

1 **THE LAW OFFICE OF**
2 **JACK FITZGERALD, PC**
3 JACK FITZGERALD (SBN 257370)
4 *jack@jackfitzgeraldlaw.com*
5 TREVOR M. FLYNN (SBN 253362)
6 *trevor@jackfitzgeraldlaw.com*
7 MELANIE PERSINGER (SBN 275423)
8 *melanie@jackfitzgeraldlaw.com*
9 Hillcrest Professional Building
10 3636 Fourth Avenue, Suite 202
11 San Diego, California 92103
12 Phone: (619) 692-3840
13 Fax: (619) 362-9555

Counsel for Plaintiff and the Proposed Class

14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 JANE LOOMIS, on behalf of herself, all
17 others similarly situated, and the general
18 public,
19
20 Plaintiff,
21
22 v.
23
24 SLENDERTONE DISTRIBUTION, INC.,
25
26 Defendant.

Case No: '19CV854 MMAKSC

CLASS ACTION

**COMPLAINT FOR VIOLATIONS OF
CAL. BUS. & PROF. CODE §§17200
ET SEQ.; CAL. BUS. & PROF. CODE
§§17500 ET SEQ.; CAL. CIV. CODE
§§ 1750 ET SEQ.; AND FOR BREACH
OF EXPRESS & IMPLIED
WARRANTIES**

DEMAND FOR JURY TRIAL

1 Plaintiff Jane Loomis on behalf of herself, all others similarly situated, and the general
 2 public, by and through her undersigned counsel, hereby sues defendant Slendertone
 3 Distribution, Inc. (“Slendertone”), and alleges the following upon her own knowledge, or
 4 where she lacks personal knowledge, upon information and belief, including the investigation
 5 of her counsel.

6 INTRODUCTION

7 1. Slendertone markets and sells an Electrical Muscle Stimulator (“EMS”) called
 8 the “Flex Belt.” The belt delivers a small amount of electricity to the body, which stimulates
 9 the muscles and causes them to contract. Such EMS devices are considered Class II Medical
 10 Devices by the Food and Drug Administration (“FDA”), and any seller is required to obtain
 11 pre-market approval. Class II Medical Devices are devices for which general controls, by
 12 themselves, are insufficient to provide reasonable assurance of the safety and effectiveness
 13 of the device, and for which there is sufficient information to establish special controls to
 14 provide such assurance.

15 2. Slendertone markets its EMS devices as providing users, with no effort or
 16 exertion on the user’s part, with “strong, toned abs in weeks” and with “more attractive abs”
 17 through a “great work out.” Slendertone’s advertising falsely conveys that use of its Flex Belt
 18 will lead to weight loss by “getting rid of belly fat,” will contour the body, provide visible
 19 “six pack” abs, and is a total replacement for traditional abdominal exercise. However, aside
 20 from some limited science showing some strength and endurance improvements to the
 21 abdominal muscle tissue as a result of extended EMS use, no science supports the conclusion
 22 that use will rid belly fat, provide more attractive abs, contour the body, provide visible “six
 23 pack” abs, or that use can ever be a replacement for traditional exercise. In fact, one 2002
 24 study concluded that no benefits were observed at all, finding that while “[e]lectrical muscle
 25 stimulation devices (EMS) have been advertised to increase muscle strength, to decrease body
 26 weight and body fat, and to improve muscle firmness and tone in healthy individuals . . . EMS
 27 had no significant effect on any of the measured parameters. Thus, claims relative to the
 28 effectiveness of EMS for the apparently healthy individual are not supported by the findings

of this study.”¹ Several other studies have resulted in similar findings and while some have concluded that EMS can strengthen abdominal muscles or even improve endurance in abdominal muscles, no study has ever yielded results supporting the notion that use of EMS will result in body contouring, weight loss, visible results (including so-called “six pack abs”), or that use can replace traditional exercise to improve overall health.

3. Additionally, FDA has only approved devices such as the Flex Belt to “temporarily strengthen, tone or firm a muscle” and has specifically *disapproved* such devices to assist with weight loss, contour the body, develop visible “six-pack” abs, or otherwise to replace traditional exercise. Similarly, the Federal Trade Commission (“FTC”), the independent federal agency charged with the promotion of consumer protection and the elimination and prevention of unfair or abusive business practices, has already determined that any claims that such ab devices cause fat loss and inch loss, will give users well-defined abdominal muscles (e.g., “rock hard,” “six pack” or “washboard” abs), or that use of the ab devices is equivalent to conventional abdominal exercises, such as sit-ups or crunches, are false and misleading.

4. Plaintiff purchased the Flex Belt in reliance on Slendertone’s misleading and unlawful claims that use would assist in weight loss, body contouring, develop visible “six-pack” abs, and could be used effectively as a replacement for abdominal exercises. She brings this action seeking injunctive and monetary relief on behalf of herself, all other similarly-situated California consumers, and the general public, alleging violations of the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*, Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and False Advertising Law, *id.* §§ 17500 *et seq.*, as well as Slendertone’s breach of express and implied warranties.

¹ *Effects of Electrical Muscle Stimulation on Body Composition, Muscle Strength, and Physical Appearance*, John. P. Porcari, et al. (2002 Porcari Study)

1 **THE PARTIES**

2 5. Plaintiff Jane Loomis, who at the time of her purchase was a resident of San
3 Diego, purchased the Flex Belt in San Diego County, California.

4 6. Defendant Slendertone is a New Jersey corporation with its principal place of
5 business at 50 Harrison St., Suite 313, Hoboken, New Jersey 07030.

6 **JURISDICTION AND VENUE**

7 7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
8 1332(d)(2)(A), the Class Action Fairness Act, because the matter in controversy exceeds the
9 sum or value of \$5,000,000 exclusive of interest and costs, at least one member of the class
10 of plaintiffs is a citizen of a state different from Slendertone. In addition, more than two-
11 thirds of the members of the class reside in states other than the state in which Slendertone is
12 a citizen and in which this case is filed, and therefore any exceptions to jurisdiction under 28
13 U.S.C. § 1332(d) do not apply.

14 8. The Court has personal jurisdiction over Slendertone pursuant to Cal. Code Civ.
15 P. § 410.10, as a result of Slendertone's substantial, continuous and systematic contacts with
16 the state, and because Slendertone has purposely availed itself of the benefits and privileges
17 of conducting business activities within the state.

18 9. Venue is proper in the Southern District of California pursuant to 28 U.S.C. §
19 1391(b) because Slendertone resides (*i.e.*, is subject to personal jurisdiction) in this district,
20 and a substantial part of the events or omissions giving rise to the claims occurred in this
21 district.

