match merchants with affiliate marketers. Affiliate marketers promoted Defendants' Products and generated consumer leads, using a variety of Internet advertising techniques, including banner advertisements, sponsored search terms, and advertisements over social media platforms.

42. Affiliate networks also provided advice to Defendants to help improve "conversions," or the number of consumers who ordered one or more of the

Defendants' Products. For instance, affiliate marketers initially suggested to Defendants that they sell dietary supplements, and that they use trial offers and negative option features to do so. Defendants agreed and modeled their business accordingly. At times, affiliate networks also created content for Defendants to host on Defendants' websites, in order to generate more sales. This content included "landing pages" that consumers would be directed to after clicking on a link in an advertisement for one of Defendants' Products. Defendants incorporated these landing pages into their Product websites and allowed the landing pages to receive consumer traffic with only a minimal review of their content.

43. Defendants paid affiliate networks a set fee for each instance in which a consumer ordered a trial of a Product after visiting an affiliate's advertisement for that Product. While Defendants represented that consumers only needed to pay the cost for shipping and handling of a trial order, usually $4.95, Defendants typically paid affiliate networks $45 per trial order, indicating that Defendants anticipated that most consumers would be charged for the full price of the Product. If the consumer purchased a straight sale of a Product after visiting an affiliate's advertisement, Defendants would pay the affiliate network between $65 and $85. The affiliate network would then pay a commission to the affiliate marketers. In 2015 alone, Defendants paid more than $19 million to affiliate networks.

Fake News and Magazine Websites

44. At times relevant to this complaint, Defendants hosted, or used affiliate marketers who hosted, websites designed to look like legitimate and independent news reports or magazine articles about one of Defendants' Products (the "fake media sites"). The fake media sites were owned and operated by Defendants' affiliate marketers or by Defendants themselves. The supposed authors of the reports often claimed to have tested the Products on themselves and experienced dramatic results, such as:

a. For Miracle Garcinia Cambogia, "I Lost 23 lbs in 5 Weeks, No Special Diet, No Intense Exercise."

b. For Ripped Muscle X and Elite Test 360, "I couldn't be any happier with the results. I gained 16 lbs of muscle in 4 weeks. No Special Diet, No Intense Exercise."

Examples of these advertisements are attached hereto as Exhibits A to B.

45. In other instances, the articles described dramatic results allegedly experienced by others, often celebrities such as Paula Deen, Kim Kardashian, or Jason Statham, and suggested that these individuals endorsed Defendants' Products. For example:

a. A fake magazine article captioned "Men's Life & Health" claimed that actor Will Ferrell "lost 18 lbs of fat and gained 20 lbs of muscle in just 3 weeks with Elite Test 360 and Ripped Muscle X."

b. A fake magazine article claimed that a consumer who used Bella Labs and La Crème experienced a 90% reduction "of all her wrinkles and problem areas" after just two weeks. The Products "tightened her face and neck, removing all sagging, aging, and dehydrated skin."

c. Another purported consumer was quoted in this article as experiencing the following results after using Bella Labs and La Crème: "After 14 days, not only had all my doubts and skepticism absolutely vanished – SO DID MY WRINKLES! The lines on my forehead, the loose, sagging skin on my neck, my crows' feet – even the age spots on my face had COMPLETELY disappeared. . . . After the 2 weeks, my skin not only stayed that way, it actually improved every day until it became as beautiful and radiant as it was 20 years ago."

d. A fake magazine article bearing the caption, "Every Day with Paula," and purportedly written by Paula Deen herself, claimed that the celebrity had tried Flawless Raspberry Ketone and "couldn't be any happier with the results. I Lost 30 lbs in 4 Weeks, No Special Diet, No Intense Exercise."

Examples of these advertisements are attached hereto as Exhibits B to D.

46. The websites used domain names that appeared to be objective news, magazine, or health websites, such as healthylifestylesmag.com, goodhousekeepingtoday.com, menshealth.com--i.link, and womenshealthi.com, and featured mastheads for what appeared to be legitimate news and journal organizations, including Women's Health, Men's Health, Vanity Fair's Hollywood, Good Housekeeping, and Everyday with Dr. Oz. The websites often included the names and logos of major broadcast and cable television networks, falsely implying that the reports on the websites had been seen on these networks.

