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12
13 UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
14

15 **FEDERAL TRADE COMMISSION,**

16 **Plaintiff,**

17 **v.**

18 **SAVVIER, INC.**
19 **SAVVIER, LP,**
20 **GREER CHILDERS,**
JACK CHING CHUNG CHANG,
21 **JEFFREY T. TULLER, and**
KEITH GREER,

22 **Defendants.**

15 } **Civil Action No.**

16 } **Stipulated Temporary**
17 } **Order Involving**
18 } **Greer Childers**

23 WHEREAS, on November 7, 2003, Plaintiff, the Federal Trade Commission
24 ("Commission" or "FTC") pursuant to Section 13(b) of the Federal Trade
25 Commission Act ("FTC Act"), 15 U.S.C. § 53(b), has filed a Complaint for
26 Permanent Injunction and Other Equitable Relief, including consumer redress, and
27 an Application for Temporary Restraining Order with Asset Freeze, Accounting,
28

1 Order Permitting Limited Expedited Discovery, and Other Equitable Relief and
2 Order to Show Cause Why a Preliminary Injunction Should Not Issue pursuant to
3 Rule 65 of the Federal Rules of Civil Procedure;

4 WHEREAS, the Stipulating Defendant denies the allegations made against
5 her; there has been no adjudication of wrongdoing; and the Stipulating Defendant
6 signs this Order to avoid unnecessary litigation costs and to have adequate time to
7 prepare a defense; and

8 WHEREAS, the Commission and the Stipulating Defendant, without any
9 admission of wrongdoing or violation of law, voluntarily have stipulated to the
10 entry of the following stipulated temporary order ("Order").

11 FINDINGS

12 A. This Court has jurisdiction over the subject matter of the case and
13 over the Stipulating Defendant.

14 B. The Court preliminarily finds, based on pleadings filed with the
15 Court, and without prejudice to the Stipulating Defendant to timely challenge
16 venue for this action, that venue lies properly with this Court for the purposes of
17 the entry, construction, modification, compliance and enforcement of this Order.

18 C. The Commission and Stipulating Defendant waive all rights to seek
19 judicial review or otherwise challenge or contest the validity of this Order, but
20 reserve the right to seek modification and termination.

21 ORDER

22 Definitions

23 A. "**Advertising**" means any written or verbal statement, illustration or
24 depiction that is designed to effect a sale or create interest in the purchasing of
25 goods or services, whether it appears in a brochure, newspaper, magazine,
26 pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter,
27 catalogue, poster, chart, billboard, public transit card, point of purchase display,
28 packaging, package insert, label, film, slide, radio, television or cable television,

1 audio program transmitted over a telephone system, program-length commercial
2 (“infomercial”), Internet or in any other medium.

3 B. **"Asset(s)"** mean any legal or equitable interest in, right to, or claim
4 to, any real and personal property, including but not limited to chattels, goods,
5 instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or
6 other deliveries, inventory, checks, notes, accounts, credits, receivables, funds,
7 monies, and all cash, wherever located, and shall include both existing assets and
8 assets acquired after the date of entry of this Order.

9 C. **"BodyFlex"** means the BodyFlex+ Exercise System and each of its
10 components, including (1) the “Gym Bar” exercise device; (2) the breathing
11 technique; (3) the video tapes titled “Getting Started: Losing the Inches” and “The
12 Workout: Just Minutes a Day”; and (4) instructional documents accompanying the
13 foregoing, and any other substantially similar product, system or program.

14 D. **"Consumer"** means an actual or potential purchaser, customer,
15 licensee or natural person.

16 E. **"Document(s)"** is synonymous in meaning and equal in scope to the
17 usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings,
18 drawings, graphs, charts, photographs, audio and video recordings, computer
19 records, and other data compilations from which information can be obtained and
20 translated, if necessary, through detection devices into reasonably usable form. A
21 draft or non-identical copy is a separate document within the meaning of the term.

22 F. **"Endorsement"** means as defined in 16 C.F.R. § 255.0(b).

23 G. **"Financial institution"** means any bank, savings and loan institution,
24 credit union, or any financial depository of any kind, including but not limited to
25 any brokerage house, trustee, broker-dealer, escrow agent, title company,
26 commodity trading company, or precious metal dealer.

27 H. **"Stipulating Defendant"** means Greer Childers, and by whatever
28 name she might be known, and any entity through which she does business.

