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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 FEDERAL TRADE COMMISSION)

11 Plaintiff,)

12 v.)

) CV. CV08-07655 DSF (PJWx)

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

) **[Proposed] FINAL JUDGMENT AND**
) **ORDER FOR PERMANENT INJUNCTION**
) **AND OTHER EQUITABLE RELIEF**

16 NEIL P. WARDLE; CHRISTOPHER J.)
17 WARDLE; and PACE MANNION;)

18 Defendants.)
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1 The parties, Plaintiff Federal Trade Commission and Defendants
2 Ultralife Fitness, Inc., dba Pure Health Labs, and UltraBurn PM;
3 Tru Genix Laboratories, LLC, dba eFitness Clubhouse and eCurves
4 Clubhouse; Neil P. Wardle; Christopher J. Wardle; and Pace Mannion;
5 having agreed in the Stipulated Final Judgment and Order for
6 Permanent Injunction and Other Equitable Relief to entry of this
7 Order, hereby request that the Court enter the same to resolve all
8 matters in dispute in this action. Defendants have waived service
9 of the Summons and Complaint.

10 **FINDINGS**

11 1. This Court has jurisdiction over the subject matter of
12 this action and all parties hereto. Venue in the Central District
13 of California is proper.

14 2. The activities of Defendants are in or affecting commerce,
15 as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

16 3. The Complaint states a claim upon which relief may be
17 granted against Defendants under Sections 5(a), 12, and 13(b) of
18 the FTC Act, 15 U.S.C. §§ 45(a), 52, and 53(b), and Section 907(a)
19 of the Electronic Fund Transfer Act, 15 U.S.C. § 1693e(a), and
20 Section 205.10(b) of Regulation E, 12 C.F.R. Section 205.10(b).

21 4. Defendants waive: (a) all rights to seek review or
22 otherwise challenge or contest the validity of this Order; (b) any
23 claim Defendants may have against the Commission, its employees,
24 representatives, or agents; (c) all claims under the Equal Access
25 to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121,
26 110 Stat. 847, 863-64, and (d) any rights to attorneys' fees that
27 may arise under said provision of law.

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1 6. The FTC and Defendants stipulate and agree to this Order,
2 without trial or adjudication of any issue of fact or law, to
3 settle and resolve all matters in dispute arising from the
4 Complaint to the date of entry of this Order. Defendants do not
5 admit any of the allegations set forth in the Complaint, other than
6 jurisdictional facts.

7 7. Entry of this Order is in the public interest.

8 **DEFINITIONS**

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

11 1. "Billing Information" means any data that enables any
12 person to access a consumer's account, such as a credit card,
13 checking, savings, share or similar account, utility bill, mortgage
14 loan account, or debit card.

15 2. "Clearly and Conspicuously" means:

16 a. in print communications, the message shall be in a
17 type size and location sufficiently noticeable for an ordinary
18 consumer to read and comprehend it, in print that contrasts with
19 the background against which it appears;

20 b. in communications disseminated orally, the message
21 shall be delivered in a volume and cadence sufficient for an
22 ordinary consumer to hear and comprehend it;

23 c. in communications made through an electronic medium
24 (such as television, video, radio, and interactive media such as
25 the Internet, online services and software), the message shall be
26 presented simultaneously in both the audio and visual portions of
27 the communication. In any communication presented solely through
28 visual or audio means, the message may be made through the same

1 means in which the communication is presented. In any
2 communication disseminated by means of an interactive electronic
3 medium such as software, the Internet, or online services, a
4 disclosure must be unavoidable and presented prior to the consumer
5 incurring any financial obligation. Any audio message shall be
6 delivered in a volume and cadence sufficient for an ordinary
7 consumer to hear and comprehend it. Any visual message shall be of
8 a size and shade, with a degree of contrast to the background
9 against which it appears and shall appear on the screen for a
10 duration and in a location, sufficiently noticeable for an ordinary
11 consumer to read and comprehend it; and

12 d. regardless of the medium used to disseminate it, the
13 message shall be in understandable language and syntax. Nothing
14 contrary to, inconsistent with, or in mitigation of the message
15 shall be used in any communication.

16 3. "Competent and Reliable Scientific Evidence" means tests,
17 analyses, research, studies, or other evidence based on the
18 expertise of professionals in the relevant area, that have been
19 conducted and evaluated in an objective manner by persons qualified
20 to do so, using procedures generally accepted in the profession to
21 yield accurate and reliable results.

22 4. "Defendants" means Ultralife Fitness, Inc., dba Pure
23 Health Laboratories, Pure Health Labs, and UltraBurn PM; Tru Genix
24 Laboratories, LLC, dba eFitness Clubhouse and eCurves Clubhouse;
25 Neil P. Wardle; Christopher J. Wardle; and Pace Mannion.

26 5. "Business Entity Defendants" means Ultralife Fitness,
27 Inc., dba Pure Health Laboratories, Pure Health Labs, and UltraBurn
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1 PM; and Tru Genix Laboratories, LLC, dba eFitness Clubhouse and
2 eCurves Clubhouse.

3 6. "Individual Defendants" means Neil P. Wardle, Christopher
4 J. Wardle, and Pace Mannion.

5 7. "Endorsement" means any advertising message (including
6 verbal statements, demonstrations, or depictions of the name,
7 signature, likeness or other identifying personal characteristics
8 of an individual or the name or seal of an organization) which
9 message consumers are likely to believe reflects the opinions,
10 beliefs, findings, or experience of a party other than the
11 sponsoring advertiser. The party whose opinions, beliefs,
12 findings, or experience the message appears to reflect will be
13 called the endorser and may be an individual, group or institution.

14 8. "Food" means:

- 15 a. articles used for food or drink for man or other
- 16 animals;
- 17 b. chewing gum; and
- 18 c. articles used for components of any such article.