47. Surrounding the reports were often what appeared to be profiles of ordinary consumers who had tried the Products, like "Jenna Detroit, MI," and "Audrey Stevens Scottsdale." These profiles included additional claims of dramatic results, showing "before" and "after" photos of consumers who appeared to have become markedly slimmer, more muscled, or younger-looking, depending on the Product. Following the reports were often "posts" or "comments" that professed to be independent statements made by ordinary consumers.

48. In truth and in fact, the purported news and magazine webpages – both Defendants' own and those of their affiliate marketers – were fake. The websites were not objective news reports or magazine articles, but rather were paid advertisements, maintained either by Defendants' affiliate marketers for Defendants, or by Defendants themselves. The reporters or commentators portrayed on the websites were fictional and never conducted the tests or

experienced the results described. The sites failed to disclose in a clear and conspicuous manner that they were not objectively evaluating the Defendants' Products, and instead were paid advertising content. The consumer testimonials surrounding and following the reports were additional advertising content, not the independent statements from ordinary consumers that they purported to be. The celebrities pictured, and in some cases purportedly quoted, never endorsed Defendants' Products. In fact, Defendants were not aware whether any celebrities even used their Products.

49. The fake media sites, as well as other kinds of advertisements for the Products, also contained a number of deceptive claims about the results consumers could reasonably expect to achieve by using Defendants' Products. For example, the following representations are typical of the claims made in advertisements for Defendant's wrinkle-reducing, muscle-building, and weight-loss Products:

a. After two weeks, "[t]he lines on my forehead, the loose, sagging skin on my neck, my crows' feet – even the age spots on my face had COMPLETELY disappeared."
b. "FLAWLESS SKIN in 14 days."
c. "I lost 32% of WRINKLES."
d. A "simple Easy trick for removing 42% of the face wrinkles."
e. A consumer "lost 8 lbs fat and gained 20 lbs of muscle in just 5 weeks" and "didn't have to change [his] diet or [his] daily routine at all. [He] just took two pills a day and the fat melted off like butter and [he] literally got shredded."
f. "Celebrity Doctor Proclaims This Garcinia Cambogia Pill Burns 17 lbs of Fat."
g. "Miracle Pill" could cause weight loss of "20 lbs in 4 weeks."
h. "Rare Plant Increases Muscle Growth 700%."

Examples of these advertisements are attached hereto as Exhibits C, and E to H.

50. The fake media sites, as well as other advertisements for the Products, also contained representations stating or implying that clinical studies proved that the Products caused various dramatic and rapid results. For example:

a. A fake news site promoting Miracle Garcinia Cambogia claimed, "[i]n a study published in the journal *Lipids in Health & Disease*, subjects taking Garcinia Cambogia lost an average of 19.3 pounds in 28 days without diet or exercise." The same advertisement claimed that, "[s]tudies have shown a 39% reduction in cholesterol and an average 2 inch reduction in belly fat within 28 days."

b. A fake magazine article purportedly published in "Every Day with Dr. Oz" and written by Dr. Mehmet Oz, a celebrity doctor with a popular daily television show focusing on medical issues and personal health, contained nearly identical claims about the results of clinical studies for an entirely different Product, Flawless Raspberry Ketone.

c. A fake magazine article appearing in a fake magazine called "Men's Health Life," claimed that Elite Test 360 and Ripped Muscle X were "clinically proven to flush out the toxins in your body, melt away body fat and pack on tons of muscle."

d. Another fake magazine article for Elite Test 360 and Ripped Muscle X claimed that the Products were "clinically proven to add significant amounts of muscle and melt away body fat without harming your immune system."

e. An advertisement for Bella Labs stated, "Clinically proven ingredient improves skin smoothness by 33% in 2 weeks" and "Clinically proven ingredient diminishes the appearance of fine lines and wrinkles by 55% in 12 weeks."

Examples of these advertisements are attached hereto as Exhibits A to B, G, and I to J.

51. In truth and in fact, the Defendants did not possess or rely upon a reasonable basis to substantiate the representations that consumers who used the Products, alone or in combination, would experience rapid, dramatic, and/or substantial weight loss, wrinkle reduction or removal, or muscle growth.

52. Some of the fake media sites were hosted on websites registered by owners or employees of one or more of the Corporate Defendants and paid for using credit cards issued to one or more of the Corporate Defendants.

