

1 JONATHAN E. NUECHTERLEIN
2 GENERAL COUNSEL

3 MATTHEW H. WERNZ
4 mwernz@ftc.gov
5 Federal Trade Commission
6 55 West Monroe Street, Suite 1825
7 Chicago, Illinois 60603
8 Tel: (312) 960-5634; Fax: (312) 960-5600

9 RAYMOND E. MCKOWN (Cal. Bar No. 150975)
10 rmckown@ftc.gov
11 Federal Trade Commission
12 10877 Wilshire Boulevard, Suite 700
13 Los Angeles, California 90024
14 Tel: (310) 824-4343; Fax: (310) 824-4380

15 Attorneys for Plaintiff
16 FEDERAL TRADE COMMISSION

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 FEDERAL TRADE COMMISSION,

20 Plaintiff,

21 v.

22 SALE SLASH, LLC, a California
23 limited liability company,

24 PURISTS CHOICE LLC, a California
25 limited liability company,

26 ARTUR BABAYAN, individually and
27 as an owner and manager of SALE
28 SLASH, LLC and PURISTS CHOICE
LLC, and

Case No. _____

Complaint for Permanent Injunction
and Other Equitable Relief

1 VAHE HAROUTOUNIAN,
2 individually and doing business as
3 PRISMA PROFITS,

4 Defendants.

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

6 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
7 Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and Section 7(a)
8 of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of
9 2003 (“CAN-SPAM Act”), 15 U.S.C. § 7706(a), to obtain temporary, preliminary,
10 and permanent injunctive relief, restitution, the refund of monies paid,
11 disgorgement of ill-gotten monies, immediate access, appointment of a receiver
12 and other equitable relief for Defendants’ acts or practices in violation of Section
13 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and the CAN-SPAM Act,
14 15 U.S.C. §§ 7701-7713.

15
16
17
18
19 **JURISDICTION AND VENUE**

20 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
21 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57(b), and 7706(a).

22 3. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and
23 15 U.S.C. § 53(b).
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

PLAINTIFF

4. 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 the CAN-SPAM Act as if statutory violations of the CAN-SPAM Act “were an unfair or deceptive act or practice proscribed under Section 18(a)(1)(B) of the [FTC Act] (15 U.S.C. 57a(a)(1)(B)).” 15 U.S.C. § 7706(a).

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

23
24
25
26
27
28

DEFENDANTS

6. Defendant Sale Slash, LLC (“Sale Slash”) is a California limited liability company with its registered address at 530 South Lake Avenue, #501, Pasadena, California 91101. Sale Slash transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint,

1 acting alone or in concert with others, Sale Slash has advertised, marketed,
2 distributed, or sold weight-loss products to consumers throughout the United
3 States.
4

5 7. Defendant Purists Choice LLC (“Purists Choice”) is a California
6 limited liability company with its registered address at 225 South Lake Avenue,
7 #300, Pasadena, California 91101. Purists Choice transacts or has transacted
8 business in this district and throughout the United States. At all times material to
9 this Complaint, acting alone or in concert with others, Purists Choice has
10 advertised, marketed, distributed, or sold weight-loss products to consumers
11 throughout the United States.
12
13

14 8. Defendant Artur Babayan is the owner and a manager of Sale Slash
15 and Purists Choice. At all times material to this Complaint, acting alone or in
16 concert with others, he has formulated, directed, controlled, had the authority to
17 control, or participated in the acts and practices of Sale Slash and Purists Choice,
18 including the acts and practices set forth in this Complaint. Defendant Babayan
19 resides in this district and, in connection with the matters alleged herein, transacts
20 or has transacted business in this district and throughout the United States. Among
21 other things, Defendant Babayan has controlled the operation of websites where
22 Defendants advertise, market, and sell weight-loss products, has controlled the
23 processing of payments from consumers victimized by Defendants’ practices, and
24
25
26
27
28

1 has controlled payments to third-party marketers who advertise and market
2 Defendants' weight-loss products, including marketers who initiate unsolicited
3 commercial electronic mail messages advertising Defendants' weight-loss
4 products.
5

6 9. Defendant Vahe Haroutounian, who also does business as Prisma
7 Profits, is an individual who resides in Tujunga, California. In connection with
8 the matters alleged herein, Defendant Haroutounian transacts or has transacted
9 business in this district and throughout the United States. Among other things,
10 Defendant Haroutounian has formulated, directed, controlled, had the authority to
11 control, or participated in the advertising and marketing of Defendants Sale Slash's
12 and Purists Choice's Weight-Loss Products, including the advertising and
13 marketing through banner advertisements, unsolicited commercial electronic mail
14 messages, and other means.
15
16
17
18