19 9. "Drug" means:

- 20 a. articles recognized in the official United States
- 21 Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United
- 22 States, or official National Formulary, or any supplement to any of
- 23 them;
- 24 b. articles intended for use in the diagnosis, cure,
- 25 mitigation, treatment, or prevention of disease in man or other
- 26 animals;
- 27 c. articles (other than food) intended to affect the
- 28 structure or any function of the body of man or other animals; and

1 d. articles intended for use as a component of any
2 article specified in clause (a), (b), or (c); but does not include
3 devices or their components, parts, or accessories.

4 10. "Device" means an instrument, apparatus, implement,
5 machine, contrivance, implant, in vitro reagent, or other similar
6 or related article, including any component, part, or accessory,
7 which is:

8 a. recognized in the official National Formulary, or
9 the United States Pharmacopeia, or any supplement to them;

10 b. intended for use in the diagnosis of disease or
11 other conditions, or in the cure, mitigation, treatment, or
12 prevention of disease, in man or other animals, or

13 c. intended to affect the structure or any function of
14 the body of man or other animals, and which does not achieve any of
15 its principal intended purposes through chemical action within or
16 on the body of man or other animals and which is not dependent upon
17 being metabolized for the achievement of any of its principal
18 intended purposes.

19 11. "Negative Option Feature" means, in an offer or
20 agreement to sell or provide any product or service, a provision
21 under which the consumer's silence or failure to take an
22 affirmative action to reject products or services or to cancel the
23 agreement is interpreted by the seller or provider as acceptance of
24 the offer. Agreements with Negative Option Features include, but
25 are not limited to: (i) free or introductory price trial offers in
26 which the consumer receives a product or service for free or at a
27 nominal or introductory price for an initial period and will incur
28 an obligation to pay or pay a greater amount for the product or

1 service if he or she does not take affirmative action to cancel,
2 reject, or return the product or service before the end of that
3 period; (ii) continuity plans in which, subsequent to the
4 consumer's agreement to the plan, the seller or provider
5 automatically ships products to a consumer unless the consumer
6 notifies the seller or provider within a certain time not to ship
7 the products; and (iii) automatic renewal plans in which the seller
8 or provider automatically renews the agreement and charges the
9 consumer unless the consumer cancels before the renewal.

10 12. "Preauthorized Electronic Fund Transfer" as defined by
11 the Electronic Fund Transfer Act, 15 U.S.C. § 1693a(9), means an
12 electronic fund transfer authorized in advance to recur at
13 substantially regular intervals.

14 **I. PROHIBITION ON MISREPRESENTATIONS**

15 **IT IS THEREFORE ORDERED** that Defendants and Defendants'
16 successors, assigns, officers, agents, servants, salespersons,
17 employees, independent contractors, attorneys, and those persons in
18 active concert or participation with them, whether acting directly
19 or through any sole proprietorship, partnership, limited liability
20 company, corporation, subsidiary, branch, division, or other
21 entity, who receive actual notice of this Order by personal service
22 or otherwise, in connection with the advertising, promoting,
23 offering for sale, or sale of any dietary supplement, food, drug,
24 device, or health-related program or service, or of any product or
25 service by means of a negative option feature, are hereby
26 permanently restrained and enjoined from misrepresenting, or
27 assisting others in misrepresenting, expressly or by implication,
28 any material fact, including but not limited to:

1 A. That a product or service is offered on a "free," "risk-
2 free," "trial," or "no obligation" basis, or words of similar
3 import, denoting or implying the absence of any obligation on the
4 part of the recipient of the offer to affirmatively act in order to
5 avoid charges;

6 B. The amount that a consumer will be charged or billed;

7 C. That a consumer will not be charged or billed;

8 D. The timing or manner of any charge or bill (including but
9 not limited to the date of the charge and whether it will be a
10 credit card charge or a checking account debit);

11 E. The length of any trial period that consumers receive
12 before being charged or billed;

13 F. Through, among other things, mailings, email, billings,
14 credit card charges and checking account debits, that a consumer
15 purchased or agreed to purchase a product or service, or that a
16 transaction has been authorized by a consumer;

17 G. That use of a product burns a significant amount of fat
18 while the user sleeps;

19 H. That use of a product can cause substantial weight loss
20 with no additional effort required;

21 I. That use of a product can cause weight loss of two pounds
22 or more a week for a month or more without diet or exercise; and

23 J. That use of a product can safely enable consumers to lose
24 more than three pounds per week for more than four weeks.

25 **II. REQUIRED DISCLOSURES**

26 **IT IS FURTHER ORDERED** that Defendants and Defendants'
27 successors, assigns, officers, agents, servants, salespersons,
28 employees, independent contractors, attorneys, and those persons in

1 active concert or participation with them, whether acting directly
2 or through any sole proprietorship, partnership, limited liability
3 company, corporation, subsidiary, branch, division, or other
4 entity, who receive actual notice of this Order by personal service
5 or otherwise, in connection with the advertising, promoting,
6 offering for sale, or sale of any product or service, are hereby
7 permanently restrained and enjoined from failing to clearly and
8 conspicuously disclose, before consumers are asked to pay money,
9 submit consideration, or reveal billing information: all fees and
10 costs; all material restrictions, limitations, or conditions
11 applicable to the purchase, receipt, or use of the product or
12 service that is the subject of the offer (including any promotion
13 associated with free products or services, or products or services
14 available on a trial basis); and all material terms and conditions
15 of any offer with a negative option feature, including but not
16 limited to:

17 A. The dollar amount of the first payment and when it will be
18 charged, withdrawn, or become due; the dates or frequency (e.g.,
19 monthly, quarterly) of all subsequent charges or payment(s); and
20 the dollar amount or range of costs of all subsequent charges or
21 payments;

22 B. If a withdrawal will be made or a charge assessed at the
23 end of a trial period unless the consumer cancels: this fact; when
24 the trial period begins; the length of the trial period; the
25 specific steps and means by which a cancellation request must be
26 submitted; and the date by or time period within which a
27 cancellation request must be received to avoid a charge;

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1 C. If products are automatically shipped to a consumer or a
2 membership, subscription, or agreement for products or services
3 that are offered on a periodic basis is automatically renewed
4 unless the consumer provides notification within a certain time not
5 to ship or renew: this fact; the length of the subsequent renewal
6 period; the manner in which a notice not to ship or renew must be
7 submitted; the date by or time period within which a notice not to
8 ship or renew must be received to avoid shipment or renewal (e.g.,
9 two weeks after the consumer is advised of an upcoming shipment);
10 and the telephone number, email address, or street address to which
11 such a notice must be directed;

