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2008 NOV 20 PM 12:09
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

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8

9 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10 FEDERAL TRADE COMMISSION

11 Plaintiff,

12 v.

13 ULTRALIFE FITNESS, INC., dba
14 Pure Health Laboratories, Pure
Health Labs, and UltraBurn PM;
15 and TRU GENIX LABORATORIES,
LLC, dba eFitness Clubhouse,
16 eCurves Clubhouse;

17 NEIL P. WARDLE; PACE MANNION;
CHRISTOPHER J. WARDLE,-

18 Defendants.
19

CV 08-07655 DSF PJWx

COMPLAINT FOR INJUNCTIVE AND
OTHER EQUITABLE RELIEF

20
21 Plaintiff, the Federal Trade Commission, through its
22 undersigned attorneys, alleges as follows:

23 1. Plaintiff brings this action under Sections 5(a),
24 12, and 13(b) of the Federal Trade Commission Act ("FTC Act"),
25 15 U.S.C. §§ 45(a), 52, and 53(b), and the Electronic Fund
26 Transfer Act ("EFTA"), 15 U.S.C. § 1693 - 1693r, to secure
27 permanent injunctive relief, rescission of contracts and
28 restitution, disgorgement of ill-gotten gains, and other

1 equitable relief from Defendants for engaging in acts or
2 practices that violate Sections 5(a) and 12 of the FTC Act,
3 15 U.S.C. §§ 45(a) and 52, Section 907(a) of the EFTA, 15
4 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12
5 C.F.R. § 205.10(b).

6 **JURISDICTION AND VENUE**

7 2. This Court has subject matter jurisdiction over the
8 Federal Trade Commission's claims pursuant to 15 U.S.C.
9 §§ 45(a), 52, 53(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345.

10 3. Venue in the Central District of California is
11 proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b)
12 and (c).

13 **PLAINTIFF**

14 4. Plaintiff, Federal Trade Commission ("FTC" or
15 "Commission") is an independent agency of the United States
16 government created by statute, 15 U.S.C. §§ 41 et seq. The
17 FTC enforces the FTC Act, which prohibits unfair or deceptive
18 acts or practices in or affecting commerce. The FTC also
19 enforces the EFTA, which regulates the rights, liabilities,
20 and responsibilities of participants in electronic fund
21 transfer systems. The FTC may initiate federal district court
22 proceedings, through its own attorneys, to enjoin violations
23 of the FTC Act, and the EFTA, and to secure such other
24 equitable relief, including rescission of contracts,
25 restitution, and disgorgement of ill-gotten gains, as may be
26 appropriate in each case. 15 U.S.C. §§ 45(a) and 53b.

DEFENDANTS

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5. Defendant Ultralife Fitness, Inc., is a Utah corporation whose principal place of business is 857 West South Jordan Parkway, South Jordan, Utah 84095. Ultralife Fitness, Inc., does business as Pure Health Laboratories, Pure Health Labs, and UltraBurn PM. Ultralife Fitness, Inc., has engaged in the marketing of a hoodia weight loss dietary supplement, online fitness programs, and exercise devices. Ultralife Fitness, Inc., transacts or has transacted business in this district and throughout the United States.

6. Tru Genix Laboratories, LLC, is a Utah limited liability company whose principal place of business is 857 West South Jordan Parkway, South Jordan, Utah 84095. Tru Genix Laboratories, LLC, has done business as eFitness Clubhouse, and eCurves Clubhouse. Tru Genix Laboratories, LLC, has engaged in the marketing of a hoodia weight loss dietary supplement, and online fitness programs. Tru Genix Laboratories, LLC, transacts or has transacted business in this district and throughout the United States.

7. Defendant Neil P. Wardle is a director and incorporator of Ultralife Fitness, Inc., and a member and the registered agent for Tru Genix Laboratories, LLC. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, and/or participated in the acts and practices of Ultralife Fitness, Inc., and Tru Genix Laboratories, LLC. Neil P. Wardle transacts or has transacted business in this district.