1 **I. PROHIBITED BUSINESS ACTIVITIES**

2 **IT IS HEREBY ORDERED** that the Stipulating Defendant, and her
3 agents, servants, employees, and attorneys, and those persons in active concert or
4 participation with them who receive actual notice of this Order by personal service
5 or otherwise, whether acting directly or through any corporation, subsidiary,
6 division or other device, are hereby temporarily enjoined from making, or assisting
7 others in making, directly or by implication, any false or misleading oral or written
8 statement or representation in connection with the advertising, promotion, offering
9 for sale, distribution, or sale of BodyFlex, including but not limited to, falsely
10 representing, expressly or by implication, including through the use of
11 endorsements, that:

12 A. BodyFlex causes users to lose four to 14 inches across six body areas
13 in the first seven days without reducing calories;

14 B. BodyFlex causes users to burn enough body fat to lose four to 14
15 inches across six body areas in the first seven days; and

16 C. a clinical study proves that BodyFlex causes significant fat loss and
17 inch loss in the first seven days.

18 **II. PACKAGING AND LABELING RECALL**

19 **IT IS FURTHER ORDERED** that the Stipulating Defendant shall
20 cooperate and not interfere with any recall, repackaging or relabeling by any
21 person, partnership, corporation or other entity that is offering for sale, selling or
22 distributing to consumers BodyFlex containing, expressly or by implication, any
23 of the representations set forth in Paragraph I above.

24 **III. ASSET FREEZE**

25 **IT IS FURTHER ORDERED** that the Stipulating Defendant, and her
26 agents, servants, employees, and attorneys, and those persons or entities in active
27 concert or participation with them who receive actual notice of this Order by
28 personal service or otherwise, whether acting directly or through any corporation,

1 subsidiary, division or other device, are hereby temporarily enjoined from directly
2 or indirectly selling, liquidating, assigning, transferring, converting, loaning,
3 encumbering, pledging, concealing, dissipating, spending, withdrawing, or
4 otherwise disposing of any funds from an account located in Wells Fargo Bank
5 that has been identified to the Commission in a sworn declaration dated November
6 7, 2003 submitted by the Stipulating Defendant.

7 **IV. RETENTION OF ASSETS AND RECORDS BY THIRD PARTIES**

8 **IT IS FURTHER ORDERED** that, pending determination of the FTC's
9 request for a preliminary injunction, and upon notification of this Order, Wells
10 Fargo Bank, and its officers, employees and agents, shall:

11 A. Hold and retain within such entity's control, and prohibit the
12 Stipulating Defendant and her agents, servants, employees, attorneys, and all
13 persons or entities directly or indirectly under her control, or in common control
14 with her, from withdrawing, removing, assigning, transferring, pledging,
15 encumbering, disbursing, dissipating, converting, selling, liquidating, or otherwise
16 disposing of any such funds, documents, property or assets contained in the
17 account referenced in Paragraph III, except:

- 18 1. As directed by further order of the Court; or
- 19 2. By written agreement of the Commission and the parties
20 claiming an interest in such account or asset.

21 Provided, however, that nothing in this Order imposes on Wells Fargo any
22 obligation or duty to hold and retain within its control, or to prohibit the
23 Stipulating Defendant and her agents, servants, employees, attorneys, and all
24 persons or entities directly or indirectly under her control, or in common control
25 with her, from withdrawing, removing, assigning, transferring, pledging,
26 encumbering, disbursing, dissipating, converting, selling, liquidating, or otherwise
27 disposing of funds, documents, property or assets that are not contained in the
28 account referenced in Paragraph III.

1 B. Upon the Commission's request, promptly provide the Commission
2 with copies of all records or other documentation pertaining to the account
3 referenced in Paragraph III including, without limitation, originals or copies of
4 account applications, account statements, signature cards, checks, drafts, deposit
5 tickets, transfers to and from the accounts, all other debit and credit instruments or
6 slips, currency transaction reports, 1099 forms, and safe deposit box logs.

7 C. The account subject to this provision includes existing assets and
8 assets deposited after the effective date of this Order. This Paragraph shall not
9 prohibit transfers in accordance with any provision of this Order, or any further
10 order of the Court.