12 D. The fact, if true, that the billing information
13 Defendants already possess, either because the consumer previously
14 provided it to a Defendant, or a Defendant obtained it from another
15 source, will be used to bill or charge the consumer; and

16 E. All material conditions, limitations and restrictions on
17 the ability of the consumer to use any product or service that is
18 offered "free," "risk-free," on a "trial," "discounted," "reduced
19 in price," or "no obligation" basis, or words of similar import
20 denoting or implying the absence of any obligation on the part of
21 the recipient of such offer to pay or pay a greater amount for such
22 product or service or to take affirmative action to avoid incurring
23 payment or increased payment obligations, whether such product or
24 service is the subject of the offer to the consumer or such product
25 or service is offered to a consumer who accepts an offer for other
26 products or services.

1 **III. PROHIBITIONS RELATING TO THE USE OF BILLING INFORMATION**

2 **IT IS FURTHER ORDERED** that Defendants and Defendants'
3 successors, assigns, officers, agents, servants, salespersons,
4 employees, independent contractors, attorneys, and those persons in
5 active concert or participation with them, whether acting directly
6 or through any sole proprietorship, partnership, limited liability
7 company, corporation, subsidiary, branch, division, or other
8 entity, who receive actual notice of this Order by personal service
9 or otherwise, in connection with the advertising, promoting,
10 offering for sale, or sale of any product or service, are hereby
11 permanently restrained and enjoined from directly or indirectly
12 using billing information to obtain payment without first obtaining
13 the express informed consent of the consumer, which shall include
14 express informed consent to be charged for the product or service
15 using a specified billing account, and the clear and conspicuous
16 disclosure of the information identified in Section II, above, in
17 close proximity to the consumer's express consent to purchase such
18 products or services. In connection with an offer or agreement
19 with a negative option feature, the following requirements must be
20 met to evidence express informed consent:

21 A. One of the following means must be used to evidence that
22 the consumer has given express informed consent:

23 1. Obtaining the consumer's express written
24 authorization to purchase the product or service that is the
25 subject of the transaction and the consumer's authorization to
26 assess a charge against a specified account for payment. Such
27 authorization must include the consumer's signature (the term
28 "signature" includes a verifiable electronic or digital form of

1 signature, to the extent such form of signature is recognized as a
2 valid signature under applicable federal law or state contract
3 law); or

4 2. Obtaining the consumer's express oral authorization
5 to purchase the product or service that is the subject of the
6 transaction and the consumer's authorization to assess a charge
7 against a specified account for payment that is audio-recorded, as
8 follows:

9 a. the recording must evidence that the consumer,
10 during that transaction, at a minimum, has provided the last four
11 (4) digits of the account number to be charged;

12 b. the recording must evidence that the disclosure
13 requirements of Section II, above, have been complied with;

14 c. the recording must include the entirety of the
15 transaction;

16 d. the recording can be identified and located by
17 either the consumer's name or telephone number; and

18 e. a copy of the recording is provided upon request
19 to the consumer, the consumer's bank, credit or debit card company
20 or other billing entity, state attorney general or consumer
21 protection agency, and the Commission; or

22 B. For any transaction involving a service, within the lesser
23 of ten days after the date of the transaction or half the time of
24 any trial period, the consumer must be sent written confirmation of
25 the transaction, identified in a clear and conspicuous manner on
26 the outside of the envelope, via first class mail that includes all
27 the information that is required to be disclosed pursuant to
28 Section II, above;

1 C. For any transaction involving a product, the first product
2 shipment must contain written confirmation of the transaction that
3 includes all of the information that is required to be disclosed
4 pursuant to Section II, above, and a clear and conspicuous
5 statement of the procedures by which the consumer can cancel or
6 obtain a refund; and

7 D. At least thirty (30) days prior to renewing a consumer's
8 membership, subscription, or agreement to purchase for any service
9 (in the case of a membership, subscription, or agreement whose term
10 is six months or longer) and prior to the submission for payment of
11 a consumer's billing information for such services, a consumer must
12 be sent written confirmation of such renewal, identified in a clear
13 and conspicuous manner on the outside of the envelope, via first
14 class mail, that includes all of the information that is required
15 to be disclosed pursuant to Subsections II.A, B, and D of this
16 Order, above, and a clear and conspicuous statement of the
17 procedures by which the consumer can cancel such renewal.

18 **IV. MONITORING TO ENSURE COMPLIANCE WITH THE ORDER**

19 **IT IS FURTHER ORDERED** that Defendants and Defendants'
20 successors, assigns, officers, agents, servants, salespersons,
21 employees, independent contractors, attorneys, and those persons in
22 active concert or participation with them, whether acting directly
23 or through any sole proprietorship, partnership, limited liability
24 company, corporation, subsidiary, branch, division, or other
25 entity, who receive actual notice of this Order by personal service
26 or otherwise, in connection with the advertising, promoting,
27 offering for sale, or sale of any product or service, are hereby
28 permanently restrained and enjoined from failing to take reasonable

1 steps sufficient to monitor and ensure that all Defendants' agents,
2 representatives, employees, independent contractors, and contract
3 telemarketers comply with the requirements of Sections I-III
4 and V-IX. Such reasonable steps shall include but are not limited
5 to the following:

6 A. Establishing and following a procedure for receiving and
7 responding to consumer complaints that allege conduct that
8 constitutes a violation of the FTC Act or this Order;

9 B. Ascertaining the number and nature of consumer complaints
10 in which each employee or independent contractor is involved;

11 C. Promptly and fully investigating any consumer complaint;
12 and

13 D. Creating and retaining records demonstrating compliance
14 with this Section, as required by Section XV, including but not
15 limited to, copies of all procedures for receiving and responding
16 to consumer complaints, all documents relating to investigations of
17 consumer complaints, and all documents demonstrating how Defendants
18 responded to or addressed each consumer complaint;

19 Provided however, that this subsection does not authorize or
20 require Defendants to take any action that violates any federal,
21 state, or local law.