22 **FACTS**

23 10. Through its own website, through online third party retailers (such as Amazon),
24 and likely through some brick-and-mortar retailers, Slendertone markets and sells an over-
25 the-counter medical device called the "Flex Belt," an electronic muscle stimulating device,
26 approved by the FDA to rehabilitate muscles through electronic "pulsing" stimulation.

27 11. Utilizing a website, celebrity endorsements, paid-advertisement articles, paid
28 bloggers, social media (including Facebook) and third party retailers, Slendertone markets

1 the Flex Belt as a “miracle device” that provides a “perfect” abdominal workout in only 30
2 minutes of use per day while watching television, reading, cooking, or undertaking other
3 mundane, non-physical activities. Slendertone further markets the Flex Belt as causing fat
4 loss and well-defined abdominal muscles (i.e., “six pack” abs), and as a better alternative to,
5 or at least the equivalent of, conventional abdominal exercises, such as sit-ups or crunches.

6 12. In advertising the Flex Belt, Slendertone repeatedly uses the phrase “FDA-
7 cleared technology” and “medical-grade technology,” suggesting the FDA endorses the Flex
8 Belt specifically, or otherwise has approved the device for weight loss, well-defined
9 abdominal muscles, and a replacement for traditional abdominal exercises.

10 13. However, FDA is clear that “[w]hile an EMS device may be able to temporarily
11 strengthen, tone or firm a muscle, no EMS devices have been cleared at this time for weight
12 loss, girth reduction, or for obtaining ‘rock hard’ abs.”

13 14. Slendertone also falsely and misleadingly markets the Flex Belt as being “the
14 first Ab Belt Toning system cleared by the FDA,” and as “the first EMS (Electric Muscle
15 Stimulation) product of its kind cleared by the FDA as a class II medical device for direct to
16 consumer sales.” This is literally false, since many similar products have been sold to
17 consumers by obtaining a “substantially equivalent” approval since the 1970s.

18 15. Slendertone also misleadingly markets the Flex Belt as a “product that []
19 produce[s] results - it is FDA-cleared technology that works.” Slendertone markets the Flex
20 Belt as an EMS device that assists with weight loss, improves body contouring, develops
21 visible “six-pack” abs, and totally replaces traditional abdominal exercises – each of which
22 FDA has specifically refuted and continues to refute.

23 16. Slendertone also falsely and misleadingly conveys that there is scientific
24 evidence suggesting that the Flex Belt will provide the same health benefits as a traditional
25 physical workout. To the contrary, while some science supports the conclusion that EMS can
26 temporarily improve strength or endurance, to some degree, of abdominal muscles
27 themselves, no science has ever supported, and several studies specifically refute, that EMS
28 use can provide the same health benefits as a traditional physical workout. Even in the most

1 favorable studies that conclude EMS can result in strength and endurance gains, the author
 2 warns that “[t]he potential to attain ‘rock-hard abs’ or ‘buns of steel’ without having to
 3 actually exercise is an attractive lure for many people” and that “[t]rying to capitalize on the
 4 vanity of consumers, a number of companies have incorporated NMES technology into
 5 abdominal stimulation belts and pad system.”² Even FDA has specifically warned against
 6 promotional claims being made for similar devices promoted on television and in
 7 infomercials, newspapers, and magazines. In short, EMS technology is primarily used to
 8 address health or injury, not to address appearance. As such, while the Flex Belt might help
 9 temporarily boost strength and endurance in a situation where a user was previously injured
 10 or otherwise incapable of traditional exercise, it will not provide even close to the results
 11 promised by its broad claims.

12 17. In 2002, the FTC brought actions against three top-selling electronic ab exercise
 13 belts for having falsely advertised that users will get "six pack" or "washboard" abs without
 14 exercise.³ According to the FTC Chairman at the time, "[f]or years, marketers of diet and
 15 exercise products have been preying on overweight, out-of-shape consumers by hawking
 16 false hope in a pill, false hope in a bottle, and, now, in a belt. Unfortunately, there are no
 17 magic pills, potions, or pulsators for losing weight and getting into shape. The only winning
 18 combination is changing your diet and exercise." FTC brought an action, and obtained
 19 judgment, including injunction and money damages, for false and misleading advertising of
 20 EMS devices, identifying the following categories of false and misleading advertising:⁴

21
 22 ² *The Effects of Neuromuscular Electrical Stimulation Training on Abdominal Strength,*
 23 *Endurance, and Selected Anthropometric Measures*, John P. Porcari, et al. (2005 Porcari
 Study)

24 ³ [https://www.ftc.gov/news-events/press-r`eleases/2002/05/ftc-charges-three-top-selling-](https://www.ftc.gov/news-events/press-releases/2002/05/ftc-charges-three-top-selling-electronic-abdominal-exercise-belts)
 25 [electronic-abdominal-exercise-belts](https://www.ftc.gov/news-events/press-releases/2002/05/ftc-charges-three-top-selling-electronic-abdominal-exercise-belts)

26 ⁴ Federal Trade Commission v. Electronic Products Distribution, L.L.C., et al., Southern
 27 District of California Case No. 02-cv-888BEN (“FTC Action”); Amended Complaint for
 28 Permanent Injunction and Other Equitable Relief can be viewed at
<https://tinyurl.com/yashswl7>

- a. Causing fat loss and inch loss (FTC Action at ¶¶ 21-22);
- b. Giving users well-defined abdominal muscles (e.g., “rock hard,” “six pack” or “washboard” abs) (Id. at ¶¶ 23-24); and
- c. Equivalency or superiority to conventional abdominal exercises, such as sit-ups or crunches. (Id. at ¶ 25).

18. To lose one pound of weight, the average individual must take in approximately 3,500 fewer calories than he or she expends.⁵ EMS devices cannot cause or even assist in the loss of weight, inches, or fat from the human body. To lose weight, a person must exercise, or expend calories, while restricting caloric intake (e.g., diet). If EMS were to cause fat loss it would have to aid in expending calories. However, there is no scientific evidence that demonstrates that use of EMS devices can burn calories to the degree of volitional exercise, and probably not at all. In short, EMS will not be factor in weight loss and cannot provide any of the calorie burning benefits of traditional exercises, including abdominal exercises (like sit-ups, crunches, planking, etc.).