53. Defendants had the authority to control whether or not their Products were advertised through fake media sites. Defendants had the ultimate control over the manner in which their Products were promoted and, if necessary, could terminate their relationships with any advertisers that failed to comply with their directives. At times, Defendants prohibited their affiliate marketers from using certain types of advertisements to promote their Products, such as surveys and pop-up advertisements. Despite this authority, Defendants never directed affiliate networks not to use fake media sites to advertise their Products.

54. As indicated above, numerous advertisements promoting Defendants' Products contained fake endorsements by celebrities, such as Dr. Oz, Paula Deen, Jennifer Aniston, and many others. Some of these fake celebrity endorsements appeared in ads hosted on websites registered by owners or employees of one or more of the Corporate Defendants and paid for using credit cards issued to one or more of the Corporate Defendants.

55. In April 2014, Dr. Oz devoted an episode of his show to exposing the Defendants' unauthorized use of his name and likeness in promoting Miracle Garcinia Cambogia. After this exposé, Defendants transitioned their business away from weight-loss Products and toward muscle-building and wrinkle-reducing

or removing Products. Defendants' Products, however, continued to be marketed through bogus celebrity endorsements, even after Defendants were put on notice of this practice by Dr. Oz.

56. Defendants had the authority to control the methods by which affiliate marketers promoted their Products, and from time to time asked affiliate networks or marketers to take down specific ads featuring specific celebrities in response to cease and desist letters they received from those celebrities. However, Defendants never directed their third-party advertisers to refrain from using false celebrity endorsements to market their Products.

Advertising Claims on Defendants' Merchant Websites

57. Consumers who purchased Defendants' Products typically came to purchase them after viewing advertisements for the Products. Consumers who clicked on the links in the fake media sites and other advertisements were then directed to websites where Defendants sold their Products. On their websites, Defendants reinforced the fake media sites' misrepresentations, including that the Products had been featured on television. For example, one of Defendants' websites prominently claimed: "WARNING: Due to popular TV demand our stores are struggling to keep supply in stock. As of [date website visited] we do have a limited supply IN STOCK and ready to ship within 24 hours." Another of Defendants' websites stated, "AS SEEN ON" followed by logos for CNBC, Fox News, and USA Today. An example of this webpage is attached hereto as Exhibit K.

58. Defendants' websites also reinforced the false representations that the typical consumer could reasonably expect dramatic and rapid results from using Defendants' Products. For example:

a. Defendants' website for Elite Test 360 contained prominent claims that consumers would achieve "30% MORE MUSCLE MASS IN 30

DAYS OR LESS! LOOK UP TO 52% MORE RIPPED; INCREASE ATHLETIC ENDURANCE UP TO 42%; REDUCE AFTER WORKOUT FATIGUE BY UP TO 35%."

b. Defendants' website for Bella Labs featured prominent claims that the Product "Increases skin moisturization levels up to 400% in less than 3-days; Firm[s] and tighten[s] skin by 200% after just 1-week; Decreases the visual appearance of fine lines up to 70% after 4-weeks."

c. Another page on Defendants' website for Bella Labs claimed, "84% Decrease of Wrinkles & Lines; 95% Increase of Collagen Production; 73% Decrease in Appearance of Dark Circles."

d. Defendants' website for La Crème claimed, "83% Decrease in Wrinkles & Fine Lines; 92% Increase in Collagen Production; 65% Decrease in the Appearance of Dark Circles."

e. Defendants' website for Miracle Phytoceramides promised that consumers would "LOOK 10 YEARS YOUNGER IN LESS THAN 4 WEEKS."

f. Defendants' website for Garcinia Cambogia Slim Fast claimed that consumers would "Lose [up] to 10lbs and 1-2 inches of fat per month!"

g. Defendants' website for Miracle Garcinia Cambogia claimed, "Now you can lose weight without diet and exercise!"

Examples of these webpages are attached hereto as Exhibits K to N.

Defendants Failed to Disclose Terms of "Trial Offers" and "Straight Sales"

59. Defendants sold their Products through their merchant websites in most cases through trial offers, but also through straight sales. In a trial offer, the

consumer was shipped a full month's supply of the Product and, at the initial time of purchase, only paid the nominal cost for the shipping and handling of the Product (typically, $4.95). If, however, the consumer did not cancel his or her order and return the unused portion of the Product within a short period of time (often, fourteen calendar days), the consumer's credit or debit card would be charged the full price of the Product (usually around $87). In a straight sale, the consumer would place an order for a set number of bottles of the Product and would pay the price for those bottles at the time of the order. Numerous consumers – who purchased either trial offers or straight sales of the Products – were deceptively enrolled in autoship programs, in which the consumer would be sent, and charged for, an additional supply of the Product every month after the initial purchase.