11 V. FINANCIAL STATEMENTS AND ACCOUNTING

12 **IT IS FURTHER ORDERED** that within 14 days after service of this
13 Order, the Stipulating Defendant shall provide to counsel for the Commission:

14 A. A completed financial statement accurate as of the date of service of
15 this Order upon such Stipulating Defendant, and signed under penalty of perjury.
16 Such statement shall include all financial information as requested in the
17 Department of Treasury – Internal Revenue Service Collection Information
18 Statement for Individuals (Form 433 – A).

19 B. A completed statement, verified under oath, of all of the Stipulating
20 Defendant's payments, transfers, or assignment of funds, assets, or property worth
21 \$1,000 or more since February 1, 2003. Such statement shall include: (a) the
22 amount transferred or assigned; (b) the name of each transferee or assignee; (c) the
23 date of the assignment or transfer; and (d) the type and amount of consideration
24 paid the Stipulating Defendant. Such statement shall specify the name and address
25 of each financial institution and brokerage firm, both domestic and foreign, at
26 which the Stipulating Defendant has accounts or safe deposit boxes, and the
27 account number or other identification of each such account or safe deposit box.

28 C. A detailed accounting, verified under oath, of:

1. all gross revenues obtained from the sale of BodyFlex by the Stipulating Defendant (broken down by month) from February 1, 2003 through the date of the issuance of this Order;
2. all net profits obtained from the sale of BodyFlex by the Stipulating Defendant (broken down by month) from February 1, 2003 of sales through the date of the issuance of this Order;
3. all compensation, of any kind, the Stipulating Defendant, has received subsequent to February 1, 2003 in connection with the creation, marketing and sale of BodyFlex including salaries, commissions, consulting fees, dividends, stock options, stock grants, distributions, royalties, pensions, and profit sharing plans;
4. the total amount of BodyFlex sold since February 1, 2003; and
5. the full names, addresses, and telephone numbers of all purchasers of BodyFlex since February 1, 2003. This customer list, if practicable, shall be provided in the form of a searchable electronic document formatted in Word, Word Perfect, Excel, or Access and supplied on (a) 3.5-inch microcomputer floppy diskettes, high-density, double-sided, formatted for IBM compatible computers (1.44 MB capacity); (b) Iomega ZIP disks formatted for IBM compatible PCs (100 MB capacity); or (c) CD-R74 CD-ROM readable disks formatted to ISO 9660 specifications (650 MB capacity).

Provided, however, that upon mutual consent of the parties the Stipulating Defendant shall be permitted to provide such records or statements at a later date, and to the extent the Commission does not consent, the Stipulating Defendant may move this Court for an extension of time. Provided further, that to the extent any record requested in this Paragraph V is not within the

1 Stipulating Defendant's possession, custody or control, the Stipulating
2 Defendant may so indicate in her sworn statement as the reason she is not
3 providing the records or statements.

4 **VI. PRESERVATION OF RECORDS**

5 **IT IS FURTHER ORDERED** that the Stipulating Defendant, and her
6 agents, servants, employees, and attorneys, and those persons in active concert or
7 participation with them who receive actual notice of this Order by personal service
8 or otherwise, whether acting directly or through any corporation, subsidiary,
9 division or other device, are hereby temporarily enjoined from destroying, erasing,
10 mutilating, concealing, altering, transferring, or otherwise disposing of, in any
11 manner, directly or indirectly, any documents within her possession, custody or
12 control, that relate to the business practices or business or personal finances of the
13 Stipulating Defendant, or to the business practices or finances of entities directly
14 or indirectly under the control, in whole or in part, of the Stipulating Defendant,
15 including, but not limited to, books, records, tapes, discs, accounting data, checks
16 (fronts and backs), correspondence, forms, advertisements, brochures, manuals,
17 electronically stored data, banking records, customer lists, customer files,
18 customer addresses, customer telephone numbers, invoices, telephone records,
19 ledgers, payroll records, or other documents of any kind, including information
20 stored in computer-maintained form.