19. There is no scientific evidence of any biophysical mechanism that would cause EMS to eliminate fat under the skin, or subcutaneous fat. Subcutaneous fat lies between the muscle tissue and the skin and reduces the definition of abdominal muscles. The higher the level of subcutaneous fat, the less defined a person’s abs will look. Thus, use of an EMS device cannot result in visible “six pack” or otherwise visibly defined abdominal muscles in a user because it does nothing to reduce subcutaneous fat.

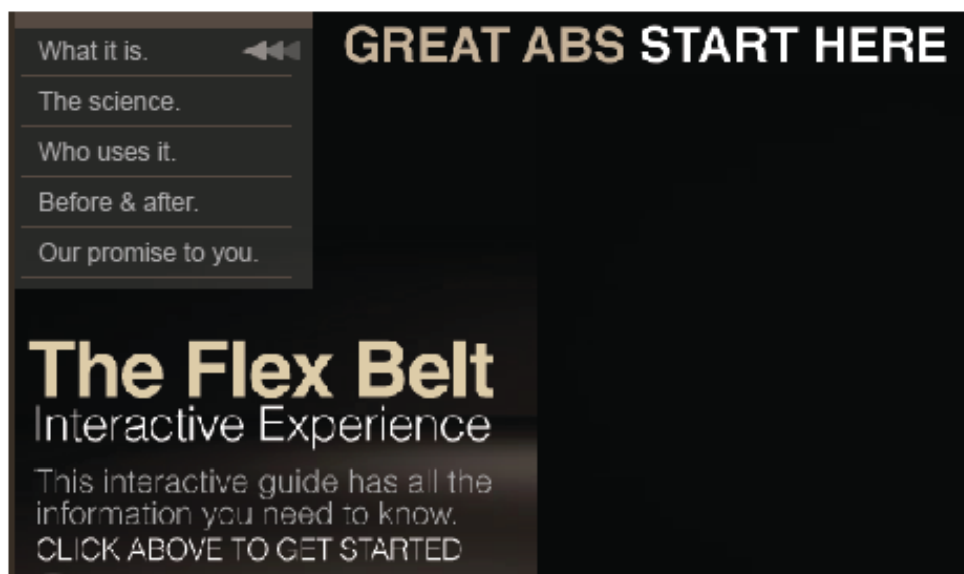
20. Slendertone, utilizing at least the following false and/or misleading phrases to market and sell the Flex Belt, which individually and, especially taken together, confuse and mislead consumers into believing its use will cause weight loss, fat reduction, contour the body, result in visible “six pack” abs, and otherwise be a total replacement to traditional exercise:

⁵ *Fed. Trade Comm’n v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1273 (S.D. Fla. 1999)

- a. "GREAT ABS START HERE"
- b. "Rid Belly Fat with The Flex Belt"
- c. "The perfect abdominal contraction"
- d. "The Ultimate Workout for Abs"
- e. "The Flex Belt helps me stay fit"
- f. "The Flex Belt will stimulate all your major stomach muscles at the same time providing you with the perfect abdominal contraction – that means your upper abs, the lower abs and even your obliques are going to get worked from The Flex Belt . . . and it does all the work for you."
- g. "I can make dinner, I can do the laundry, read a book, sit on the couch or check e-mail. I put on The Flex Belt, it does all the work, and I get the result."
- h. "The Flex Belt is the first Ab Belt Toning system cleared by the FDA for Toning, Firming and Strengthening the stomach muscles. With The Flex Belt, you can train your abs even if you're too busy or too tired for a traditional workout. Just slip on the comfortable toning ab belt and the clinically demonstrated, patented medical-grade technology stimulates the nerves that make your muscles contract and relax. As a result, you get an effective abdominal workout that targets all the muscles in your abdomen – all in just 30 minutes a day."
- i. "You don't have to worry about your form or come up with the time to get it done. The Flex Belt is clinically demonstrated to deliver firmer, stronger and more toned abdominal muscles while you are: at home, at work, watching TV, exercising, folding laundry, helping your kids with their homework, taking a walk..."
- j. "My abs look great and when you look good, you feel good. I would have to do so many different exercises to get all my abs, but with The Flex Belt it works all the ab muscles at the same time."
- k. "I don't have to worry about my abs – they will be in shape."
- l. "Everybody I know wants the same thing: Great abs. The look, the confidence it gives us. The truth is, abs are a pain to work out. The Flex Belt saves you time, because it works all your abs at the same time. Just look how easy this is."
- m. "My abs feel like I have had the most amazing work out and I've just worn the belt around the house for 30 minutes. . . . It works."

- n. “I would do so many different exercises to get all of my abs, but with the Flex Belt it works all of the ab muscles at the same time. With the Flex Belt I don’t have to worry about my abs -- this does work.”
- o. “I just have to put it on, it does the work, and I get the results.”
- p. “Being an athlete and fitness model for most of my life I know that good abs come from a lot of hard work. As my schedule kept getting busier I was having a tough time fitting in my ab workouts because I was spending my exercise time on other things, which is when I decided to give this ab belt a try. I was blown away by how intense the contractions were on my abs and how unbelievable they felt after my first Flex Belt abdominal workout. What was even more incredible was the convenience of it. I could put The Flex Belt® on and continue my day.”
- q. “Before I experienced The Flex Belt, I had a difficult time training my abs due to a car accident that left me with a bad back. Abdominal exercises hurt my lower back. Thanks to The Flex Belt, I am able to take my ab workout to a whole new level. The best part is I get a great, pain free ab workout in while helping the kids with their homework, making dinner or watching a movie.”
- r. “Maximum Core Strength”
- s. “Ultimate Toning Technology”

21. As exemplars only, some of the claims above are depicted as follows:



With my schedule I can't do an abs workout every day, but with The Flex Belt I'll put it on every day because I'm doing other things at the same time. So it's really just being smart!

It's easy, I wear it every day and my abs are there to show for it!

My abs feel like I've had the most amazing workout and I just wore The Flex Belt around the house for 30 minutes. I would never stand behind a product that I didn't believe in 100% and I believe in The Flex Belt. So here I am telling you if you'd like to try The Flex Belt, it works!

Lisa Rinna

Actress, Author and Fitness Lover

CLICK HERE TO WATCH LISA'S FLEX BELT STORY



The Flex Belt tightens, tones and strengthens my stomach without me even having to think about it. It has taken my abs to a whole other level. I can take it anywhere. The Flex Belt is incredibly portable.

With The Flex Belt... working out my core might be the easiest thing I do all day.