22 **V. PROHIBITIONS RELATING TO REFUNDS AND CANCELLATIONS**

23 **IT IS THEREFORE ORDERED** that Defendants and Defendants'
24 successors, assigns, officers, agents, servants, salespersons,
25 employees, independent contractors, attorneys, and those persons in
26 active concert or participation with them, whether acting directly
27 or through any sole proprietorship, partnership, limited liability
28 company, corporation, subsidiary, branch, division, or other

1 entity, who receive actual notice of this Order by personal service
2 or otherwise, in connection with the advertising, promoting,
3 offering for sale, or sale of any product or service, are hereby
4 permanently restrained and enjoined:

5 A. From failing to disclose, clearly and conspicuously,
6 before consumers are asked to pay money, submit consideration, or
7 reveal billing information: (1) if a representation is made about a
8 refund or cancellation policy, all material terms and conditions of
9 such policy; or (2) if there is a policy of not making refunds or
10 cancellations; this fact;

11 B. If a policy allowing consumers to cancel or obtain a
12 refund has been disclosed to the consumer, from failing to honor
13 any request that complies with such policy; provided however, with
14 respect to any money-back guarantee offered by Defendants, from
15 failing to provide, within seven (7) business days of a Defendant's
16 receipt of a valid refund request, a full refund of the purchase
17 price of the product or service; and

18 C. From misrepresenting, or assisting others in
19 misrepresenting, expressly or by implication, the terms and
20 conditions of any refund or cancellation policy or policies,
21 including but not limited to, that consumers who accept an offer
22 can easily cancel to avoid the assessment of a charge.

23 **VI. COMPLIANCE WITH THE ELECTRONIC FUND TRANSFER ACT**

24 **IT IS FURTHER ORDERED** that Defendants and Defendants'
25 successors, assigns, officers, agents, servants, salespersons,
26 employees, independent contractors, attorneys, and those persons in
27 active concert or participation with them, whether acting directly
28 or through any sole proprietorship, partnership, limited liability

1 company, corporation, subsidiary, branch, division, or other
2 entity, who receive actual notice of this Order by personal service
3 or otherwise, in connection with the advertising, promoting,
4 offering for sale, or sale of any product or service, are hereby
5 permanently restrained and enjoined, in connection with any
6 consumer who purchases any product or service subsequent to the
7 date of this Order and who uses a debit card or other means of
8 electronic funds transfer, from:

9 A. Failing to obtain written authorization for preauthorized
10 electronic fund transfers from a consumer's account before
11 initiating any preauthorized electronic fund transfer, as required
12 by Section 907(a) of the Electronic Funds Transfer Act, 15 U.S.C.
13 § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R.
14 § 205.10(b), as more fully set out in Section 205.10(b) of the
15 Federal Reserve Board's Official Staff Commentary to Regulation E,
16 12 C.F.R. § 205.10(b) Supp. I, or as it may hereafter be amended;
17 and

18 B. Failing to maintain procedures reasonably adapted to avoid
19 an unintentional failure to obtain written authorization for a
20 preauthorized electronic fund transfer, as set out in Section
21 205.10(b) of the Federal Reserve Board's Official Staff Commentary
22 to Regulation E, 12 C.F.R. § 205.10(b) Supp. I, or as it may
23 hereafter be amended.

24 **VII. FALSE WEIGHT-LOSS REPRESENTATIONS PROHIBITED**

25 **IT IS FURTHER ORDERED** that Defendants and Defendants'
26 successors, assigns, officers, agents, servants, salespersons,
27 employees, independent contractors, attorneys, and those persons in
28 active concert or participation with them, whether acting directly

1 or through any sole proprietorship, partnership, limited liability
2 company, corporation, subsidiary, branch, division, or other
3 entity, who receive actual notice of this Order by personal service
4 or otherwise, in connection with the advertising, labeling,
5 manufacturing, promoting, offering for sale, or sale of TruGenix
6 Hoodia, Ultralife PM, Pure Health Laboratories Hoodia, UltraBurn PM
7 (with Hoodia), or any dietary supplement, food, or non-prescription
8 drug or device, are hereby permanently restrained and enjoined from
9 making any representation, expressly or by implication, including
10 through the use of endorsements or product names, that such
11 product:

12 A. Causes substantial weight loss with no additional effort,
13 including, but not limited to, reducing caloric intake or
14 increasing physical activity; or

15 B. Causes permanent weight loss.

16 **VIII. REPRESENTATIONS PROHIBITED UNLESS TRUE AND SUBSTANTIATED**

17 **IT IS FURTHER ORDERED** that Defendants and Defendants'
18 successors, assigns, officers, agents, servants, salespersons,
19 employees, independent contractors, attorneys, and those persons in
20 active concert or participation with them, whether acting directly
21 or through any sole proprietorship, partnership, limited liability
22 company, corporation, subsidiary, branch, division, or other
23 entity, who receive actual notice of this Order by personal service
24 or otherwise, in connection with the advertising, labeling,
25 manufacturing, promoting, offering for sale, or sale of any dietary
26 supplement, food, drug, device, or health-related program or
27 service, are hereby permanently restrained and enjoined from making
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1 any representation, expressly or by implication, including through
2 the use of endorsements or product names:

3 A. That any such product, service, or program:

- 4 1. causes weight loss;
- 5 2. causes weight loss with no additional effort,
6 including, but not limited to, reducing caloric intake or
7 increasing physical activity;
- 8 3. causes users to lose any specified amount of weight
9 within a particular time frame;
- 10 4. reduces or eliminates fat;
- 11 5. reduces or curbs appetite;
- 12 6. increases metabolism; or
- 13 7. causes permanent weight loss; or

14 B. Regarding the health benefits, performance, efficacy,
15 safety, or side effects of any such product, service, or
16 program;

17
18 unless, the representation is true, not misleading, and, at the
19 time the representation is made, Defendants possess and rely upon
20 competent and reliable scientific evidence that substantiates the
21 representation.

