

1 WILLIAM E. KOVACIC
General Counsel

2 LEMUEL DOWDY
3 ROBIN ROSEN SPECTOR
4 VICTOR DeFRANCIS
Attorneys for Plaintiff
Federal Trade Comm

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1 Order Permitting Limited Expedited Discovery, and Other Equitable Relief and
2 Order to Show Cause Why

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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 docum

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

1 subsidiary, division or other device, are hereby temporarily

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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 acc

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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;

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 ac

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 A. Sending any statement, letter, fax, email or wire transmission, or
2 telephoning or engaging in any act, directly or indirectly, that results in a
3 determination by a foreign trustee or other entity that a “duress” event has
4 occurred under the terms of a foreign trust agreement until such time that all assets
5 have been fully repatriated pursuant Paragraph XII of this order.

6 B. Notifying any trustee, protector or other agent of any foreign trust or
7 other related entities of either the existence of this Order, or of the fact that
8 repatriation is required pursuant to a court order, until such time that order,er, fa
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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:

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1 **XVII. RETENTION OF JURISDICTION**

2 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of
3 this matter for all purposes.

4 **IT IS SO ORDERED.**

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7 Dated _____ UNITED STATES DISTRICT JUDGE

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9 **SO STIPULATED:**

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11 _____
12 LEMUEL DOWDY
13 ROBIN ROSEN
14 VICTOR DEFRANCIS
15 Federal Trade Commission
16 600 Pennsylvania Avenue, N.W.
17 Mail Drop NJ-2122
18 Washington, D.C. 20580
19 (202) 326-2981 (voice)
20 (202) 326-2981 (fax)

11 _____
12 JOHN R. FLEDER
13 DC Bar #176123
14 Hyman, Phelps & McNamara, P.C.
15 700 Thirteenth Street, NW
16 Suite 1200
17 Washington, DC 20005
18 (202) 737-4580 (voice)
19 (202) 737-9329 (fax)

17 _____
18 JOHN JACOBS
19 Federal Trade Commission
20 10877 Wilshire Boulevard,
21 Suite 700
22 Los Angeles, CA 90024
23 (310) 824-4343 (voice)
24 (310) 824-4380 (fax)

17 _____
18 PATRICIA GLASER
19 C.S.B. No. 055668
20 KERRY GARVIS WRIGHT
21 C.S.B. No. 206320
22 Christenson, Miller, Fink, Jacobs,
23 Glaser, Weil & Shapiro LLP
24 10250 Constellation Boulevard
25 Los Angeles, CA 90067
26 (310) 553-3000 (voice)
27 (310) 556-2920 (fax)

28
Attorneys for the Stipulating
Defendant, Greer Childers