It's something that I don't have to put thought into and nobody even has to know I have it on, because it goes under your clothes. I can make dinner, I can do the laundry, read a book, sit on the couch or check e-mail. I put on

Seeing Results with The Flex Belt

By using it for only 30 minutes everyday, you should already be seeing apparent results in only a matter of weeks. The best part about this is that you do not have to completely devote your time in merely wearing the device. While you do so, you can also go on you go about with all your daily chores and responsibilities. So whether you are doing laundry, reading, or bonding with your baby, the Flex Belt has been designed to fit into whatever lifestyle.

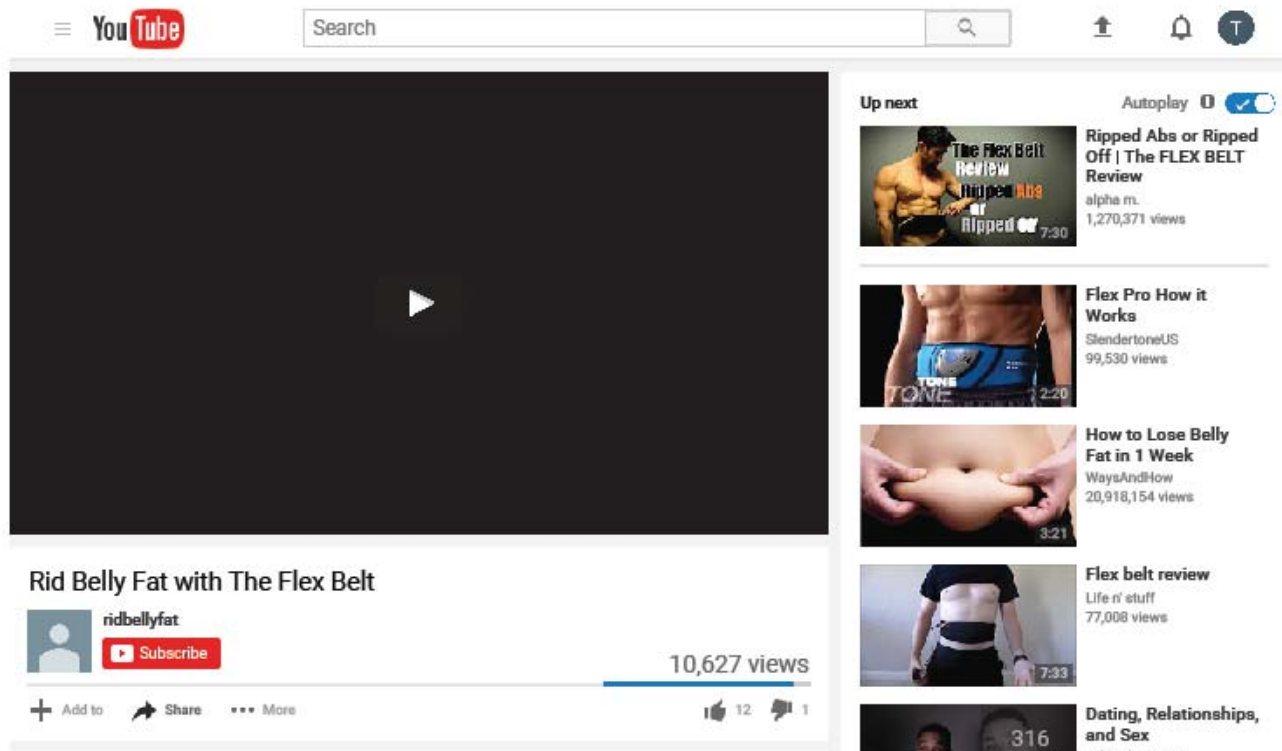
Another thing about the device is that it is very comfortable. Its material is breathable so wearing it for long periods of time should not hamper ease. This feature will make this the best abs device for people that suffer from back problems. Anyone who is unable to do conventional exercises with such a condition should have no problem using the Flex Belt.

The Flex Belt: Backed by the Pros

This product is not only used by people that are in the medical field, this is also used by the top-performing athletes to constantly keep them in shape. In turn, this will make them a step closer to achieving success in their chosen field. This only goes to show just how much reputable the Flex Belt has grown over the years.

Find out [how to get rid of belly fat fast](#) the convenient way [here](#).

Posted in [Reviews](#) [6 Comments](#)



My abs look great and when you look good, you feel good. I would have to do so many different exercises to get all my abs, but with The Flex Belt it works all the ab muscles at the same time.

With The Flex Belt I know I don't have to worry about my abs -- This does work!

I use The Flex Belt when I am reading my scripts, when I am on a conference call, when I am making dinner or the kids' lunches. With the Flex Belt there is no excuse to not get your ab workout done. I don't have to stop what I am doing, I just have to put it on, it does the work and I get the results.

Denise Richards Actress, Entrepreneur and Mom

CLICK HERE TO WATCH DENISE'S FLEX BELT STORY

22. In a separate “Before & After” section on its website, Slendertone depicts “before and after” pictures, falsely suggesting that use of the Flex Belt will result in body contouring and visible “six pack” abs:







23. Slendertone also utilizes images, adjacent to many of the claims complained of herein, of flat, toned, “six-pack” abdominal muscles on celebrities and models to convey that such results can be achieved through use of the Flex Belt.

PLAINTIFF’S PURCHASE AND RELIANCE

24. On or about April 22, 2016, plaintiff Jane Loomis purchased the Flex Belt through Amazon.com. In initially deciding to purchase the Flex Belt, plaintiff relied on Slendertone’s claims that its use would result in weight loss, body contouring, well-defined abdominal muscles (e.g. “six-pack” abs), and that it could replace traditional exercise to result in improved health, fitness, and body shape. Plaintiff thereafter purchased some replacement gel pads as instructed by Slendertone. Plaintiff relied not only on the false and misleading claims identified herein on the Slendertone Flex Belt website, but on the false and misleading promises and affirmations contained on the Amazon webpage, which includes many, if not all, of the claims asserted on the Flex Belt website, on Facebook advertisements, and television commercials. The following are some exemplars of advertising on the Amazon webpage:



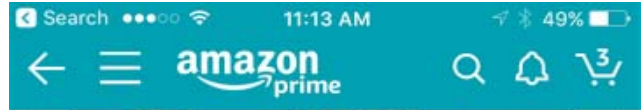
THE FLEX BELT will stimulate all your major stomach muscles at the same time providing you with the perfect abdominal contraction – that means your upper abs, the lower abs and even your obliques are going to get worked from THE FLEX BELT. ..and it does all the work for you. You don't have to worry about your form or come up with the time to get it done.

THE FLEX BELT is clinically demonstrated to deliver firmer, stronger and more toned abdominal muscles while you are: at home, at work, watching TV, exercising, folding laundry, helping your kids with their homework, taking a walk. ..virtually anytime and anywhere.