1 8. Defendant Pace Mannion was the vice president of
2 Ultralife Fitness, Inc. At all times material to this
3 Complaint, acting alone or in concert with others, he
4 formulated, directed, controlled, and/or participated in the
5 acts and practices of Ultralife Fitness, Inc., and Tru Genix
6 Laboratories, LLC. Pace Mannion transacts or has transacted
7 business in this district.

8 9. Defendant Christopher J. Wardle is the chief
9 financial officer of Ultralife Fitness, Inc., and a member of
10 Tru Genix Laboratories, LLC. Christopher J. Wardle is the
11 brother of Defendant Neil P. Wardle. At all times material to
12 this Complaint, acting alone or in concert with others, he has
13 formulated, directed, controlled, and/or participated in the
14 acts and practices of Ultralife Fitness, Inc., and Tru Genix
15 Laboratories, LLC. Christopher J. Wardle transacts or has
16 transacted business in this district.

17 10. Defendants Ultralife Fitness, Inc., Tru Genix
18 Laboratories, LLC, Neil P. Wardle, Pace Mannion, and
19 Christopher J. Wardle have operated as a common enterprise to
20 advertise, market, promote, offer to sell, sell, or distribute
21 weight loss dietary supplements, online fitness programs, and
22 exercise devices.

23 **COMMERCE**

24 11. At all times material to this Complaint, Defendants'
25 course of business, including the acts and practices alleged
26 herein, have been and are in or affecting commerce, as
27 "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C.
28 § 44.

DEFENDANTS' COURSE OF CONDUCT

12. Since at least February 2005, Defendants advertised, marketed, promoted, offered to sell, sold or distributed weight loss dietary supplements, online fitness programs, or exercise devices through Internet banner and search engine ads, Internet sites, email solicitations, and inbound telemarketing calls. Defendants' advertisements most often offered consumers the opportunity to obtain a free supply of the weight loss dietary supplement hoodia as long as the consumer paid a modest shipping and handling fee, usually in the \$4-\$8 range. Defendants requested consumers' financial account information ostensibly to collect the shipping and handling fees.

13. However, consumers who agreed to receive the free supplement subsequently learned, commonly after they discovered an unfamiliar charge on their account statements, that Defendants had enrolled them into hoodia and fitness continuity programs at about, respectively, \$50 and \$30 per month, and then used the financial account information to collect the monthly fees.

14. Defendants marketed their offer through Internet banner and email solicitations, which commonly linked to websites Defendants used in their promotions, principally: www.ultraburnpm.com, www.trugenixhoodia.com, www.purehealthhoodia.com, www.purehealthlabs.com, www.pmburner.com, and <http://trugenix.com>.

15. One email solicitation, for example, stated the following:

1 The Diet Pill Recommended By Doctors. Hoodia Curbs
2 Your Appetite And Burns Fat Quickly And
3 Naturally!.... YES! WE GUARANTEE YOU WILL LOSE THE
4 WEIGHT AND KEEP IT OFF! TruGenix Hoodia will begin
5 working the first day...while you do nothing, the
6 ingredients begin absorbing into your body and you
7 will start to lose your appetite. Request your FREE
8 bottle of TruGenix Hoodia and to show you our
9 commitment to helping you achieve your weight loss
10 goals we will provide you with: A personalized diet
11 plan; Exercise tips; Body Mass Index calculator; and
12 more ALL FOR FREE. Fill out the form to receive your
13 FREE bottle today and our limited time fitness offer!
14 [link to website].