60. Advertisements promoting trial offers of Defendants' Products typically did not explain any of the material terms and conditions of the trial offers, including that consumers would be charged for the full cost of the Products if they did not cancel their orders within a short period of time. Similarly, advertisements for both trial offers and straight sales of Defendants' Products typically did not explain that consumers would often be automatically enrolled in an autoship program, whereby the consumers would continue to receive, and be billed for, additional supplies of the Products on a monthly basis. On the contrary, advertisements for Defendants' Products frequently claimed that they were "free" or "risk free."

Defendants' "Risk-Free" Trial Offers Ordering Process

61. After the typical consumer clicked on a link in an advertisement for Defendants' Products, he or she would be transferred to a webpage on Defendants' websites called a "landing page." Landing pages typically included windows for consumers to enter their contact information. Once the consumer entered his or

her contact information, he or she would be transferred to another webpage called an "order page," where he or she would enter his or her payment information. Sometimes landing pages and order pages were combined into a single webpage, where a consumer was required to enter both his or her contact information and payment information. More typically, however, the landing pages and the order pages were divided into a two-step process.

62. The landing pages for the Products that consumers would typically see did not include any visible disclosures explaining the terms of the trial offer. For example, a landing page on Defendants' website for Ripped Muscle X ("RMX Landing Page"), a purported muscle-building Product, did not include any visible disclosures about the terms and conditions of the trial offer, such as (1) that consumers would be charged the full cost of the Product if they did not cancel the trial offer within a short period of time; (2) that consumers would be automatically enrolled in an autoship program, pursuant to which Defendants would send them additional shipments each month and would charge them accordingly until they took steps to cancel the autoship program; or (3) the trial offer's cancellation and refund policies. Instead, on this page, the consumer entered only his or her contact information and then, after making the determination that he or she would like to receive the trial offer, would click a button that said, "RUSH MY TRIAL." A copy of the RMX Landing Page is attached hereto as Exhibit O.

63. The order pages where consumers would typically enter their payment information contained inadequate disclosures that were neither clear nor conspicuous. For example, after clicking the "RUSH MY TRIAL" button on the RMX Landing Page, the consumer would be directed to an order page on the Ripped Muscle X website where the consumer would be required to enter his or her billing information ("RMX Order Page"). On the RMX Order Page, the only visible disclosure about the terms and conditions of the trial offer was near the

bottom of the webpage, below prominent advertising claims about the purported benefits of the Product ("Get Totally Ripped" and "Burn Fat"). The disclosure was in smaller type than most of the other text on the webpage and the text was in what appears to be a light grey font against a black background. A copy of the RMX Order Page is attached hereto as Exhibit P.

64. Defendants appear to have taken steps to conceal from banks, payment processors, and regulators the inadequacy of their disclosures to consumers. To that end, Defendants hosted alternate "cleaner" versions of landing pages and order pages on their websites that contained more prominent disclosures, which were accessible by typing the Uniform Resource Locator ("URL") of one of Defendants' websites directly into a web browser and navigating to the trial offer page.

65. For example, anyone who specifically typed "www.rippedmusclex.com" into an Internet browser and navigated to that website's trial offer page would encounter a landing page that looked very different from the RMX Landing Page. They would find instead a combination landing and order page, which included visible disclosures in two places on the webpage concerning the terms and conditions of Ripped Muscle X's trial offer. Both of these disclosures were in dark grey or black type on a white background, using a font size that was similar to the size of other key text on the webpage. Because the vast majority of sales of Defendants' Products occurred via traffic from advertisements for the Products, rather than via consumers typing specific URLs into web browsers, the typical consumer purchasing Defendants' Products would never have encountered the more prominent disclosures reflected on this webpage.

Defendants Emphasized That Trial Orders Carried No Risk

66. Throughout the ordering process, Defendants' webpages reinforced the false representation in the advertisements that the trial orders carried no risk. The landing pages regularly described the trial orders as "RISK FREE," and promised a "100% guarantee" of customer satisfaction. Examples of these webpages are attached hereto as Exhibits K to P.