Clinically demonstrated results you can see and feel in just weeks.



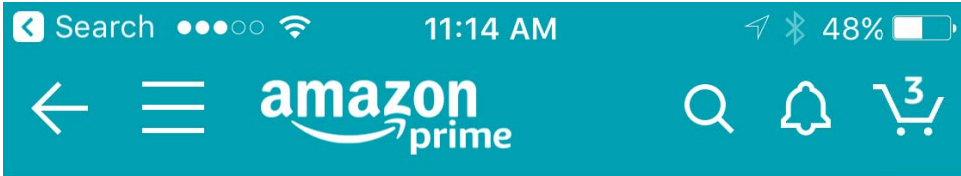
THE FLEX BELT can work for you, too.



Adrianne Curry - TV Star and Fitness Fanatic - Winner America's Next Top Model

The Flex Belt tightens, tones and strengthens my stomach without me even having to think about it. It has taken my abs to a whole other level. I can take it anywhere. The Flex Belt is incredibly portable. With the Flex Belt. ..working out my core might be the easiest thing I do all day.

It's something that I don't have to put thought into and nobody even has to know I have it on, because it hides under your clothes. I can make dinner, I can do the laundry, read a book, sit on the couch or check e-mail. I put on The Flex Belt, it does all the work, and I get the results.



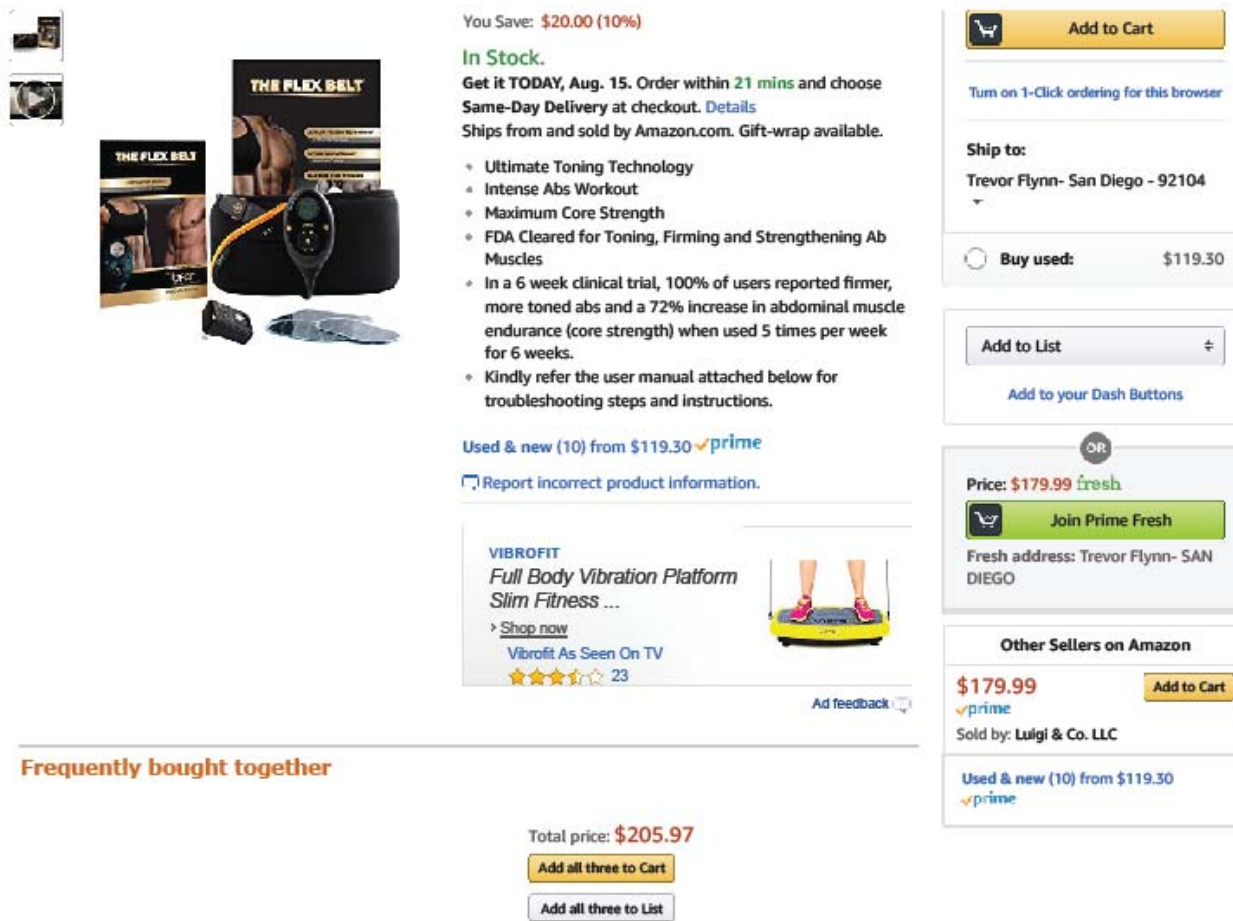
About this item

Features

- Ultimate Toning Technology
- Intense Abs Workout
- Maximum Core Strength
- FDA Cleared for Toning, Firming and Strengthening Ab Muscles
- In a 6 week clinical trial, 100% of users reported firmer, more toned abs and a 72% increase in abdominal muscle endurance (core strength) when used 5 times per week for 6 weeks.
- Kindly refer the user manual attached below for troubleshooting steps and instructions.

Product information

Product Dimensions	10.7 x 7.1 x 2.8 inches
Item Weight	1.2 pounds
Shipping Weight	1.3 pounds
Department	unisex-adult
Manufacturer	The Flex Belt



You Save: **\$20.00 (10%)**

In Stock.
Get it **TODAY, Aug. 15.** Order within **21 mins** and choose **Same-Day Delivery** at checkout. [Details](#)
Ships from and sold by Amazon.com. Gift-wrap available.

- Ultimate Toning Technology
- Intense Abs Workout
- Maximum Core Strength
- FDA Cleared for Toning, Firming and Strengthening Ab Muscles
- In a 6 week clinical trial, 100% of users reported firmer, more toned abs and a 72% increase in abdominal muscle endurance (core strength) when used 5 times per week for 6 weeks.
- Kindly refer the user manual attached below for troubleshooting steps and instructions.