21 **VII. RECORD KEEPING/BUSINESS OPERATIONS**

22 **IT IS FURTHER ORDERED** that the Stipulating Defendant, and her
23 officers, agents, servants, employees, and attorneys, and those persons in active
24 concert or participation with them who receive actual notice of this Order by
25 personal service or otherwise, whether acting directly or through any corporation,
26 subsidiary, division or other device, are hereby temporarily enjoined from:

27 A. Failing to create and maintain documents, typically created and
28 maintained in the ordinary course of business, that, in reasonable detail,

1 accurately, fairly, and completely reflect the income, assets, disbursements,
2 transactions, and use of money by the Stipulating Defendant or other entity
3 directly or indirectly under her control, beginning as of the time of effective
4 service of this Order, including, but not limited to, books, records, accounts, bank
5 statements, current accountants' reports, general ledgers, general journals, cash
6 receipt ledgers, cash disbursement ledgers and source documents, and documents
7 indicating title to real or personal property.

8 B. Creating any business entity, including any partnership, limited
9 partnership, joint venture, sole proprietorship or corporation, after service of this
10 Order, without first providing the Commission with a written statement disclosing:
11 (1) the name of the business entity; (2) the address and telephone number of the
12 business entity; (3) the names of the business entity's officers, directors, principals,
13 managers and employees; and (4) a description of the business entity's intended
14 activities in sufficient detail to provide the Commission adequate information
15 regarding the business entity's activities.

16 C. Operating or exercising any control over any business entity,
17 including any partnership, limited partnership, joint venture, sole proprietorship or
18 corporation, after service of this Order, without providing the Commission with a
19 written statement described below in Subparagraph D.

20 D. Within 14 days after entry of this Order, the Stipulating Defendant
21 shall provide a written statement, under oath, to the Commission disclosing: (1)
22 the name of the business entity, including any partnership, limited partnership,
23 joint venture, sole proprietorship or corporation over which the Stipulating
24 Defendant exercises control, operates or created; (2) the address and telephone
25 number of each such business entity; (3) the names of each such business entities'
26 officers, directors, principals, managers and employees; and (4) a description of
27 each such business entities activities in sufficient detail to provide the
28 Commission adequate information regarding the business entity's activities.

1 **VIII. DISTRIBUTION OF ORDER BY THE STIPULATING**
2 **DEFENDANT**

3 **IT IS FURTHER ORDERED** that the Stipulating Defendant shall
4 immediately provide a copy of this Order to each affiliate, partner, division, sales
5 entity, successor, assign, officer, director, employee, independent contractor,
6 agent, attorney, advertising agency, call center, domain name registrar, reseller,
7 mail receipt center, fulfillment house, and representative of the Stipulating
8 Defendant involved with her subsequent to February 1, 2003 in the advertising,
9 marketing, offering for sale or sale of BodyFlex and shall, within 14 days from the
10 date of entry of this Order, serve upon counsel for the Commission a sworn
11 statement that they have complied with this provision of the Order. The statement
12 shall include the names, titles, and addresses of each such person or entity who
13 received a copy of the Order.

14 **IX. SERVICE OF ORDER**

15 **IT IS FURTHER ORDERED** that copies of this Order may be served by
16 facsimile transmission, personal or overnight delivery, or U.S. mail, by employees
17 of the Commission, employees of any law enforcement agency, or agents of any
18 process servers retained by the Commission upon (1) the Stipulating Defendant;
19 (2) any financial institution or other entity or person that may have possession,
20 custody, control or knowledge of any documents, accounts, or assets of the
21 Stipulating Defendant; or (3) any other entity or person that may otherwise be
22 subject to any provision of this Order. Service upon any branch or office of any
23 entity shall effect service upon the entire entity.

24 **X. CONSUMER CREDIT REPORT**

25 **IT IS FURTHER ORDERED** that pursuant to Section 604(a)(1) of the
26 Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting
27 agency served with this Order shall promptly furnish consumer reports concerning
28 the Stipulating Defendant to counsel for the Commission.

1 **XI. LIMITED EXPEDITED DISCOVERY AS TO THE EXISTENCE AND**
2 **LOCATION OF ASSETS AND DOCUMENTS AND COMPLIANCE**
3 **WITH THIS ORDER**

4 **IT IS FURTHER ORDERED** that pursuant to Federal Rules of Civil
5 Procedure 26, 30(a), 31(a), 34, and 45, the Commission is granted leave, at any
6 time after service of this Order, to:

7 A. Take the deposition, including depositions upon forty-eight hours'
8 written notice, of any person, whether or not a party, for the purpose of
9 discovering the nature, location, status, and extent of assets of the Stipulating
10 Defendant or of her affiliates or subsidiaries; the nature and location of documents
11 reflecting the business transactions of the Stipulating Defendant; the whereabouts
12 of the Stipulating Defendant; and compliance with this Order. The limitations and
13 conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) and 31(a)(2)(B) regarding
14 subsequent depositions of an individual shall not apply to depositions taken
15 pursuant to this Section. Any such depositions taken pursuant to this Section shall
16 not be counted toward the ten-deposition limit set forth in Fed. R. Civ. P.
17 30(a)(2)(A) and 31(a)(2)(A).