15 16. Defendants' websites spelled out the offers in more
16 detail. For example, the websites' home and landing pages
17 typically emphasized the weight reducing qualities of the
18 dietary supplement and stated that while the cost of a bottle
19 of the hoodia dietary supplement was \$49.95, for a limited
20 time, the company would give the consumer a free sample. The
21 following are examples of such advertising:

22
23 UltraBurn PM (with Hoodia), as seen on TV. Lose
24 Weight While You Sleep. Lose up to 10 pounds in 15
25 days by claiming your FREE 15 Day Trial Order!
26 UltraBurn PM will work for you! Get Your FREE 15 Day
27 Supply (Limited Quantity). Limited Time Offer -
28

1 Yours FREE. UltraBurn PM Normally \$49.95, Today
2 FREE!

3

4 Here is why UltraBurn PM is so effective:... Apple
5 Cider - Kick start your metabolism to burn more fat.
6 PM Blend without stimulants so it is safe and
7 effective to take at night. Burn's [sic] the Fat
8 while you sleep.

9

10 For people in a hurry the Night Time Fat Burner can
11 be just what is needed.... Three capsules are
12 excellent for keeping [sic] improving your health
13 while you are sleeping. No additional effort is
14 required. [www.ultraburnpm.com].

15
16 Pure Health Laboratories Hoodia, Get Your 14 Day
17 Supply Bottle For Free! The Diet Pill That's Shaping
18 The Nation. Start Losing Weight Now Quickly and
19 Naturally. Try It Free. Take the First Step. Order
20 Your FREE Trial Today. Instantly Starts Working.
21 Recommended by Doctors. 100% Natural, No Side
22 Effects. Best Selling Product. #1 Diet Product in
23 America. ORDER NOW.

24

25 Pure Health Labs Hoodia is effective 24 hours a day.
26 It works during the day and while you sleep at night.
27 The ingredients begin absorbing into your system and
28 you will wake feeling thinner [&] healthier....

1 [\www.bodygymfitness.com/z/ph3/?cy=9&pr=29&af=56&ad=72
2 and www.purehealthlabs.com].

3
4 TruGenix Hoodia. Originally \$49.95. You can get it
5 FREE For a limited time only! The Diet Pill
6 Recommended by Doctors. Hoodia Curbs Your Appetite
7 and Burns Fat Quickly and Naturally! Fill out the
8 form below and receive your Free Bottle.

9

10 TruGenix Hoodia will begin working the first
11 day...while you do nothing...you will start to lose
12 your appetite.

13

14 Ultraburn PM...raises metabolism.

15 [\[http://trugenix.com\]](http://trugenix.com)

16

17 Ultralife PM. The Ultimate Night Time Fat Burner.
18 As Seen On TV. Start Losing Weight Tonight!
19 Ultralife PM was \$49.95, Now FREE! (for a limited
20 time!). Yes, please send me my 30 day supply of
21 Ultralife PM for FREE!

22

23 UltraLife-PM is the ORIGINAL night time Fat Burner!
24 Our methods have been used for years by people
25 wanting to loss [sic] weight and they do it while
26 they sleep. Now the same doctor recommended Fat
27 Burner can be yours for free! [\[www.pmburner.com\]](http://www.pmburner.com)

1 17. The initial website order pages asked consumers to
2 disclose their name, email address, phone number, and postal
3 address in order to receive the free sample. Typically, no
4 fees or costs were mentioned on these order pages. These
5 pages also instructed consumers to click on a "Next Page" or
6 "Order Now" button to proceed to the second step of the
7 ordering process.

8 18. The second step included an oversized print
9 statement, such as "Your 15 day supply of UltraBurn PM is
10 FREE, you just pay \$4.87 for shipping." In smaller print, the
11 second step stated: "Here's What You'll be Getting! Your 15
12 day supply of UltraBurn PM is FREE, you just pay \$6.95 [sic]
13 for shipping. We're so confident of your success that we'll
14 even refund your shipping charges if you don't lose weight!"
15 In still smaller print the second step stated: "Product
16 Selection: The product you have selected to purchase is
17 **UltraBurn PM 30**. UltraBurnPM. Your credit card will be
18 billed: \$4.87. Your IP is: [redacted]. Charges will appear
19 from **UltraLaboratories, Inc.**" Defendants then asked for
20 consumers' credit card information, but they also accepted
21 debit card information. Typically, just below the request for
22 account information was the statement "I agree to the Terms
23 and Conditions," accompanied by a check off box. The "Terms
24 and Conditions" phrase was a web link to the "Terms and
25 Conditions" section of the website. Following the link was a
26 "Send My Free Trial" button, which the consumer used to
27 complete the transaction.

