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

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16 **FEDERAL TRADE COMMISSION,**

17 **Plaintiff,**

18 **v.**

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

22 **Defendants.**
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24)

) **Civil Action No. CV 03-8159**
) **FMC (JTLx)**

) **FIRST AMENDED**
) **COMPLAINT FOR**
) **PERMANENT**
) **INJUNCTION AND**
) **OTHER EQUITABLE**
) **RELIEF**

25 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), through
26 its undersigned attorneys, alleges as follows:

1 **1.** Plaintiff FTC brings this action under Section 13(b) of the Federal Trade
2 Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure a permanent
3 injunction, consumer redress, disgorgement, and other equitable relief
4 against the Defendants for engaging in deceptive acts or practices in
5 connection with the advertising, marketing, and sale of the BodyFlex+
6 System (“BodyFlex”), including an exercise bar and breathing technique,
7 which purportedly causes rapid inch loss and burns fat, in violation of
8 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

9 **JURISDICTION AND VENUE**

- 10 **2.** This Court has subject matter jurisdiction over this matter under 15 U.S.C.
11 §§ 45(a), 52, and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.
12 **3.** Venue in this district is proper under 15 U.S.C. § 53(b) and 28 U.S.C.
13 §§ 1391(b) and (c).

14 **THE PARTIES**

15 **4.** Plaintiff, the Federal Trade Commission, is an independent agency of the
16 United States Government created by statute. *See* 15 U.S.C. §§ 41-58. The
17 Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which
18 prohibits unfair or deceptive acts or practices in or affecting commerce. The
19 Commission also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which
20 prohibits false advertisements for food, drugs, devices, services, or
21 cosmetics in or affecting commerce. The Commission may initiate federal
22 district court proceedings, through its attorneys, to enjoin violations of the
23 FTC Act and to secure such other equitable relief, including rescission of
24 contracts and restitution, and disgorgement of ill-gotten gains, as may be
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1 appropriate in each case. 15 U.S.C. § 53(b).

2 **5.** Defendant Savvier, Inc. (“Savvier”), is a closely held California corporation
3 located at 74948 Saguaro Lane, Indian Wells, California 92210 and/or
4 19191 S. Vermont Avenue, Suite 750, Torrance, CA 90502. At all times
5 relevant to this Complaint, acting individually or in concert with others,
6 Savvier has marketed and sold BodyFlex to consumers throughout the
7 United States. Savvier transacts or has transacted business in the Central
8 District of California.

9 **6.** Defendant Savvier, LP is a limited partnership located at 5790 Fleet Street,
10 Suite 130, Carlsbad, California 92008. At all times relevant to this
11 Complaint, acting individually or in concert with others, Savvier LP has
12 marketed and sold BodyFlex to consumers throughout the United States.
13 Savvier LP transacts or has transacted business in the Central District of
14 California.

15 **7.** Defendant BodyFlex, Inc. (“BFI”) is a closely held Nevada corporation
16 located at 2525 Sun Reef Road, Las Vegas, Nevada 89128. At all times
17 relevant to this Complaint, acting individually or in concert with others, BFI
18 has marketed and sold BodyFlex to consumers throughout the United States.
19 BFI transacts or has transacted business in the Central District of California

20 **8.** Defendant Greer Childers is an officer, director, and/or owner of BFI. She is
21 the purported creator of BodyFlex, and appears in the advertising for and
22 videotapes demonstrating the product. At all times relevant to this
23 Complaint, acting individually or in concert with others, she has participated
24 in the acts and practices set forth herein. Ms. Childers transacts or has
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1 sale of BodyFlex directly to consumers nationwide through a variety of
2 media including, but not necessarily limited to, an approximately 30-minute
3 television commercial (“infomercial”) and an Internet website.

4 **The BodyFlex+ System**

5 **14.** BodyFlex has two components: (1) a Gym Bar (a plastic exercise bar with
6 an oversized elastic band attached at either end); and (2) a breathing
7 technique. The product is packaged with a carrying case, instructions, a tape
8 measure and includes two videotapes: “Getting Started: Losing the Inches,”
9 an instructional video in which Ms. Chil630.0014 Tw(tecde: ol viatotap)]T,”

1 **18.** In “The Workout” videotape, Ms. Childers begins the BodyFlex routine by
2 performing the breathing technique combined with six warm-up exercises
3 that purportedly stretch the muscles in the face, neck, arms (biceps and
4 triceps), waist, and upper and lower abdominal muscles. She performs each
5 stretching exercise five times for a total of 30 warm-up repetitions. The
6 exercises can be performed in a sitting or standing position – Ms. Childers is
7 sitting in the video. The next step is a “cool down” consisting of five deep
8 breaths. The warm-up exercises and the cool down comprise approximately
9 11 minutes of the approximately 18-minute routine.