22 **IX. FDA APPROVED CLAIMS**

23 **IT IS FURTHER ORDERED** that:

24 A. Nothing in this order shall prohibit Defendants from
25 making any representation for any drug that is permitted in
26 labeling for such drug under any tentative final or final standard
27 promulgated by the Food and Drug Administration, or under any new
28 drug application approved by the Food and Drug Administration;

1 B. Nothing in this order shall prohibit Defendants from
2 making any representation for any product that is specifically
3 permitted in labeling for such product by regulations promulgated
4 by the Food and Drug Administration pursuant to the Nutrition
5 Labeling and Education Act of 1990; and

6 C. Nothing in this order shall prohibit Defendants from
7 making any representation for any device that is permitted in
8 labeling for such device under any new medical device application
9 approved by the Food and Drug Administration.

10 **X. MONETARY JUDGMENT**

11 **IT IS FURTHER ORDERED** that judgment for equitable monetary
12 relief in favor of the Federal Trade Commission against Defendants,
13 jointly and severally, is hereby entered in the amount of nine
14 million nine hundred six thousand four hundred seventy-six dollars
15 (\$9,906,476), which is the amount of consumer injury that the
16 Federal Trade Commission alleges was caused by Defendants.
17 However, this judgment shall be suspended, subject to the
18 provisions of Section XI, upon the completed payments identified in
19 Subsections X.A, X.B, X.C, and X.D:

20 A. Defendant Neil P. Wardle shall pay fifty thousand dollars
21 (\$50,000) to the Commission. Upon Neil P. Wardle's execution of
22 this Order he shall deposit twenty-five thousand dollars (\$25,000)
23 into an escrow account held by attorney Kenneth R. Ivory. Within
24 five (5) days after entry of this Order by the Court, the first
25 twenty-five thousand dollar (\$25,000) installment shall be paid to
26 the Commission. Within ninety (90) days after entry of this Order
27 by the Court, Neil P. Wardle shall pay a second twenty-five
28 thousand dollar (\$25,000) installment to the Commission.

1 B. Defendant Pace Mannion shall pay fifty thousand dollars
2 (\$50,000) to the Commission. Upon Pace Mannion's execution of this
3 Order he shall deposit fifty thousand dollars (\$50,000) into an
4 escrow account held by attorney Kenneth R. Ivory. Within five (5)
5 days after entry of this Order by the Court the fifty thousand
6 dollars (\$50,000) shall be paid to the Commission;

7 C. Defendant Christopher J. Wardle shall pay fifty thousand
8 dollars (\$50,000) to the Commission. Upon Christopher J. Wardle's
9 execution of this Order he shall deposit twenty-five thousand
10 dollars (\$25,000) into an escrow account held by attorney Kenneth
11 R. Ivory. Within five (5) days after entry of this Order by the
12 Court, the first twenty-five thousand dollar (\$25,000) installment
13 shall be paid to the Commission. Within ninety (90) days after
14 entry of this Order by the Court, Christopher J. Wardle shall pay a
15 second twenty-five thousand dollar (\$25,000) installment to the
16 Commission;

17 D. After Neil P. Wardle and Pace Mannion make the payments to
18 the Commission required by Subsections X.A and X.B, but no later
19 than two hundred seventy (270) days after entry of this Order by
20 the Court, Neil P. Wardle shall transfer to the Internal Revenue
21 Service one hundred two thousand nine hundred twenty-eight dollars
22 (\$102,928), and Defendant Pace Mannion shall transfer to the
23 Internal Revenue Service one hundred thousand eight hundred forty-
24 seven dollars (\$100,847) as payment for each Defendant's federal
25 income tax liability for the 2006 tax year. Within five (5) days
26 of such payments, Neil P. Wardle and Pace Mannion shall provide
27 proof of the payments to the FTC.
28

1 E. If, on the two hundred seventy-first (271st) day after
2 entry of this Order by the Court, Defendant Neil P. Wardle has not
3 made the full payment to the IRS described in Subsection X.D, he
4 shall pay the amount of such nonpayment or underpayment, along with
5 the amount of any interest or credit he receives on account of such
6 nonpayment or underpayment, to the FTC within two hundred eighty-
7 five (285) days after entry of this Order;

8 F. If, on the two hundred seventy-first (271st) day after
9 entry of this Order by the Court, Defendant Pace Mannion has not
10 made the full payment to the IRS described in Subsection X.D, he
11 shall pay the amount of such nonpayment or underpayment, along with
12 the amount of any interest or credit he receives on account of such
13 nonpayment or underpayment, to the FTC within two hundred eighty-
14 five (285) days after entry of this Order;

15 G. If Defendant Neil P. Wardle or Defendant Pace Mannion fail
16 to pay the amounts each is required to pay pursuant to Subsections
17 X.E and X.F, then judgment in the amount of nine million nine
18 hundred six thousand four hundred seventy-six dollars (\$9,906,476)
19 shall be entered and will become immediately due and payable, less
20 any amounts already paid, against that defaulting Defendant.
21 Provided however, that such defaulting Defendant shall have a
22 fourteen (14) day period within which to cure his default.

23 H. Defendants shall pay all amounts due to the FTC under this
24 Order in cash by electronic funds transfer to the Commission, or to
25 such agent as the Commission may direct, pursuant to instructions
26 provided by the Commission. Defendants' payments to the FTC
27 totaling one hundred fifty thousand dollars (\$150,000) shall be
28 made notwithstanding that Defendants have made no admission of

1 liability and the Court has made no such finding in connection with
2 this Order;

3 I. All funds paid pursuant to this Section shall be deposited
4 into a fund administered by the Commission or its agent to be used
5 for equitable relief, including but not limited to restitution to
6 consumers and any attendant expenses for the administration of such
7 equitable relief. In the event that direct restitution to
8 consumers is wholly or partially impracticable or funds remain
9 after restitution is completed, the Commission may apply any
10 remaining funds for such other equitable relief (including consumer
11 information remedies) as it determines to be reasonably related to
12 Defendants' practices as alleged in the Complaint. Any funds not
13 used for such equitable relief will be deposited with the United
14 States Treasury as disgorgement. Defendants shall have no right to
15 challenge the Commission's choice of remedies under this Section.
16 Defendants shall have no right to contest the manner of
17 distribution chosen by the Commission. No portion of any payment
18 under the judgment herein shall be deemed a payment of any fine,
19 penalty, or punitive assessment;