28

1 19. The "Terms and Conditions" section of the website,
2 when printed, usually consisted of eleven 8.5 inch by 11 inch
3 pages of dense text through which consumers had to navigate to
4 determine the actual terms and conditions that Defendants
5 wished to impose upon them. The section typically stated that
6 by ordering the dietary supplement, the customer agreed to a
7 "14 Day Free Trial" (as opposed to accepting a "free sample")
8 of the dietary supplement that required the purchase of a two
9 or three month supply at about \$49 a month, unless the
10 consumer canceled within the trial period. Defendants did not
11 disclose that the consumer would be enrolled into a continuity
12 program for the dietary supplement and would be billed this
13 amount on a monthly basis. In instances where Defendants
14 debited the consumer's bank account, Defendants did not obtain
15 a writing signed or similarly authenticated authorization from
16 the consumer for the recurring debits. Defendants continued
17 to bill the consumer's credit card account or debit the
18 consumer's bank account beyond the two or three months if the
19 consumer failed to cancel within the trial period.

20 20. Several paragraphs below the statement recited in
21 paragraph 19, the Terms and Conditions section also typically
22 stated that the consumer had agreed to become a member of
23 Defendants' online fitness continuity program, e.g.,
24 eCurvesClubhouse.com or eFitnessClubhouse.com at approximately
25 \$30 per month unless the consumer canceled. In instances
26 where Defendants debited the consumer's bank account,
27 Defendants did not obtain a writing signed or similarly
28 authenticated authorization from the consumer for the

1 recurring debits. Defendants continued to debit the
2 consumer's bank account or bill the consumer's credit card
3 account if the consumer failed to cancel. Additionally, the
4 Terms and Conditions section also typically stated that if the
5 consumer initiated a chargeback, Defendants would impose a \$30
6 chargeback fee, refer the account to collections, and impose
7 another \$150 fee if the collection account was sent to an
8 attorney.

9 21. Through most of the life of the offer, Defendants'
10 websites did not adequately disclose the material terms of the
11 continuity plans or their substantial charges. Prior to mid-
12 2006, Defendants' continuity plans and their charges were
13 disclosed, if at all, only in the Terms and Conditions
14 section, which consumers could reach only through
15 inconspicuous web links. The size, location, and prominence
16 of the links were not commensurate with the importance of the
17 material information that consumers needed in order to make an
18 informed decision whether to participate in Defendants'
19 offers. These defects rendered the notices ineffective and
20 inadequate.

21 22. Absent an injunction against such practices, there
22 is a substantial likelihood that Defendants will return to
23 their former marketing methods to increase sales and revenue.

24 23. Also, in numerous instances, Defendants breached the
25 terms of their continuity plans. Defendants did not allow
26 consumers to obtain, try, or use the weight loss dietary
27 supplement for the promised trial period before Defendants
28 withdrew money from, or assessed fees against, consumers'

1 accounts. Defendants withdrew funds or assessed fees: (a)
2 before consumers obtained the dietary supplement from
3 Defendants; (b) after consumers obtained the dietary
4 supplement from Defendants but before the trial period ended;
5 or (c) in situations where consumers never obtained the
6 dietary supplement from Defendants.

7 24. Defendants also promoted their continuity plan
8 offers through inbound telephone calls with consumers who
9 called Defendants in response to their Internet banner and
10 email advertisements. During these telephone calls,
11 Defendants' representatives made the same "free trial"
12 representations that were made on the websites' home, landing,
13 and order pages. Moreover, salespersons routinely represented
14 that, unless consumers authorized them, no fees beyond the
15 shipping and handling charges would be imposed and no
16 additional products would be sent. However, the sales
17 representatives failed to disclose that consumers would be
18 enrolled in the dietary supplement and online fitness
19 continuity programs and that corresponding charges would be
20 assessed.