19 10. Defendants Sale Slash and Purists Choice (collectively, "Corporate
20 Defendants") have operated as a common enterprise while engaging in the
21 deceptive acts and practices and other violations of law alleged below. Defendants
22 have conducted the business practices described below through interrelated
23 companies that have common ownership, officers, managers, business functions,
24 and office locations, and that commingled funds. Because these Corporate
25 Defendants have operated as a common enterprise, each of them is jointly and
26
27
28

1 severally liable for the acts and practices alleged below. Defendant Babayan has
2 formulated, directed, controlled, had the authority to control, or participated in the
3 acts and practices of the Corporate Defendants that constitute the common
4 enterprise.
5

6 COMMERCE

7
8 11. At all times material to this Complaint, Defendants have maintained a
9 substantial course of trade in or affecting commerce, as “commerce” is defined in
10 Section 4 of the FTC Act, 15 U.S.C. § 44.
11

12 DEFINITIONS

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

16 13. “**Electronic mail address**” means a destination, commonly expressed
17 as a string of characters, consisting of a unique user name or mailbox (commonly
18 referred to as the “local part”) and a reference to an Internet domain (commonly
19 referred to as the “domain part”), whether or not displayed, to which an electronic
20 mail message can be sent or delivered. 15 U.S.C. § 7702(5).
21

22 14. “**Commercial electronic mail message**” means any electronic mail
23 message the primary purpose of which is the commercial advertisement or
24 promotion of a commercial product or service (including the content on an Internet
25 website operated for commercial purposes). 15 U.S.C. § 7702(2).
26
27
28

1 15. “**Header Information**” means the source, destination, and routing
2 information attached to an electronic mail message, including the originating
3 domain name and originating electronic mail address, and any other information
4 that appears in the line identifying, or purporting to identify, a person initiating the
5 message. 15 U.S.C. § 7702(8).
6

7 16. “**Initiate**,” when used with respect to a commercial electronic mail
8 message, means to originate or transmit such message or to procure the origination
9 or transmission of such message. 15 U.S.C. § 7702(9).
10

11 17. “**Procure**,” when used with respect to the initiation of a commercial
12 electronic mail message, means intentionally to pay or provide other consideration
13 to, or induce, another person to initiate such a message on one’s behalf. 15 U.S.C.
14 § 7702(12).
15

16 18. “**Protected Computer**” means a computer which is used in or
17 affecting interstate or foreign commerce or communication, including a computer
18 located outside the United States that is used in a manner that affects interstate or
19 foreign commerce or communication of the United States. 15 U.S.C. § 7702(13).
20

21 19. “**Sender**” means a person who initiates a commercial electronic mail
22 message and whose product, service, or Internet Web site is advertised or
23 promoted by the message. 15 U.S.C. § 7702(16).
24
25
26
27
28

1 among search engine results. These advertisements attract consumers to websites
2 where Defendants advertise, market, promote, and sell the Weight-Loss Products.
3 These banner advertisements entice consumers with claims like, “1 Tip for a tiny
4 belly: Cut down on a bit of your belly every day by following this 1 old weird tip,”
5 or “Garcinia Cambogia Exposed – Miracle Diet or Scam?”
6

7
8 24. Since at least 2013, Defendants also have sent, or have hired affiliate
9 marketers who have sent, unsolicited commercial electronic mail messages to
10 consumers that appear to have been sent by consumers’ friends, family members,
11 or other contacts. These messages are in fact paid advertisements promoting
12 Defendants’ Weight-Loss Products and contain links that lead consumers to
13 Defendants’ websites.
14
15

16 25. Consumers who click on links in these banner advertisements and
17 unsolicited commercial electronic mail messages are taken to fake news websites,
18 which are owned and operated by Defendants’ affiliate marketers. These fake
19 news websites appear to be objective news reports about Defendants’ Weight-Loss
20 Products. In fact, they are paid advertisements that advance false weight-loss
21 claims and contain links to Defendants’ websites, where consumers can purchase
22 Defendants’ products.
23
24
25
26
27
28

1 Breaking news: [link]

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

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

4
5 31. The hyperlinks included in these messages, if clicked, take consumers
6 to a fake news website.

7
8 32. Defendants are "initiators" of these commercial electronic mail
9 messages, which they either have originated or transmitted themselves, or have
10 procured the origination or transmission of, through payments or other
11 consideration, or inducements.

12
13 33. Defendants also are "senders" of these commercial electronic mail
14 messages, which they have initiated and which advertise or promote Defendants'
15 websites.