20 J. Defendants acknowledge and agree that all money paid
21 pursuant to this Order is irrevocably paid to the Commission for
22 purposes of settlement between the parties, and Defendants shall
23 make no claim or demand for return of the funds, directly or
24 indirectly, through counsel or otherwise, and in the event of
25 bankruptcy of any Defendant, such Defendant acknowledges that the
26 funds are not part of the debtor's estate, nor does the estate have
27 any claim or interest therein;

1 K. Defendants shall provide the Commission, or its agent,
2 within thirty (30) days of such a request, the name, last known
3 address, telephone number, e-mail address, date of purchase, total
4 amount paid to Defendants, amount of any full or partial refund,
5 and the complete file record, including computer records and
6 correspondence for each consumer who paid Defendants or any entity
7 owned or controlled, in full or in part, by Defendants, for dietary
8 supplements, fitness programs, exercise devices, or other products
9 or services marketed or sold by Defendants from February 2005
10 through the date of entry of this Order, and any further
11 information the Commission deems necessary to effectuate any
12 restitution program for consumers;

13 L. Unless already done so, each Defendant is hereby required,
14 in accordance with 31 U.S.C. § 7701, to furnish to the Commission
15 their respective taxpayer identifying numbers (social security
16 numbers or employer identification numbers), which will be used for
17 purposes of collecting and reporting on any delinquent amount
18 arising out of such Defendant's relationship with the government;

19 M. Any Redress Administrator shall destroy all records
20 relating to the distribution of this judgment six (6) years after
21 the last of the funds are credited, delivered to the Commission, or
22 delivered to the FTC Treasury account, provided that no records
23 shall be destroyed unless and until a representative of the
24 Commission has received and approved the final accounting report
25 pertaining to Defendants' payment. Records shall be destroyed in
26 accordance with disposal methods and procedures to be specified by
27 the Commission. The Commission may, in its sole discretion,
28

1 require that such records, in whole or in part, be transferred, in
2 lieu of destruction, to the Commission;

3 N. Pursuant to Section 604(1) of the Fair Credit Reporting
4 Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may
5 furnish a consumer report concerning any Defendant to the FTC,
6 which shall be used for purposes of collecting and reporting on any
7 delinquent amount arising out of this Order.

8 **XI. RELIANCE ON DISCLOSURES**

9 **IT IS FURTHER ORDERED** that:

10 A. The Commission's agreement to this Order is expressly
11 premised upon the truthfulness, accuracy, and completeness of the
12 individual and corporate financial statements and other documents
13 and information provided by Defendants as identified in the
14 February 20, 2008 letter from defense counsel Kenneth Ivory to
15 Commission counsel Raymond E. McKown. Such data constitute
16 material information relied upon by the Commission in negotiating
17 and agreeing to the terms of this Order;

18 B. If, upon motion by the Commission, this Court finds that a
19 Defendant has (1) failed to disclose any material asset,
20 materially, misrepresented the value of any asset, or made any
21 other material misrepresentation in or omission from the submitted
22 financial statements, documents, or information identified in the
23 February 20, 2008 letter from defense counsel Kenneth Ivory to
24 Commission counsel Raymond E. McKown, or (2) failed to make timely
25 payment pursuant to Subsections X.A, X.B, or X.C, then, as to that
26 Defendant, judgment in the amount of nine million nine hundred six
27 thousand four hundred seventy-six dollars (\$9,906,476) shall be
28 entered and will become immediately due and payable, less any

1 amounts already paid; provided however, that in all other respects
2 this Order shall remain in full force and effect unless otherwise
3 modified by the Court;

4 C. Any proceedings instituted under this Section XI are in
5 addition to, and not in lieu of, any other civil or criminal
6 remedies as may be provided by law, including any other proceedings
7 that the FTC may initiate to enforce this Order; and

8 D. For purposes of Sections X and XI, and any subsequent
9 proceedings to enforce payment, the Defendants agree that the facts
10 as alleged in the Complaint filed in this action shall be taken as
11 true, without further proof, in any subsequent litigation filed by
12 or on behalf of the Commission to collect any unpaid amount or
13 otherwise enforce its rights pursuant to this Order, including a
14 non-dischargeability complaint filed in any bankruptcy case.

15 **XII. PROHIBITION ON COLLECTION OF PAYMENTS AND DISCLOSURE OF**
16 **CUSTOMER INFORMATION**

17 **IT IS FURTHER ORDERED** that Defendants and Defendants'
18 successors, assigns, officers, agents, servants, salespersons,
19 employees, independent contractors, attorneys, and those persons in
20 active concert or participation with them, whether acting directly
21 or through any sole proprietorship, partnership, limited liability
22 company, corporation, subsidiary, branch, division, or other
23 entity, who receive actual notice of this Order by personal service
24 or otherwise, in connection with the advertising, promoting,
25 offering for sale, or sale of any dietary supplement or fitness
26 products, are hereby permanently restrained and enjoined from:

27 A. Causing any withdrawal, assessment of a fee, or payments
28 to be made against any consumer account, or otherwise causing

1 collection of, or attempts to collect, payment, directly or
2 indirectly, from a consumer, for any order for any such product
3 offered or provided to consumers where the purported authorization
4 for such order occurred prior to the effective date of this Order;

5 B. Selling, renting, leasing, transferring or otherwise
6 disclosing the name, address, birth date, telephone number, email
7 address, Social Security number, credit or debit card number, bank
8 account number, or other financial or identifying personal
9 information of any person from whom or about whom such information
10 was obtained in connection with activities alleged in the
11 Complaint; and

12 C. Benefitting from or using the name, address, birth date,
13 telephone number, Social Security number, credit or debit card
14 number, bank account number, or other financial or identifying
15 personal information of any person from whom or about whom any
16 Defendant obtained such information in connection with activities
17 alleged in the Complaint;

18 Provided however, that such financial or identifying personal
19 information may be disclosed to a law enforcement agency or as
20 required by any law, regulation, or court order.