67. Similarly, the order pages on Defendants' websites contained language like, "You're Almost Done! Just Pay for Shipping." The order pages also typically represented that the offer was for a "30 Day Supply" of the Product, which would cost the consumer "$0.00," and listed the "total" cost of the purchase as "$4.95" (i.e., the cost of shipping and handling). An example of such a webpage is attached hereto as Exhibit Q.

68. In truth and in fact, trial orders were neither "free" nor "risk free." Consumers who provided their credit or debit information to pay a nominal shipping and handling fee for the trial Product were likely to be charged approximately $87 for the trial Product, and recurring amounts for subsequent shipments, if they did not quickly cancel their automatic enrollment in Defendants' autoship programs and return the unused portion of the trial Product. Nor did the Defendants make good on their guarantee of customer satisfaction. Defendants failed to disclose, or to disclose adequately, material terms of their refund policy. Refunds were offered only on a case-by-case basis, and as described below in Paragraphs 77-78, they hinged on factors unrelated to the consumer's degree of satisfaction.

Defendants' Offers for Upsell or Add-On Products

69. As reflected above, Defendants' websites, as consumers typically experienced them, did not display any disclosures concerning the material terms of the trial offer, the autoship program, or the cancellation and refund policies until

the final step of the Defendants' ordering process, on the order page. Due to the lack of prominence of these belated disclosures, numerous consumers reported never seeing them.

70. After they entered their credit or debit card information and submitted the order to purchase a trial of a Product, numerous consumers were directed to a webpage that invited them to sign up for a second trial of another, allegedly related Product, *i.e.* an upsell or add-on Product. For example, a page from Defendants' Product website for Bella Labs Instant Wrinkle Reducer indicated in large type across the top of the screen, "Thanks for your order, don't forget…" and offered a "FREE" trial of the upsell Product, La Crème Anti-Wrinkle Crème. The webpage contained prominent buttons with text like, "CLAIM YOUR TRIAL TODAY!" and "YES, SEND MY BOTTLE! BEFORE THE TRIAL OFFER EXPIRES." A copy of the La Crème offer page from the Bella Labs website is attached hereto as Exhibit R.

71. This webpage contained no visible disclosure informing consumers of the material terms and conditions of the trial purchase of the upsell Product. Nowhere were consumers informed that the failure to cancel within a short period of time would lead to further, significant charges with respect to the upsell Product; nor were consumers told that signing up for the trial of the upsell Product would enroll them in an autoship program.

Defendants' Straight Sale Offers

72. While most of Defendants' Products were offered on a trial basis, even those that were offered on a straight sale basis were deceptively sold. As with trial offers, numerous consumers who purchased Products on a straight sale basis were also placed into autoship programs without their knowledge or consent. For instance, numerous consumers who purchased a single bottle of Miracle Garcinia Cambogia, an alleged weight-loss Product, were enrolled automatically in

an autoship program. As demonstrated by the screenshot attached hereto as Exhibit S, the purchase page of the Miracle Garcinia Cambogia website contained no visible disclosure alerting a consumer to the fact that by buying a single bottle of Miracle Garcinia Cambogia, he or she would be charged monthly for additional shipments of the Product.

73. Consumers could only learn of the true terms and conditions of the Product offer by clicking on a hyperlink at the bottom of the webpage, called "Terms & Conditions," under the billing information windows. There, buried in the middle of a multi-page, small print putative contract, the consumer could read:

> For the single bottle purchase, you will be charged $48.00 today + $4.95 for shipping & handling and be enrolled in a 30 day supply auto shipment of Miracle Garcinia Cambogia for half the price! If the order is not canceled before the end of the 30 day period, on the 30th day after the purchase you will be charged the 50% discounted rate of $24.63 for a fresh 30 day supply of Miracle Garcinia Cambogia.

Defendants' Cancellation and Refund Practices

74. Numerous consumers sought to cancel their Product orders after they learned the true terms and conditions of Defendants' trial offers and autoship program. These consumers often experienced a myriad of difficulties in their cancellation efforts.