18 B. Demand the production of documents, on five days' notice, from any
19 person, whether or not a party, relating to the nature, status or extent of assets of
20 the Stipulating Defendant; the location of documents reflecting the business
21 transactions of the Stipulating Defendant; the whereabouts of the Stipulating
22 Defendant; and compliance with this Order; provided that 24 hours' notice shall
23 be deemed sufficient for the production of any such documents that are maintained
24 or stored as electronic data.

25 C. Service of discovery upon a party, taken pursuant to this Section,
26 shall be sufficient if made by facsimile or by overnight delivery.

27 **XII. REPATRIATION OF FOREIGN ASSETS**

28 **IT IS FURTHER ORDERED** that, notwithstanding that the Stipulating
Defendant has sworn under oath that she does not maintain any foreign assets, if

1 she does, in fact, possess such foreign assets now or hereafter, the Stipulating
2 Defendant shall immediately:

3 A. Repatriate to the United States all funds, documents or assets in
4 foreign countries held: (1) by her; (2) for her benefit; or (3) under her direct or
5 indirect control, jointly or singly.

6 B. The same business day as any repatriation under Subparagraph A
7 above: (1) notify counsel for the Commission of the name and location of the
8 financial institution or other entity that is the recipient of such funds, documents or
9 assets; and (2) serve this Order on any such financial institution or other entity.

10 C. Provide the Commission with a full accounting of all funds,
11 documents, and assets outside of the territory of the United States held: (1) by her;
12 (2) for her benefit; or (3) under her direct or indirect control, jointly or singly.

13 D. Hold and retain all repatriated funds, documents, and assets and
14 prevent any transfer, disposition or dissipation whatsoever of any such assets or
15 funds.

16 E. Provide the Commission access to the Stipulating Defendant's
17 records and documents held by financial institutions outside the territorial United
18 States, by signing the Consent to Release of Financial Records, which shall be
19 provided by FTC counsel.

20 **XIII. NONINTERFERENCE WITH REPATRIATION**

21 **IT IS FURTHER ORDERED** that, notwithstanding that the Stipulating
22 Defendant has sworn under oath that she does not maintain any foreign assets, if
23 she does, in fact, possess such foreign assets now or hereafter, the Stipulating
24 Defendant is hereby temporarily enjoined from taking any action, directly or
25 indirectly, which may result in the encumbrance or dissipation of foreign assets, or
26 in the hindrance of the repatriation required by the Paragraph XII of this Order,
27 including, but not limited to:

1 B. The Stipulating Defendant, in responding to this Court's order, shall
2 serve all memoranda, affidavits, and other evidence on which she intends to rely
3 not later than 4:00 p.m. (PDT) of the fourteenth day prior to the preliminary
4 injunction hearing set in this matter. The Commission may serve and file a reply
5 to the Stipulating Defendant's opposition no later than 4:00 p.m. (PDT) on the
6 seventh day prior to the preliminary injunction hearing

7 C. The question of whether this Court should enter a preliminary
8 injunction pursuant to Fed. R. Civ. P. 65 enjoining the Stipulating Defendant
9 during the pendency of this action shall be resolved on the pleadings, declarations,
10 exhibits, and memoranda filed by and oral argument of the parties. Live testimony
11 shall be heard only pursuant to Local Rule 7-8.

12 **XVI. CORRESPONDENCE WITH AND NOTICE TO THE COMMISSION**

13 **IT IS FURTHER ORDERED** that for purposes of this Order, all
14 correspondence and pleadings to the Commission shall be performed by hand
15 delivery or confirmed facsimile delivery to:

16 Lemuel Dowdy
17 Federal Trade Commission
18 Division of Enforcement
19 600 Pennsylvania Ave. NW
20 NJ-2122
21 Washington, DC 20580
22 Phone: (202) 326-2981
23 Facsimile: (202) 326-2558
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