16
17 34. Defendants' commercial electronic mail messages are not sent by the
18 persons whose names or electronic mail addresses are listed in the header
19 information and subject heading. These messages are not sent by persons known
20 to the recipients of the messages. Rather, in numerous instances, Defendants have
21 initiated commercial electronic mail messages, described above, containing false or
22 misleading header information—specifically, header information suggesting that
23 the emails were sent by persons known to the recipients. In numerous instances,
24 Defendants have initiated these commercial electronic mail messages from email
25
26
27
28

1 accounts that have been illegally accessed or to contact lists that have been
2 illegally accessed.

3 35. Moreover, in numerous instances, Defendants have initiated
4 commercial electronic mail messages that contain subject headers that misrepresent
5 the content or subject matter of the message. In particular, the subject headers of
6 these commercial electronic mail messages misrepresent that the same purported
7 sender who is falsely identified in the email's header has composed the email.
8 These subject headers state, for example, "From [purported sender]."
9
10

11 36. In numerous instances, Defendants have initiated commercial
12 electronic mail messages that do not include any notification to recipients of their
13 ability to decline receiving future commercial electronic mail messages from
14 Defendants, and do not include a reply email address or other mechanism that
15 recipients can use to decline receiving future commercial electronic mail messages
16 from Defendants.
17
18

19 37. In numerous instances, Defendants have initiated commercial
20 electronic mail messages that do not include a valid physical postal address of the
21 sender.
22
23

24 Fake News Websites

25 38. Consumers who click on the hyperlinks in Defendants'
26 advertisements, including their banner advertisements and commercial electronic
27
28

1 mail messages, are taken to websites designed to look like news reports about one
2 of the Weight-Loss Products. The websites purport to provide objective
3 investigative reports about one of the Weight-Loss Products. The supposed
4 authors of the reports claim to have tested the products on themselves and
5 experienced dramatic weight loss, such as 23 pounds in 1 month or 36 pounds in 9
6 weeks.
7

8
9 39. Defendants' unsolicited commercial electronic mail messages contain
10 links to fake news websites with addresses like diet.com-wb4.net and diet.com-
11 8s9.net. These websites include headlines such as "Insider Report: Oprah and
12 Other Celebrities Lose 4 lbs / Week of Belly Fat With This Secret That Our
13 Readers Can Try Now!" The websites often include the names, logos, or images
14 of Oprah Winfrey and the television show "The Doctors," suggesting that the
15 Weight-Loss Products have been reviewed or endorsed by those personalities.
16
17

18
19 40. Surrounding the reports are what appear to be profiles of ordinary
20 consumers who have tried the Weight-Loss Products, like "Kristy Miami, FL" and
21 "Jennifer from San Diego, CA." These profiles set forth additional claims of
22 significant weight loss, such as 28 pounds in 5 weeks, that are supported by
23 "before" and "after" photos showing consumers who appear to have become
24 noticeably slimmer. The fake news reports have links that lead to Defendants'
25 websites, where consumers can purchase the Weight-Loss Products.
26
27
28

1 41. Similarly, Defendants' banner advertisements contain links to
2 websites with addresses like healthconsumerreviews.com and
3 healthlifestylereview.com. These websites include headlines like, "SPECIAL
4 REPORT: Lose 23 lbs of Belly Fat in 1 Month with This Diet Cleanse that
5 Celebrities Use. Exclusive Offer for Readers." Beneath this headline is what
6 appears to be an investigative report authored by a reporter or commentator
7 pictured on the website. The supposed author of the report claims to have tested
8 the products on herself and experienced dramatic and positive weight-loss.
9 Following the reports are "responses" or "comments" that appear to be
10 independent statements made by ordinary consumers.
11

12 42. In fact, the news reports linked to by Defendants' unsolicited
13 commercial electronic mail messages and banner advertisements are fake.
14 Defendants' Weight-Loss Products were never reviewed or endorsed by "The
15 Doctors" or Oprah Winfrey. Reporters or consumers portrayed on the sites are
16 fictional and never conducted the tests or experienced the results described in the
17 reports. The reports and consumers' tales of weight-loss remain the same
18 regardless of which of Defendants' various Weight-Loss Products is being
19 marketed. The websites are not objective news reports but rather are paid
20 advertisements, maintained by Defendants' affiliate marketers for Defendants.
21
22
23
24
25
26
27
28

Defendants' Merchant Websites

1
2 43. Consumers who click on the links in the fake news reports are taken
3 to websites where Defendants sell their Weight-Loss Products. On their websites,
4 Defendants reinforce the fake news websites' representation that their Weight-Loss
5 Products have been shown on television or otherwise have been reviewed or
6 endorsed by The Doctors or Oprah Winfrey. For example, the Defendants
7 prominently claim:
8
9