Used & new (10) from **\$119.30** ✓prime
[Report incorrect product information.](#)

VIBROFIT
Full Body Vibration Platform Slim Fitness ...
> [Shop now](#)
Vibrofit As Seen On TV
★★★★☆ 23

Ad feedback

Frequently bought together

Total price: **\$205.97**
[Add all three to Cart](#)
[Add all three to List](#)

Add to Cart
Turn on 1-Click ordering for this browser

Ship to:
Trevor Flynn- San Diego - 92104

Buy used: **\$119.30**

Add to List
[Add to your Dash Buttons](#)

OR

Price: \$179.99 fresh
Join Prime Fresh
Fresh address: Trevor Flynn- SAN DIEGO

Other Sellers on Amazon
\$179.99 ✓prime
Sold by: Luigi & Co. LLC
[Add to Cart](#)
Used & new (10) from **\$119.30** ✓prime

25. In purchasing the Flex Belt, Ms. Loomis was seeking a product that would allow her to replace traditional abdominal exercise and permit her to engage in other activities while at the same time achieving all of the benefits of traditional exercise, that use as directed would result in fat loss, body contouring, and well-defined abdominal muscles. Ms. Loomis relied on Slendertone's advertising claims to believe that what she was purchasing would provide these benefits.

26. The advertising of the Flex Belt, however, was misleading, and had the capacity, tendency, and likelihood to confuse or confound Ms. Loomis and other consumers acting reasonably (including the putative class), as described in detail herein.

27. Ms. Loomis acted reasonably in relying on Slendertone's advertising and claims, which Slendertone intentionally placed on its website, various third party advertisers, social

1 media, and third party retailers like Amazon.com, with the intent to induce average consumers
2 into purchasing the Flex Belt.

3 28. The Flex Belt cost more than similar products without misleading advertising
4 and would have cost less absent the false and/or misleading advertising.

5 29. If Slendertone was enjoined from engaging in the false and/or misleading
6 advertising, the market demand and price for the Flex Belt would drop, as it has been
7 artificially and fraudulently inflated due to Slendertone's use of deceptive advertising.

8 30. Ms. Loomis paid more for the Flex Belt, and would only have been willing to
9 pay less, or unwilling to purchase it at all, absent the misleading claims complained of herein.

10 31. For these reasons, the Flex Belt was worth less than what Ms. Loomis paid for
11 it, and may have been worth nothing at all.

12 32. Ms. Loomis would consider purchasing an EMS device again in the future if she
13 were assured that the product was marketed truthfully and not falsely or misleadingly, and
14 that the price of the product matched the benefit of the bargain she expected, for instance,
15 only in providing temporary strengthening or toning of abdominal muscles (or other muscles
16 to which the EMS device is directed) and not for a replacement for traditional exercise,
17 weight-loss, fat loss, body-contouring, and for visible "six pack" abs.

18 33. Moreover, Ms. Loomis is not a scientist and would have no way of knowing if,
19 in the future, FDA approves a medical device for those benefits she originally thought she
20 was obtaining from the Flex Belt. Thus, if technology does exist in the future that will permit
21 a user to obtain the benefits she sought (including fat loss, replacement for traditional
22 exercise, and well-defined abdominal muscles), and Ms. Loomis was assured that such
23 advertising was not false or misleading because Slendertone were enjoined from engaging in
24 false advertising and she knew she could safely rely on such claims, she would purchase an
25 EMS device from Slendertone in the future.

26 **CLASS ACTION ALLEGATIONS**

27 34. Pursuant to Fed. R. Civ. P. 23, plaintiff seeks to represent a class comprised of
28 all persons in California who, at any time from four years preceding the date of this Complaint

1 to the time a class is notified, purchased the Flex Belt for their own personal, family, or
2 household use and not for resale

3 35. Plaintiff nevertheless reserves the right to divide into subclasses, expand,
4 narrow, more precisely define, or otherwise modify the class definition prior to (or as part of)
5 filing a motion for class certification.

6 36. The members in the proposed Class are so numerous that individual joinder of
7 all members is impracticable, and the disposition of the claims of all Class Members in a
8 single action will provide substantial benefits to the parties and Court.

9 37. Questions of law and fact common to plaintiff and the Class include:

10 a. Whether Slendertone's various advertising claims are material to
11 reasonable consumers;

12 b. Whether Slendertone's various advertising claims are false,
13 misleading, or reasonably likely to deceive the public or consumers acting
14 reasonably because the Flex Belt is not capable of providing the benefits
15 advertised;

16 c. Whether Slendertone made any statement it knew or should have
17 known was false or misleading;

18 d. Whether Slendertone's practices were immoral, unethical,
19 unscrupulous, or substantially injurious to consumers;

20 e. Whether the utility of any of Slendertone's practices, if any,
21 outweighed the gravity of harm to its victims;

22 f. Whether Slendertone's conduct violated public policy;

23 g. Whether the consumer injury caused by Slendertone's conduct was
24 substantial, not outweighed by benefits to consumers or competition, and not
25 one consumers themselves could reasonably have avoided;

26 h. Whether Slendertone's policies, acts, and practices with respect to
27 the Flex Belt were designed to, and did result in the purchase and use of the Flex
28 Belt by the class members primarily for personal, family, or household purposes;

i. Whether Slendertone represented that the Flex Belt has characteristics, uses, or benefits which they do not have, within the meaning of Cal. Civ. Code § 1770(a)(5);

j. Whether Slendertone represented that the Flex Belt is of a particular standard, quality, or grade, when it was really of another, within the meaning of Cal. Civ. Code § 1770(a)(7);

k. Whether Slendertone advertised The Flex Belt with the intent not to sell them it as advertised, within the meaning of Cal. Civ. Code § 1770(a)(9);

l. Whether Slendertone represented that the Flex Belt has been supplied in accordance with previous representations when it has not, within the meaning of Cal. Civ. Code § 1770(a)(16);

m. Whether through the challenged labels and advertising, Slendertone made affirmations of fact or promises, or descriptions of the goods;

n. Whether Slendertone's affirmations of fact or promises, or descriptions of the goods became part of the basis of the bargain for the Class's purchases;

o. Whether Slendertone failed to provide the goods in conformation with its affirmations of fact, promises, and descriptions of the goods;

p. Whether Slendertone's conduct violates state or federal statutes or regulations;

q. The proper amount of damages, including punitive damages;

r. The proper amount of restitution;

s. The proper scope of injunctive relief; and

t. The proper amount of attorneys' fees.

38. These common questions of law and fact predominate over questions that affect only individual Class Members.

39. Plaintiff's claims are typical of Class Members' claims because they are based on the same underlying facts, events, and circumstances relating to Slendertone's conduct.