21 **XIII. COMPLIANCE MONITORING**

22 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and
23 investigating compliance with any provision of this Order:

24 A. Within fifteen (15) days of receipt of written notice from
25 a representative of the Commission, Neil P. Wardle, Christopher J.
26 Wardle, Pace Mannion, Ultralife Fitness, Inc., and Tru Genix
27 Laboratories, LLC, shall submit additional written reports, sworn
28 to under penalty of perjury; produce documents for inspection and

1 copying; appear for deposition; and/or provide entry during normal
2 business hours to any business location in such Defendant's
3 possession or direct or indirect control, to inspect the business
4 operation;

5 B. In addition, the Commission is authorized to monitor
6 compliance with this Order by all other lawful means, including but
7 not limited to the following:

8 1. obtaining discovery from any person, without further
9 leave of Court, using the procedures prescribed by Fed. R. Civ. P.
10 30, 31, 33, 34, 36, and 45;

11 2. posing as consumers and suppliers to Neil P. Wardle,
12 Christopher J. Wardle, Pace Mannion, Ultralife Fitness, Inc., or
13 Tru Genix Laboratories, LLC, Defendants' employees, or any other
14 entity managed or controlled in whole or in part by Neil P. Wardle,
15 Christopher J. Wardle, Pace Mannion, Ultralife Fitness, Inc., or
16 Tru Genix Laboratories, LLC, without the necessity of
17 identification or prior notice; and

18 C. Neil P. Wardle, Christopher J. Wardle, Pace Mannion,
19 Ultralife Fitness, Inc., and Tru Genix Laboratories, LLC, shall
20 permit representatives of the Commission to interview any employer,
21 consultant, independent contractor, representative, agent, or
22 employee who has agreed to such an interview, relating in any way
23 to any conduct subject to this Order. The person interviewed may
24 have counsel present;

25 Provided however, that nothing in this Order shall limit the
26 Commission's lawful use of compulsory process, pursuant to Sections
27 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any
28 documentary material, tangible things, testimony, or information

1 relevant to unfair or deceptive acts or practices in or affecting
2 commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

3 **XIV. COMPLIANCE REPORTING BY DEFENDANTS**

4 **IT IS FURTHER ORDERED** that, in order that compliance with the
5 provisions of this Order may be monitored:

6 A. For a period of five (5) years from the date of entry of
7 this Order,

8 1. Neil P. Wardle, Christopher J. Wardle, and Pace
9 Mannion shall notify the Commission of the following:

10 a. any changes in residence, mailing addresses, and
11 telephone numbers of said Defendants, within ten (10) days of the
12 date of such change;

13 b. any changes in employment status (including
14 self-employment) of Neil P. Wardle, Christopher J. Wardle, or Pace
15 Mannion, and any change in the ownership interest of Neil P.
16 Wardle, Christopher J. Wardle, or Pace Mannion, in any business
17 entity, within ten (10) days of the date of such change. Such
18 notice shall include the name and address of each business that
19 such Defendant is affiliated with, employed by, creates or forms,
20 or performs services for; a statement of the nature of the
21 business; and a statement of said Defendant's duties and
22 responsibilities in connection with the business or employment; and

23 c. any change in Neil P. Wardle, Christopher J.
24 Wardle, or Pace Mannion's name or use of any aliases or fictitious
25 names;

26 2. Neil P. Wardle, Christopher J. Wardle, Pace Mannion,
27 Ultralife Fitness, Inc., and Tru Genix Laboratories, LLC, shall
28 notify the Commission of any changes in the corporate structure of

1 any Business Entity Defendant or of any company or organization
2 that Neil P. Wardle, Christopher J. Wardle, or Pace Mannion
3 directly or indirectly controls, or has an ownership interest in,
4 that may affect compliance obligations arising under this Order,
5 including but not limited to a dissolution, assignment, sale,
6 merger, or other action that would result in the emergence of a
7 successor entity; the creation or dissolution of a subsidiary,
8 parent, or affiliate that engages in any acts or practices that are
9 subject to this Order; the filing of a bankruptcy petition; or a
10 change in the corporate name or address, at least thirty (30) days
11 prior to such change, provided that, with respect to any proposed
12 change in the corporation about which Defendants learn of less than
13 thirty (30) days prior to the date such action is to take place,
14 Defendants shall notify the Commission as soon as is practicable
15 after obtaining such knowledge;

16 B. One hundred eighty (180) days after the date of entry of
17 this Order, Neil P. Wardle, Christopher J. Wardle, Pace Mannion,
18 Ultralife Fitness, Inc., and Tru Genix Laboratories, LLC, each
19 shall provide a written report to the FTC, sworn to under penalty
20 of perjury, setting forth in detail the manner and form in which
21 they have complied and are complying with this Order. This report
22 shall include, but not be limited to:

23 1. for Neil P. Wardle, Christopher J. Wardle, and Pace
24 Mannion:

25 a. their then-current residence address, mailing
26 addresses, and telephone numbers;

27 b. their then-current employment and business
28 addresses and telephone numbers, a description of the business

1 activities of each such employer or business, and the title and
2 responsibilities of said Individual Defendants for each such
3 employer or business; and

4 c. any other changes required to be reported under
5 subparagraph A of this Section XIV;

6 2. for all Defendants:

7 a. a copy of each acknowledgment of receipt of this
8 Order obtained pursuant to Section XVI;

9 b. written expressions of consumers' consent
10 required by Section XII.A; and

11 c. any other changes required to be reported under
12 subparagraph A of this Section XIV;

13 C. For the purposes of this Order, Defendants shall, unless
14 otherwise directed by the Commission's authorized representatives,
15 mail all written notifications to the Commission to:

16 Associate Director, Division of Enforcement
17 Federal Trade Commission
18 601 New Jersey Avenue, N. W.
Washington, D.C. 20580
RE: FTC v. Ultralife Fitness et al.