21 25. Due to Defendants' misrepresentations and inadequate
22 disclosures, in numerous instances consumers were unaware that
23 Defendants imposed fees against consumers' accounts in excess
24 of the shipping and handling charges. In numerous instances,
25 while routinely reviewing their credit and checking account
26 statements, consumers found the unauthorized continuity plan
27 charges or withdrawals.

28

1 26. Like their continuity plan terms, Defendants'
2 cancellation and refund policy terms were not clearly and
3 conspicuously disclosed. The only location of these
4 disclosures on Defendants' websites was on the "Terms and
5 Conditions" pages. Those pages represented that consumers
6 could cancel their continuity plan enrollment only by sending
7 a letter by certified mail or by cancelling online within the
8 free trial periods, and that attempted cancellations by email
9 or voicemail would not be accepted. Additionally, Defendants'
10 telemarketers routinely failed to clearly and conspicuously
11 disclose information about cancellations or refunds.

12 27. Consumers who attempted to obtain refunds for the
13 unauthorized charges and cancel the enrollments met several
14 obstacles. Numerous consumers had a difficult time reaching
15 Defendants. Once contact with a customer service
16 representative ("CSR") was made and consumers requested
17 refunds for unauthorized and unrecognized charges, they were
18 routinely told the request for a free sample also enrolled
19 them into a dietary supplement continuity program, which the
20 unrecognized charges covered. Also, in many instances
21 consumers were not informed that obtaining the free sample
22 also constituted enrollment into a fitness club continuity
23 program. If consumers persisted in complaining about the
24 unrecognized charges, CSRs often agreed to cancel the
25 enrollment (in one of the continuity programs), but declined
26 to issue a refund. Many consumers questioned the CSR and
27 specifically asked if all programs and pending charges had
28 been canceled. CSRs often confirmed the blanket cancellation

1 and absence of pending charges. However, contrary to that
2 representation, in many instances additional continuity plan
3 charges were made to consumers' accounts.

4 28. Defendants also used other tactics to prevent
5 cancellations. For example, when consumers followed a CSR's
6 instructions to use a particular method to cancel, e.g., by
7 website, consumers later found that their requests were
8 denied. Many consumers who attempted to cancel over the
9 Internet found they needed login identifiers or passwords that
10 they had not received from Defendants. In addition, CSRs
11 frequently refused to accept telephone cancellation requests.

12 29. The result of these actions by Defendants was that a
13 large number of cancellations were either delayed or were
14 never processed, which resulted in unauthorized charges.

15 **THE FEDERAL TRADE COMMISSION ACT**

16 30. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
17 provides that "unfair or deceptive acts or practices in or
18 affecting commerce, are hereby unlawful." The Commission also
19 enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which
20 prohibits false advertisements for food, drugs, devices,
21 services or cosmetics in or affecting commerce.

22 **VIOLATIONS OF THE FTC ACT**

23 **COUNT I-Failure to Disclose Material Terms of Continuity Plans**

24 31. In numerous instances since February 2005, in
25 connection with the advertisement, marketing, promotion,
26 offering for sale, sale, or distribution of dietary
27 supplements, online fitness programs, and other products,
28 Defendants represented, expressly or by implication, that

1 consumers could order a "free" or "trial" sample and would
2 incur only a small cost (e.g., \$4.97) for shipping and
3 handling.