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

14 44. Defendants' websites also reinforce the false weight-loss claims.
15 These websites feature prominent weight-loss claims like, "Enhance Your Diet and
16 Lose Weight Fast!," "Want to burn fat quicker and more efficiently?," "ARE YOU
17 *ready to LOSE WEIGHT?*" and "Rapid Belly Melt without *diet or exercise.*"
18 Defendants' websites also include prominent images of young, thin women who
19 are wearing bikinis or holding tape measures around their waists. In some
20 instances, Defendants' websites recount purported testimonials from consumers
21 that support the message to consumers that Defendants' products will result in
22 rapid and substantial weight loss. Defendants further entice consumers to purchase
23 their products with the bold statement, "CLAIM YOUR FREE BOTTLE
24 TODAY!"
25
26
27
28

1 45. Defendants require consumers who wish to order their Weight-Loss
2 Products to enter their contact information, including name, address, telephone
3 number, and email address. Consumers must also click on a button prominently
4 labeled "RUSH MY ORDER." Upon clicking on the button, Defendants' websites
5 take consumers to a payment page.
6

7 46. Defendants' payment page prompts consumers to choose the quantity
8 of Defendants' Weight-Loss Products they wish to order. To purchase
9 Defendants' Weight-Loss Products, consumers must also enter their credit or debit
10 card payment information. Consumers must then click a button bearing the same
11 "RUSH MY ORDER" label as the original landing page on Defendants' websites.
12
13

14 47. Defendants have disseminated, or caused to be disseminated,
15 advertisements for the Weight-Loss Products. In these advertisements, Defendants
16 have claimed that taking the Weight-Loss Products causes rapid and substantial
17 weight loss.
18
19

20 48. In truth and in fact, the Weight-Loss Products do not cause rapid and
21 substantial weight loss, nor do Defendants possess and rely upon a reasonable basis
22 to substantiate representations that consumers who use the Weight-Loss Products
23 will rapidly lose a substantial amount of weight.
24
25
26
27
28

1 information that is materially false or materially
2 misleading.

3 60. Section 5(a)(6) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(6),

4 states:

5 For purposes of [section 5(a)(1)], the term “materially”,
6 when used with respect to false or misleading header
7 information, includes the alteration or concealment of
8 header information in a manner that would impair the
9 ability of an Internet access service processing the
10 message on behalf of a recipient, a person alleging a
11 violation of this section, or a law enforcement agency to
12 identify, locate, or respond to a person who initiated the
13 electronic mail message or to investigate the alleged
14 violation, or the ability of a recipient of the message to
15 respond to a person who initiated the electronic message.

16 61. Section 5(a)(2) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(2),

17 states:

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

28 62. Section 7(e) of the CAN-SPAM Act, 15 U.S.C. § 7706(e), states that
in any action to enforce compliance through an injunction with Section 5(a)(2) and

1 other specified sections of the CAN-SPAM Act, the FTC need not allege or prove
2 the state of mind required by such sections.

3
4 63. Section 5(a)(3)(A) of the CAN-SPAM Act, 15 U.S.C.

5 § 7704(a)(3)(A), states:

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

10 (i) a recipient may use to submit, in a
11 manner specified in the message, a reply electronic
12 mail message or other form of Internet-based
13 communication requesting not to receive future
14 commercial electronic mail messages from that
sender at the electronic mail address where the
message was received; and

15 (ii) remains capable of receiving such
16 messages or communications for no less than 30
17 days after the transmission of the original message.

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

19 § 7704(a)(5)(A), states:

20 It is unlawful for any person to initiate the transmission
21 of any commercial electronic mail message to a protected
22 computer unless the message provides:

23 (i) clear and conspicuous identification
24 that the message is an advertisement or
solicitation;

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Count V

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

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

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

b. a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that a recipient could use to submit a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from Defendants at the electronic mail address where the message was received, and that remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

71. Defendants' acts or practices, as described in Paragraph 70 above, violate 15 U.S.C. § 7704(a)(5)(A)(ii) and § 7704(a)(3).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Count VI

Failure to Include Valid Physical Postal Address

72. In numerous instances, Defendants have initiated the transmission, to protected computers, of commercial electronic mail messages that do not include the sender's valid physical postal address.

73. Defendants' acts or practices, as described in Paragraph 72 above, violate 15 U.S.C. § 7704(a)(5)(A)(iii).

CONSUMER INJURY

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

THIS COURT'S POWER TO GRANT RELIEF

75. 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 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.

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

4 Respectfully submitted,

5 Jonathan E. Nuechterlein
6 General Counsel

7
8 Dated: April 24, 2015

9 
10 _____
11 Matthew H. Wernz, IL Bar #6294061
12 Attorney for Plaintiff
13 FEDERAL TRADE COMMISSION
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28