19 D. For purposes of the compliance reporting and monitoring
20 required by this Order, the Commission is authorized to communicate
21 directly with Defendants.

22 **XV. RECORD KEEPING**

23 **IT IS FURTHER ORDERED** that, for a period of eight (8) years
24 from the date of entry of this Order, in connection with any
25 business where Neil P. Wardle, Christopher J. Wardle, Pace Mannion,
26 Ultralife Fitness, Inc., or Tru Genix Laboratories, LLC, is the
27 majority owner of the business or directly or indirectly manages or
28 controls the business, each Defendant and its agents, employees,

1 officers, corporations, successors, and assigns, and those persons
2 in active concert or participation with them who receive actual
3 notice of this Order by personal service or otherwise, are hereby
4 restrained and enjoined from failing to create and retain the
5 following records:

6 A. Accounting records that reflect the cost of products or
7 services sold, revenues generated, and the disbursement of such
8 revenues;

9 B. Personnel records accurately reflecting: the name,
10 address, and telephone number of each person employed in any
11 capacity by such business, including as an independent contractor;
12 that person's job title or position; the date upon which the person
13 commenced work; and the date and reason for the person's
14 termination, if applicable;

15 C. Customer files containing the names, addresses, phone
16 numbers, dollar amounts paid, quantity of items or services
17 purchased, and description of items or services purchased, to the
18 extent such information is obtained in the ordinary course of
19 business;

20 D. Complaint and refund requests (whether received directly,
21 indirectly or through any third party) and any responses to those
22 complaints or requests;

23 E. Copies of all sales scripts, training materials,
24 advertisements, or other marketing materials;

25 F. Each tape recording of a telemarketing call made pursuant
26 to Section III.A.2, above; and

27 G. All records and documents necessary to demonstrate full
28 compliance with each provision of this Order, including but not

1 limited to, copies of all procedures for receiving and responding
2 to consumer complaints, all documents relating to investigations of
3 consumer complaints, all documents demonstrating how Defendants
4 responded to or addressed each consumer complaint as required by
5 Section IV, all documents evidencing whether refunds were provided
6 as required by Section V.B, all acknowledgments of receipt of this
7 Order as required by Sections XVI and XVII, all reports submitted
8 to the FTC pursuant to Section XIV, and all written expressions of
9 consumers' consent as required by Sections III.A.1 and XII.A.

10 **XVI. DISTRIBUTION OF ORDER BY DEFENDANTS**

11 **IT IS FURTHER ORDERED** that, for a period of five (5) years
12 from the date of entry of this Order, Defendants shall deliver
13 copies of this Order as directed below:

14 A. Business Entity Defendants: Ultralife Fitness, Inc., and
15 Tru Genix Laboratories, LLC, must deliver a copy of this Order to
16 all of its principals, officers, directors, and managers. Each
17 Business Entity Defendant also must deliver a copy of this Order to
18 all of its employees, agents, and representatives who engage in
19 conduct related to the subject matter of this Order. For current
20 personnel, delivery shall be within five (5) days of service of
21 this Order upon Defendants. For new personnel, delivery shall
22 occur prior to them assuming their responsibilities;

23 B. Individual Defendants as control person: For any business
24 that Neil P. Wardle, Christopher J. Wardle, or Pace Mannion
25 controls, directly or indirectly, or in which any Individual
26 Defendant has a majority ownership interest, such Individual
27 Defendant must deliver a copy of this Order to all principals,
28 officers, directors, and managers of that business. Said

1 Individual Defendants must also deliver copies of this Order to all
2 employees, agents, and representatives of that business who engage
3 in conduct related to the subject matter of this Order. For
4 current personnel, delivery shall be within five (5) days of
5 service of this Order upon Defendants. For new personnel, delivery
6 shall occur prior to them assuming their responsibilities;

7 C. Neil P. Wardle, Christopher J. Wardle, or Pace Mannion as
8 employee or non-control person: For any business where such
9 Individual Defendant is not a controlling person of a business but
10 otherwise engages in conduct related to the subject matter of this
11 Order, the Individual Defendant must deliver a copy of this Order
12 to all principals and managers of such business before engaging in
13 such conduct; and

14 D. Neil P. Wardle, Christopher J. Wardle, Pace Mannion,
15 Ultralife Fitness, Inc., and Tru Genix Laboratories, LLC, must
16 secure a signed and dated statement acknowledging receipt of this
17 Order, within thirty (30) days of delivery, from all persons
18 receiving a copy of the Order pursuant to this Section.

19 **XVII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

20 **IT IS FURTHER ORDERED** that each Defendant and Relief
21 Defendant, within five (5) business days of receipt of this Order
22 as entered by the Court, must submit to the Commission a truthful
23 sworn statement acknowledging receipt of this Order. An example of
24 such a form is provided as Attachment A.

25 **XVIII. COSTS AND ATTORNEYS' FEES**

26 **IT IS FURTHER ORDERED** that each party shall bear its own costs
27 and attorneys' fees incurred in connection with this action.
28

XIX. RETENTION OF JURISDICTION

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

IT IS SO ORDERED.

Date:

Honorable Dale S. Fischer
United States District Judge

ATTACHMENT A

UNITED STATES DISTRICT COURT

_____ DISTRICT OF _____

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DEFENDANT, et al.

Defendants.

CIVIL ACTION NO.

AFFIDAVIT OF
DEFENDANT -----
ACKNOWLEDGING RECEIPT OF
ORDER

[Name of defendant], being duly sworn, hereby states and affirms as follows:

1. My name is _____. My current residence address is _____ . I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in FTC v. Defendant, et al. (United States District Court for the _____ District of _____).

3. On [date], I received a copy of the [state full name of the Final Order as it appears on the Order itself], which was signed by the Honorable [name of U.S. District Judge] and entered by the Court on [date of entry of Order].

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [date], at [city and state].

[Full name of defendant]

State of _____, City of _____

Subscribed and sworn to before me this ____ day of _____, 2005 ____.

Notary Public
My Commission Expires:

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