Specifically, all Class Members, including plaintiff, were subjected to the same misleading and deceptive conduct when they purchased the Flex Belt and suffered economic injury because the Flex Belt's advertising is false and/or misleading. Absent Slendertone's business practice of deceptively and unlawfully labeling the Flex Belt, plaintiff and Class Members would only have been willing to pay less, or unwilling to purchase the product at all.

40. Plaintiff will fairly and adequately represent and protect the interests of the Class, has no interests incompatible with the interests of the Class, and has retained counsel competent and experienced in class action litigation, and specifically in litigation involving the false and misleading advertising.

41. Class treatment is superior to other options for resolution of the controversy because the relief sought for each Class Member is small, such that, absent representative litigation, it would be infeasible for Class Members to redress the wrongs done to them.

42. Slendertone has acted on grounds applicable to the Class, thereby making appropriate final injunctive and declaratory relief concerning the Class as a whole.

43. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3).

44. Class treatment may also be appropriate as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violations of the Unfair Competition Law,

Cal. Bus. & Prof. Code § 17200 *et seq.*

45. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

46. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200.

47. The acts, omissions, misrepresentations, practices, and non-disclosures of Slendertone as alleged herein constitute business acts and practices.

Fraudulent

48. A statement or practice is fraudulent under the UCL if it is likely to deceive the public, applying a reasonable consumer test.

49. As set forth herein, Slendertone's claims relating to the Flex Belt are likely to deceive reasonable consumers and the public.

Unlawful

50. The acts alleged herein are "unlawful" under the UCL in that they violate at least the following laws:

- The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*;
- The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 352 *et seq.*, and specifically § 352(a) (prohibiting labeling that is "false or misleading in any particular"). Further, Section 201(n) states that if an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading, there shall be taken into account (among other things) representations made or suggested by statement, word, design, device, or any combination thereof. The phrase "false or misleading" is not confined in meaning to untrue, forged, fraudulent, or deceptive. In fact, the word, statement, or illustration may be true in the strict sense of the word; however, the labeling can violate of the law if it proves deceptive to the customer. It is not a necessary condition that the labeling should be flatly and baldly false; the word "misleading" in the Act means that labeling is deceptive if it is such as to create or lead to a false impression in the mind of the reader. A "false impression" may result not only from a false or deceptive statement, but may also be instilled in the mind of the purchaser by ambiguity or misdirection; and
- The California Sherman Food, Drug, and Cosmetic Act, Cal. Health & Safety Code §§ 109875 *et seq.*, including § 111330.

Unfair

51. Slendertone's conduct with respect to the labeling, advertising, and sale of the Flex Belt was unfair because Slendertone's conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

52. Slendertone's conduct with respect to the labeling, advertising, and sale of the Flex Belt was also unfair because it violated public policy as declared by specific constitutional, statutory or regulatory provisions, including but not limited to the False Advertising Law.

53. Slendertone's conduct with respect to the labeling, advertising, and sale of the Flex Belt was also unfair because the consumer injury was substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided.

54. Slendertone profited from its sale of the falsely, deceptively, and unlawfully advertised product to unwary consumers.

55. Plaintiff and Class Members are likely to be damaged by Slendertone's continued deceptive trade practices, as Slendertone continues to falsely advertise and sell the Flex Belt. Thus, injunctive relief enjoining this deceptive practice is proper.

56. Slendertone's conduct caused and continues to cause substantial injury to plaintiff and the other Class Members, who have suffered injury in fact as a result of Slendertone's unlawful conduct.

57. In accordance with Bus. & Prof. Code § 17203, plaintiff, on behalf of herself, the Class, and the general public, seeks an order enjoining Slendertone from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices, and to commence a corrective advertising campaign.

58. Plaintiff, on behalf of herself and the Class also seeks an order for disgorgement and restitution of all monies from the sale of the Flex Belt and replacement gel pads, which were unjustly acquired through acts of unlawful competition.

SECOND CAUSE OF ACTION

Violations of the False Advertising Law,

Cal. Bus. & Prof. Code §§ 17500 *et seq.*

59. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

60. Under the FAL, “[i]t is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services” to disseminate any statement “which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

61. As alleged herein, the advertisements, labeling, policies, acts, and practices of Slendertone relating to the Flex Belt misled consumers acting reasonably that use of the Flex Belt will result in weight loss, body contouring, fat loss, well-defined abdominal muscles (i.e. visible “six pack” abs), and/or is a more or equally effective replacement for traditional abdominal exercises.

62. Plaintiff suffered injury in fact as a result of Slendertone’s actions as set forth herein because plaintiff purchased the Flex Belt in reliance on Slendertone’s false and misleading marketing claims.

63. Slendertone’s business practices as alleged herein constitute unfair, deceptive, untrue, and misleading advertising pursuant to the FAL because Slendertone has advertised the Flex Belt in a manner that is untrue and misleading, which Slendertone knew or reasonably should have known.

64. Slendertone profited from its sales of the falsely and deceptively advertised the Flex Belt to unwary consumers.

65. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, plaintiff and the Class are entitled to injunctive and equitable relief and restitution.

THIRD CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act,

Cal. Civ. Code §§ 1750 *et seq.*

66. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

67. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.

68. Slendertone's false and misleading labeling and other policies, acts, and practices described herein were designed to, and did, induce the purchase and use of the Flex Belt for personal, family, or household purposes by plaintiff and other Class Members, and violated and continue to violate at least the following sections of the CLRA:

- a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have;
- b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another;
- c. § 1770(a)(9): advertising goods with intent not to sell them as advertised; and
- d. § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

69. Slendertone profited from its sales of the falsely, deceptively, and unlawfully advertised the Flex Belt to unwary consumers.

70. Slendertone's wrongful business practices regarding The Flex Belt constituted, and constitute, a continuing course of conduct in violation of the CLRA.

71. Pursuant to California Civil Code § 1782, plaintiff notified Slendertone in writing by certified mail, return receipt requested of her claims and the particular violations of § 1770 of the Act, but Slendertone failed to remedy the violations within 30 days thereafter. Because Slendertone failed to implement remedial measures, plaintiff, on behalf of herself

1 and the Class, seeks actual and punitive damages, including attorneys' fees, as well as
2 restitution and injunctive relief.

3 72. In compliance with Cal. Civ. Code § 1782(d), an affidavit of venue is filed
4 concurrently with this Complaint.

5 **FOURTH CAUSE OF ACTION**

6 **Breaches of Express Warranties,**

7 **Cal. Com. Code § 2313(1)**

8 73. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
9 as if set forth in full herein.