75. Because two Products were typically paired together in a single offer, consumers often purchased trials of two Products and were enrolled in autoship programs for both. When such a consumer called to cancel both autoship programs, Defendants typically allowed the consumer to cancel only one of the autoship programs. Consumers were required to make a second call to a different telephone number to cancel the autoship program for the second Product, even though the same Tarr call center handled customer service calls related to all of the

Defendants' Products. Moreover, customer service representatives were trained to try to upsell alternative Products to consumers who called to cancel, seek refunds, or otherwise complain.

76. Consumers also faced significant difficulty in obtaining refunds. When consumers called Defendants seeking refunds, they were usually told, initially, that their money would not be refunded, or, at best, that they would receive only a partial refund as a courtesy. Indeed, according to the Tarr customer service training manual, Defendants' customer service representatives were instructed to tell consumers that they were eligible for a full refund only if they had cancelled the trial and returned the remainder of the Product to Defendants within the trial offer period. Even though advertisements and websites for Defendants' Products guaranteed that consumers would be 100% satisfied, and that trials were "free" or "risk-free," refunds were offered to consumers only on a case-by-case basis.

77. Whether a consumer was offered a full or even a partial refund often depended on the following factors, which had little to do with a customer's level of satisfaction: (1) if the consumer threatened to complain to a government agency, the Better Business Bureau ("BBB"), or a bank or credit card company; or (2) if the complaining consumer's order was processed using a credit card processing merchant account which already had a heightened level of chargebacks (*i.e.*, numerous instances in which customers contacted their bank to dispute a credit card charge and the issuing bank charged that amount back to the merchant bank). The latter factor was likely to avoid having Defendants' merchant accounts terminated by banks or payment processors due to excessive consumer chargebacks.

78. In other instances, consumers received refunds from Defendants only after they complained to their credit card companies, regulatory authorities, or the

BBB. Even in those instances, however, Defendants did not always issue full refunds to consumers.

Telemarketing

79. Sometimes consumers entered their contact information on the landing page for a Product, but did not complete their purchase on the order page. Defendants maintained a team of employees responsible for outbound calls to potential customers. These telemarketers would regularly call consumers who had entered their contact information but had not completed a purchase, to try to convince them to purchase the Product. According to Defendants' own training materials, telemarketers were trained in certain instances not to disclose all of the material terms and conditions of the trial purchase until after the credit card transaction had been processed, such as the fact that the consumer would be charged each month for additional shipments of the Product.

VIOLATIONS OF THE FTC ACT

80. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

81. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. Acts or practices are unfair under Section 5 of the FTC Act if they cause, or are likely to cause, substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

82. Section 12 of the FTC Act, 15 U.S.C. § 52, prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C.

§ 52, most of the Defendants' products are either "foods," "drugs," or "cosmetics," as defined in Section 15(b), (c), and (e) of the FTC Act, 15 U.S.C. § 55(b), (c), (e).

COUNT I

Failure to Disclose Adequately Material Terms of Offer

83. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of the Products, Defendants, directly or through affiliates acting on their behalf and for their benefit, have represented, expressly or by implication, (a) that consumers who provide their credit or debit card billing information to purchase a trial offer of Defendants' Products will be charged only a nominal shipping and handling fee and would have no other obligations; and (b) that consumers who provide their credit or debit card billing information to purchase a straight sale of Defendants' Products will be charged only the cost of that transaction as listed and would incur no further charges.

84. In numerous instances in which Defendants have made the representations set forth in Paragraph 83 of this Complaint, Defendants have failed to disclose, or disclose adequately to consumers, material terms and conditions of their offer, including:

a. For consumers who purchased trial offers, that Defendants will use their credit or debit card information to charge them the full costs of the trial products, upon the expiration of a limited trial period;
b. The dates on which the trial period begins and ends;
c. For consumers who purchased either trial offers or straight sales, that Defendants will automatically enroll them in an autoship program with additional charges;
d. The cost of the autoship program and the frequency and duration of the recurring charges;

e. The means consumers must use to cancel the autoship program to avoid additional charges; and

f. The requirements of Defendants' refund policies.

85. Defendants' failure to disclose or disclose adequately the material information described in Paragraph 84, above, in light of the representations described in Paragraph 83, above, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

False "Free" or "Risk-Free" Trial Claim

86. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of the Products, Defendants have represented, directly or through affiliates acting on their behalf and for their benefit, that consumers can try Defendants' products "free" or "risk-free," after the payment of a nominal shipping and handling charge.

87. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 86 of this Complaint, consumers could not try Defendants' Products "free" or "risk-free," because Defendants charged consumers the full cost of the Products if the consumers did not call to cancel within the trial period, typically fourteen days from the date of order. In addition, Defendants did not provide full refunds to all consumers who requested refunds.

88. Therefore, the making of the representations as set forth in Paragraph 86 of this Complaint constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. § 45(a) and 52.

COUNT III

Unfairly Charging Consumers Without Authorization

89. In numerous instances, Defendants have caused charges to be submitted for payment to the credit and debit cards of consumers without the express informed consent of consumers.

90. Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

91. Therefore, Defendants' practices as described in Paragraph 89 above constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

COUNT IV

Misrepresentations – Guarantees and Refunds

92. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of the Defendants' Products, Defendants have represented, directly or through affiliates acting on their behalf and for their benefit, expressly or by implication, that they will provide full refunds to consumers who request them.

93. In truth and in fact, in numerous instances Defendants either have not provided full refunds to consumers who requested them or have provided refunds only after consumers complained or threatened to complain to governmental agencies, credit card companies, banks, or the BBB.

94. Therefore, the making of the representations as set forth in Paragraph 92 of this Complaint constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. § 45(a) and 52.

COUNT V

Misrepresentations – Fake Media Sites

95. Through the means described in Paragraphs 36-79, Defendants, directly or through affiliates acting on their behalf and for their benefit, have represented, expressly or by implication, that:

a. Certain websites linking to Defendants' websites are objective and independent news reports or magazine articles;

b. News or magazine reporters have performed independent tests demonstrating the effectiveness of Defendants' Products;

c. Defendants' Products were used, endorsed, or approved by specifically identified celebrities; and

d. The comments contained in and following the purported news and magazine articles on the websites linking to Defendants' websites express the views of independent consumers.

96. In truth and in fact:

a. The websites linking to Defendants' websites are advertisements made to appear as objective and independent news reports and magazine articles;

b. News or magazine reporters have not performed independent tests demonstrating the effectiveness of Defendants' Products;

c. The specifically identified celebrities have not used, endorsed, or approved of Defendants' Products; and

d. The comments contained in and following the purported news or magazine articles on the websites linking to Defendants' websites do not express the views of independent consumers.

97. Therefore, the making of the representations as set forth in Paragraph 95 of this Complaint constitutes a deceptive act or practice and the making of false

advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. § 45(a) and 52.

COUNT VI

False or Unsubstantiated Efficacy Claims

98. Through the means described in Paragraphs 36-79, Defendants represented, directly or through affiliates acting on their behalf and for their benefit, expressly or by implication, that their Products caused substantial weight loss, muscle growth, or wrinkle reduction or removal, or that such results would be rapid, including for example that:

a. Miracle Garcinia Cambogia causes substantial weight loss without any special diet or intense exercise;

b. Flawless Raspberry Ketone causes substantial weight loss without any special diet or intense exercise;

c. Bella Labs and La Crème cause rapid, sustained, and substantial wrinkle removal or reduction, firm and tighten skin, and remove facial age spots;

d. Elite Test 360 and Ripped Muscle X cause substantial fat loss and muscle gain without any change in diet or exercise; and

e. One or more of Defendants' Products increases muscle growth by 700%.

99. The representations set forth in Paragraph 98 are false or were not substantiated at the time they were made.

100. Therefore, the making of the representations as set forth in Paragraph 98 constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT VII

Establishment Claims

101. Through the means described in Paragraphs 36-79, Defendants represented, directly or through affiliates acting on their behalf and for their benefit, expressly or by implication, that clinical studies proved that:

a. Their weight-loss Products would achieve rapid, sustained, or substantial weight loss;

b. Their muscle-building Products would achieve rapid, sustained, or substantial muscle growth; and

c. Their wrinkle-reducing Products would achieve rapid, sustained, or substantial wrinkle reduction or removal.

102. In truth and in fact, studies do not show that Defendants' Products lead to rapid, sustained, or substantial weight loss, muscle building, or wrinkle reduction or removal.

103. Therefore, the making of the representations as set forth in Paragraphs 101 constitute deceptive acts or practices and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

VIOLATIONS OF ROSCA

104. In 2010, Congress passed ROSCA, 15 U.S.C. §§ 8401-05, which became effective on December 29, 2010. Congress passed ROSCA because "[c]onsumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business." Section 2 of ROSCA, 15 U.S.C. § 8401.

105. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging consumers for goods or services sold in transactions effected on the Internet through a negative option feature, as that term is defined in the Commission's Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310.2(w), unless the seller: (a) clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information; (b) obtains the consumer's express informed consent before making the charge; and (c) provides a simple mechanism to stop recurring charges. *See* 15 U.S.C. § 8403.

106. The TSR defines a negative option feature as: "in an offer or agreement to sell or provide any goods or services, a provision under which the consumer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer." 16 C.F.R. § 310.2(w).

107. As described above, Defendants advertise and sell their Products to consumers through a negative option feature as defined by the TSR. *See* 16 C.F.R. § 310.2(w).

108. Under Section 5 of ROSCA, 15 U.S.C. § 8404, a violation of ROSCA is a violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a, and therefore constitutes an unfair or deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S. § 45(a).

COUNT VIII

Violation of ROSCA – Autoship Program

109. In numerous instances, in connection with the selling of their Products on the Internet through a negative option feature, Defendants have failed to:

a. clearly and conspicuously disclose all material terms of the negative option feature of the Product purchase before obtaining the consumer's billing information;

b. obtain the consumer's express informed consent to the negative option feature before charging the consumer's credit card or debit card; and/or

c. provide simple mechanisms for a consumer to stop recurring charges to the consumer's credit card or debit card.

110. Defendants' practices as set forth in Paragraph 109 are a violation of Section 4 of ROSCA, 15 U.S.C. § 8403, and are therefore a violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a, 15 U.S.C. § 8404(a), and therefore constitute an unfair or deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S. § 45(a).

VIOLATIONS OF THE ELECTRONIC FUND TRANSFER ACT AND REGULATION E

111. Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), provides that a "preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made."

112. Section 903(10) of EFTA, 15 U.S.C. § 1693a(10), provides that the term "preauthorized electronic fund transfer" means "an electronic fund transfer authorized in advance to recur at substantially regular intervals."

113. Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b), provides that "[p]reauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer."

114. Section 1005.10(b) of the Consumer Financial Protection Bureau's Official Staff Commentary to Regulation E ("Official Staff Commentary to Regulation E"), 12 C.F.R. § 1005.10(b), cmt.5, Supp. I, provides that "[t]he authorization process should evidence the consumer's identity and assent to the

authorization." The Official Staff Commentary to Regulation E further provides that "[a]n authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable." 12 C.F.R. § 1005.10(b), cmt 6, Supp. I.

COUNT IX

Unauthorized Debiting from Consumers' Accounts

115. In numerous instances, Defendants have debited consumers' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated from consumers for preauthorized electronic fund transfers from their accounts, thereby violating Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b).

116. Further, in numerous instances, Defendants have debited consumers' bank accounts on a recurring basis without providing a copy of a written authorization signed or similarly authenticated by the consumer for preauthorized electronic fund transfers from the consumer's account, thereby violating Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b).

117. Under Section 918(c) of EFTA, 15 U.S.C. § 1693o(c), a violation of EFTA and Regulation E constitutes a violation of the FTC Act.

118. Accordingly, by engaging in violations of EFTA and Regulation E as alleged in Paragraphs 115-116 of this Complaint, Defendants have engaged in violations of the FTC Act. 15 U.S.C. § 1693o(c).

CONSUMER INJURY

119. Consumers have suffered substantial injury as a result of Defendants' violations of the FTC Act, ROSCA, and EFTA. 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 AUTHORITY TO GRANT RELIEF

120. 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.

121. Section 5 of ROSCA, 15 U.S.C. § 8404, and Section 917(c) of EFTA, 15 U.S.C. § 1693o(c), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of ROSCA and EFTA, including the rescission or reformation of contracts and the refund of money.

PRAYER FOR RELIEF

122. Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), Section 5 of ROSCA, 15 U.S.C. § 8404, Section 917(c) of EFTA, 15 U.S.C. § 1693o(c), and the Court's own equitable powers, requests that the Court:

a. Enter a permanent injunction to prevent future violations of the FTC Act, ROSCA, and EFTA by Defendants;

b. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, ROSCA, and EFTA, 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.

Respectfully submitted,

DAVID C. SHONKA
Acting General Counsel

WILLIAM H. EFRON
Regional Director

Dated: October 3, 2017

s/ *Brian N. Lasky*

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