10 **19.** In the approximately seven remaining minutes of the approximately 18-
11 minute routine, after the cool down, Ms. Childers performs six different
12 exercises using the Gym Bar that allegedly target the biceps, shoulders,
13 triceps, abdominal muscles, waistline, hips and upper legs. Ms. Childers
14 instructs users to perform three sets of three repetitions of each exercise,
15 with a short rest after each set, for a total of nine repetitions. The sixth
16 exercise is the only exercise that must be performed in a standing position.
17 The routine ends with five deep breaths.

18 **20.** Ms. Childers states in the video and in the infomercial that, to make the Gym
19 Bar exercises more challenging, users can add approximately five pounds of
20 additional resistance by rolling the elastic band one revolution around the
21 ends of the Gym Bar.

22 **The Defendants’ Ads and Claims For BodyFlex**

23 **21.** To induce consumers to purchase BodyFlex, the Defendants have
24 disseminated or have caused to be disseminated advertisements including,
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but not necessarily limited to, an infomercial and an Internet website –

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1 So, you can imagine what I thought when I heard about
2 an exercise program that you stood still and all you did was
3 breathe and it promised four to 14 inches lost off your body and
4 your midsection in the first seven days.

5 **ON SCREEN: Across your 6 target areas.**

6 GREER CHILDERS: I thought this is the biggest
7 gimmick I've ever heard in my life. But back then, I was so
8 desperate, I didn't know what else to do. So, I thought, well,
9 I've tried everything else, I'm going to try this, too.

10 The first seven days, to my amazement, I lost 10 inches
11 in my midsection alone. . . .

12 Ex. A at 26.

13 **24.** Throughout the infomercial Ms. Childers repeats her fabulous results. She
14 also challenges consumers to try the product. “[S]he includes a tape
15 measure in every kit so you can see with your own eyes the amazing inch
16 loss.” Ex. A at 45. “Use the tape measure, prove me wrong,” she implores
17 consumers. *Id.* at 63.

18 **25.** The infomercial includes user testimonials juxtaposed with before and after
19 photographs showing the users as substantially thinner purportedly as a
20 result of using BodyFlex. The infomercial also includes commentary by
21 medical doctors and purported testing results.

22 **26.** The www.bodyflex.com website closely parallels the infomercial.
23 Consumers are directed to this website during the infomercial when the
24 announcer describes how to order the product. The website relates Ms.
25 Childers' personal fitness story and reiterates many of the claims made in the
26 infomercial. It also includes the user testimonials and commentary from the
medical doctors depicted in the infomercial. *See* Ex. B (facsimile of the
website).

1 27. The BodyFlex advertisements include, but are not limited to, the following
2 statements and depictions:

3 a. MALE ANNOUNCER: Well, now, in just seven days you can
4 lose from four to 14 inches guaranteed with BodyFlex Plus.
Ex. A at 40-41 and 55; *see also* Ex. B at 68.

5 b. MALE ANNOUNCER: The secret of BodyFlex lies in the
6 power of oxygen to burn fat. With BodyFlex breathing, you'll
supercharge your blood with fat burning oxygen and you'll lose
inches fast –

7 **ON SCREEN: Guarantees**
8 **Lose**
9 **4 to 14 Inches**
in just 7 days

10 (In very small print) Measured across your 6 target areas

11 MALE ANNOUNCER: – so fast that BodyFlex guarantees
12 you'll lose four to 14 inches across your target areas in the first 7
days.

13 **ON SCREEN: Upper Abs**
14 **Lower Abs**
15 **Waist**
16 **Hips**
Thighs
Upper Arms
4 to 14 Inches

17 MALE ANNOUNCER: That's the upper abs, lower abs, waist,
18 hips, thighs and upper arms. That's right four to 14 inches in the first
7 days.