4 32. Defendants failed to disclose or disclose adequately
5 to consumers the material terms and conditions of the offer
6 for a "free" or "trial" sample, including:

7 (a) that consumers who ordered the free or trial
8 sample would be enrolled in one or more continuity programs
9 for one or more products;

10 (b) that consumers' checking or credit account
11 information would be used to debit their bank accounts or bill
12 their credit card accounts to pay the continuity plans' fees;

13 (c) the cost of additional shipments;

14 (d) that consumers had to separately cancel each
15 continuity program to avoid further shipments and charges; and

16 (e) the means consumers had to use to cancel.

17 33. In light of the representation set forth in
18 Paragraph 31, Defendants' failure to disclose or to disclose
19 adequately the material information set forth in Paragraph 32
20 constitutes a deceptive act or practice in violation of
21 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

22 **COUNT II-Misrepresentations of Material Facts**

23 34. In numerous instances since February 2005, in
24 connection with the advertisement, marketing, promotion,
25 offering for sale, sale, or distribution of dietary
26 supplements, online fitness programs, and other products,
27 Defendants represented, expressly or by implication, that:

28

1 (a) they would allow consumers to obtain and use
2 Defendants' dietary supplements during a trial period before
3 Defendants withdrew money from or assessed a fee against
4 consumers' financial accounts for amounts other than shipping
5 and handling; and

6 (b) they would honor consumers' requests to cancel
7 their memberships in Defendants' continuity programs.

8 35. In truth and in fact, in numerous instances
9 Defendants:

10 (a) withdrew money from and assessed fees against
11 consumers' financial accounts for amounts other than shipping
12 and handling prior to allowing consumers to obtain and use
13 Defendants' dietary supplements for the stated trial period;
14 and

15 (b) did not honor consumers' requests to cancel their
16 memberships in Defendants' continuity programs.

17 36. Therefore, the making of the representations set
18 forth in Paragraph 34 constitutes deceptive practices in
19 violation of Sections 5(a) of the FTC Act, 15 U.S.C. § 45(a).

20 **COUNT III-Unauthorized Billing**

21 37. In numerous instances since February 2005, in
22 connection with the advertisement, marketing, promotion,
23 offering for sale, sale, or distribution of dietary
24 supplements, online fitness programs, and other products,
25 Defendants caused charges to be submitted for payment to
26 financial institutions without obtaining the express informed
27 consent of consumers.

28

1 38. Defendants' practice of causing charges to be
2 submitted for payment to financial institutions without
3 obtaining the consumers' express informed consent caused or
4 was likely to cause substantial injury to consumers that was
5 not reasonably avoidable by consumers themselves and was not
6 outweighed by countervailing benefits to consumers or
7 competition.

8 39. Therefore, Defendants' practice as alleged in
9 Paragraph 37 is unfair in violation of Section 5(a) of the FTC
10 Act, 15 U.S.C. § 45(a).

11 **COUNT IV-False and Deceptive Weight-loss Claims**

12 40. In numerous instances since February 2005, in
13 connection with the advertisement, marketing, promotion,
14 offering for sale, sale, or distribution of TruGenix Hoodia,
15 Ultralife PM, Pure Health Laboratories Hoodia, and UltraBurn
16 PM (with Hoodia), Defendants represented, expressly or by
17 implication, that:

18 (a) TruGenix Hoodia, Ultralife PM, Pure Health
19 Laboratories Hoodia, and UltraBurn PM (with Hoodia) cause
20 substantial weight loss with no additional effort, including
21 reducing caloric intake or increasing physical activity,
22 required;

23 (b) TruGenix Hoodia, Ultralife PM, Pure Health
24 Laboratories Hoodia, and UltraBurn PM (with Hoodia) cause long
25 term or permanent weight loss;

26 (c) UltraBurn PM (with Hoodia) enables users to lose
27 10 pounds in 15 days;

28

1 (d) TruGenix Hoodia, Ultralife PM, Pure Health
2 Laboratories Hoodia, and UltraBurn PM (with Hoodia) cause fat
3 loss;

4 (e) Ultralife PM, Pure Health Laboratories Hoodia,
5 and UltraBurn PM (with Hoodia) raise a user's metabolism
6 enough to cause significant weight loss; and

7 (f) TruGenix Hoodia, Ultralife PM, Pure Health
8 Laboratories Hoodia, and UltraBurn PM (with Hoodia) curb the
9 user's appetite enough to cause significant weight loss.