10 74. Through the Flex Belt's advertising, Slendertone made affirmations of fact or
11 promises, or description of goods, that the Flex Belt provides specific benefits which it does
12 not. These representations were "part of the basis of the bargain," in that plaintiff and the
13 Class purchased the products in reasonable reliance on those statements. Cal. Com. Code §
14 2313(1).

15 75. Slendertone breached its express warranties by selling products that do not
16 provide the benefits promised by the advertising claims.

17 76. That breach actually and proximately caused injury in the form of the lost
18 purchase price that plaintiff and Class members paid for the Flex Belt.

19 77. Plaintiff notified Slendertone of the breach prior to filing, but Slendertone failed
20 to rectify the breach.

21 78. As a result, plaintiff seeks, on behalf of herself and other Class Members, actual
22 damages arising as a result of Slendertone's breaches of express warranty.

23 **FIFTH CAUSE OF ACTION**

24 **Breach of Implied Warranty of Merchantability,**

25 **Cal. Com. Code § 2314**

26 79. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
27 as if set forth in full herein.
28

1 80. Slendertone, through its acts set forth herein, in the sale, marketing, and
 2 promotion of the Flex Belt, made representations to plaintiff and the Class that, among other
 3 things, the Flex Belt will result in weight loss, well-defined abdominal muscles, and is a
 4 superior or equal replacement for traditional abdominal exercises.

5 81. Slendertone is a merchant with respect to the goods of this kind which were sold
 6 to plaintiff and the Class, and there was, in the sale to plaintiff and other consumers, an
 7 implied warranty that those goods were merchantable.

8 82. However, Slendertone breached that implied warranty in that the Flex Belt does
 9 not conform to the various advertising claims made by Slendertone.

10 83. As an actual and proximate result of Slendertone's conduct, plaintiff and the
 11 Class did not receive goods as impliedly warranted by Slendertone to be merchantable in that
 12 they did not conform to promises and affirmations made on the container or label of the goods,
 13 in violation of Cal. Com. Code § 2314(2)(f).

14 84. Plaintiff notified Slendertone of the breach prior to filing, but Slendertone failed
 15 to rectify the breach.

16 85. As a result, plaintiff seeks, on behalf of herself and other Class Members, actual
 17 damages arising as a result of Slendertone's breaches of implied warranty.

18 **PRAYER FOR RELIEF**

19 86. Wherefore, plaintiff, on behalf of herself, all others similarly situated, and the
 20 general public, prays for judgment against Slendertone as to each and every cause of action,
 21 and the following remedies:

22 A. An Order declaring this action to be a proper class action, appointing
 23 plaintiff as class representative, and appointing undersigned counsel as class counsel;

24 B. An Order requiring Slendertone to bear the cost of class notice;

25 C. An Order enjoining Slendertone from using any challenged labeling or
 26 marketing claim that is found to be false, misleading, or unlawful;

27 D. An Order compelling Slendertone to conduct a corrective advertising
 28 campaign;

E. An Order compelling Slendertone to destroy all misleading and deceptive advertising materials, and The Flex Belt' product packaging and labels that bear such misleading and deceptive claims;

F. An Order requiring Slendertone to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, or untrue or misleading advertising;

G. An award of attorneys' fees and costs;

H. An Order requiring Slendertone to pay statutory, compensatory, and punitive damages where permitted by law;

I. Pre- and post-judgment interest; and

J. Any other and further relief that Court deems necessary, just, or proper.

JURY DEMAND

87. Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: April 26, 2019

/s/ Jack Fitzgerald

THE LAW OFFICE OF JACK FITZGERALD, PC

JACK FITZGERALD (SBN 257370)

jack@jackfitzgeraldlaw.com

TREVOR M. FLYNN (SBN 253362)

trevor@jackfitzgeraldlaw.com

MELANIE PERSINGER (SBN 275423)

melanie@jackfitzgeraldlaw.com

Hillcrest Professional Building

3636 Fourth Avenue, Suite 202

San Diego, California 92103

Phone: (619) 692-3840

Fax: (619) 362-9555

Attorneys for Plaintiff and the Putative Class

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Jane Loomis

(b) County of Residence of First Listed Plaintiff Chelan, Washington
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
The Law Office of Jack Fitzgerald, PC, 3636 Fourth Ave., Suite 202, San Diego, CA 92103, 619-692-3840

DEFENDANTS

Slendertone Distribution, Inc.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Buchalter APC, 18400 Von Karman Ave., Suite 800, Irvine, CA 92612, 949-760-1121

'19CV854 MMAKSC**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §§ 1332

Brief description of cause:

Diversity Action; Class Action Fairness Act

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

04/26/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jack Fitzgerald

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

1 **THE LAW OFFICE OF**
2 **JACK FITZGERALD, PC**
3 JACK FITZGERALD (SBN 257370)
4 *jack@jackfitzgeraldlaw.com*
5 TREVOR M. FLYNN (SBN 253362)
6 *trevor@jackfitzgeraldlaw.com*
7 MELANIE PERSINGER (SBN 275423)
8 *melanie@jackfitzgeraldlaw.com*
9 Hillcrest Professional Building
3636 Fourth Avenue, Suite 202
San Diego, California 92103
Phone: (619) 692-3840
Fax: (619) 362-9555

10 *Counsel for Plaintiff and the Proposed Class*

11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 JANE LOOMIS, on behalf of herself, all
15 others similarly situated, and the general
public,

16 Plaintiff,

17 v.
18

19 SLENDERTONE DISTRIBUTION, INC.,

20 Defendant.
21

'19CV854 MMAKSC

**CONSUMERS LEGAL REMEDIES
ACT VENUE AFFIDAVIT [CCP §
1780(d)]**

1 I, Jane Loomis, declare as follows:

2 1. I am a plaintiff in this action. I make this affidavit as required by California Civil
3 Code § 1780(d).

4 2. The Complaint in this action is filed in a proper place for the trial of this action
5 because defendant is doing business in this county.

6 3. The Complaint in this action is further filed in a proper place for the trial of this
7 action because the transactions that are the subject of the action occurred in this county.
8

9 I declare under penalty of perjury under the laws of the United States that the foregoing
10 is true and correct to the best of my knowledge.
11

12 Executed this 26 day of April, 2019, in Winstee, WA
13 (city) (state)

14
15 
16 Jane Loomis
17
18
19
20
21
22
23
24
25
26
27
28

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [No Science Supports Six-Pack Ab, Fat Loss Claims for Slendertone's Flex Belt, Class Action Alleges](#)