10 41. The representations set forth in Paragraph 40 were
11 false or were not substantiated at the time the
12 representations were made. Among other things, there are no
13 reliable scientific studies of Defendants' weight-loss
14 products, or the ingredients in those products, to support the
15 effects claimed in Defendants' advertising. Therefore, the
16 making of the representations set forth in Paragraph 40,
17 above, constitutes a deceptive practice, and the making of
18 false advertisements, in or affecting commerce, in violation
19 of Sections 5(a) and 12 of the Federal Trade Commission Act,
20 15 U.S.C. §§ 45(a) and 52.

21 **THE ELECTRONIC FUND TRANSFER ACT AND REGULATION E**

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

27 43. Section 205.10(b) of Regulation E, 12 C.F.R.
28

1 § 205.10(b), provides that "[p]reauthorized electronic fund
2 transfers from a consumer's account may be authorized only by
3 a writing signed or similarly authenticated by the consumer.
4 The person that obtains the authorization shall provide a copy
5 to the consumer."

6 **COUNT V-Violations of the Electronic Fund**

7 **Transfer Act and Regulation E**

8 44. In numerous instances since February 2005, in
9 connection with the advertisement, marketing, promotion,
10 offering for sale, sale, or distribution of dietary
11 supplements, online fitness programs, and other products,
12 Defendants debited consumers' bank accounts on a recurring
13 basis without obtaining a writing signed or similarly
14 authenticated authorization from consumers for preauthorized
15 electronic fund transfers from the accounts, thereby violating
16 Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section
17 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

18 45. Pursuant to the EFTA, 15 U.S.C. § 1693o(c), every
19 violation of the EFTA and Regulation E constitutes a violation
20 of the FTC Act.

21 46. By engaging in violations of the EFTA and Regulation
22 E as alleged in Paragraph 44, Defendants have engaged in
23 violations of the FTC Act.

24 **CONSUMER INJURY**

25 47. Numerous consumers throughout the United States have
26 suffered substantial monetary loss as a result of Defendants'
27 unlawful acts or practices. In addition, Defendants have been
28 unjustly enriched as a result of their unlawful practices.

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

4 **THIS COURT'S POWER TO GRANT RELIEF**

5 48. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
6 empowers this Court to grant injunctive and other ancillary
7 relief, including rescission of contracts and restitution, and
8 the disgorgement of ill-gotten gains, to prevent and remedy
9 violations of any provision of law enforced by the Commission.

10 **PRAYER FOR INJUNCTIVE AND MONETARY RELIEF**

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

14 1. Award Plaintiff such preliminary and ancillary relief
15 as may be necessary to avert the likelihood of consumer injury
16 during the pendency of this action and to preserve the
17 possibility of effective final relief;

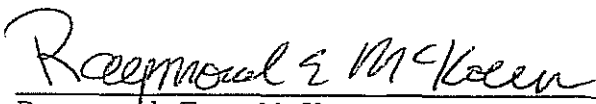
18 2. Enter a permanent injunction to prevent future
19 violations of the FTC Act, the EFTA, and Regulation E;

20 3. Award such relief as the Court finds necessary to
21 redress injury to consumers resulting from Defendants'
22 violations of the FTC Act, the EFTA and Regulation E,
23 including but not limited to, rescission or reformation of
24 contracts, restitution, the refund of monies paid, and the
25 disgorgement of ill-gotten monies; and

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1 4. Award Plaintiff the costs of bringing this action, as
2 well as such other and additional relief as the Court may
3 determine to be just and proper.

4 Dated: *Nov. 17, 2008* Respectfully submitted,

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7 Raymond E. McKown
8 Attorney for Plaintiff
9 Federal Trade Commission

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