19 Ex. A at 41-42 and 55-56; *see also* Ex. B at 72 (same text).

20 c. GREER CHILDERS: BodyFlex is a system that fits into my
21 needs, and believe me, I'm not dieting for anybody.
Ex. A at 27.

22 d. **ON SCREEN: 4 to 14 inches across your 6 target areas**

23 GREER CHILDERS: Four to 14 inches in the first seven days.
24 What more could someone ask for in a fitness program?
Ex. A at 35-36.

25 e. GREER CHILDERS: The way BodyFlex works is it's

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1 **p. ON SCREEN: SIZE 20 to 10/12**

2 ERIKA WEAKLEY [purported BodyFlex user]: I've gone
3 from a size 20 to a size 10/12.

4 Ex. A at 24; *see also id.* at 55 (“The first week I lost an average of 12
5 inches all over”); *id.* at 48, 50 and 63 (same screen text).

6 **q. ON SCREEN: SIZE 14 TO 4**

7 DAWN HALASZ [purported BodyFlex user]: I went from a
8 size 14 to a 4.

9 Ex. A at 24; *see also id.* at 48, 51 and 64 (same text along with
10 photographs); Ex. B at 75 (same text coupled with before and after
11 photographs that depict Ms. Halasz as noticeably thinner).

12 **r. ON SCREEN: Alicia Nurick**
13 **Age: 57 Size: 22 to 14**

14 ALICIA NURICK [purported BodyFlex user]: The first week
15 that I was doing BodyFlex, I lost seven-and-a-half inches.

16 Ex. A at 27. [Same messages and display characteristics described in
17 ¶ 27(l) appear during this testimonial.]

18 **s. ON SCREEN: Lost 9 Total Inches in 1 Week**
19 **Joya Frazzetta**
20 **Age: 36**

21 JOYA FRAZZETTA [purported BodyFlex user]: It was
22 unbelievable to lose nine inches in one week.

23 Ex. A at 28 and 37; *see also id.* at 54 (“nine inches in one week”).

24 **t. ON SCREEN: Sherry Sheppard**
25 **Age: 44 Size: 32 to 16**

26 SHERRY SHEPPARD [purported BodyFlex user]: On
BodyFlex I lost 200 pounds and 153 inches total. And that's just
amazing to me.

Ex. A at 31 and 48. [Same messages and display characteristics
described in ¶ 27(l) appear during this testimonial.]

1 DR. RON ROTHENBERG: We have very hard core data here.
2 The group lost seven inches average of the different measurements
3 that we took. What this means is a significant fat loss. That's how
4 they lost the inches, by losing fat.
5 Ex. A at 38; Ex. B at 73 (virtually identical text).

- 6 **d. ON SCREEN: Dr. Daniel Cosgrove, M.D.**
7 **Medical Director, Wellmax Center**
8 **BodyFlex utilizes resistance training to boost your**
9 **metabolism. A recent study confirmed the aerobic nature of the**
10 **BodyFlex workout and caloric burn capabilities versus treadmill**
11 **exercise at 3 mph.**

12 DR. DANIEL COSGROVE: With the BodyFlex System, even
13 compared to other exercise programs of this same duration, you will
14 burn more calories while you're using it, but even more importantly,
15 you're burning more calories the whole rest of the day while you're
16 not using it. And if you're burning more calories all day, even if
17 you're just sitting there, then you're going to lose weight more
18 effectively.
19 Ex. A at 38.

- 20 **e. DR. DANIEL COSGROVE: I think it is surprising how a**
21 **person can sit in one place and literally be watching TV while they're**
22 **doing exercise and they can still beat the treadmill. We compared the**
23 **exact same time on the treadmill with the BodyFlex System and the**
24 **BodyFlex System burned more calories. It works better.**
25 **Ex. A at 52-53; see also Ex. B at 72.**

26 **THE DEFENDANTS' VIOLATIONS OF THE FTC ACT**

- 29. Section 5(a) of the FTC Act, 15 U.S.C**

1 BodyFlex.

2 **COUNT ONE**
3 **FALSE INCH LOSS CLAIMS**

4 **30.** Through the means described in Paragraphs 21-28, the Defendants have
5 represented, expressly or by implication, that BodyFlex causes users to lose
6 from four to 14 inches across six body areas in the first seven days without
7 reducing calories.

8 **31.** In truth and in fact, BodyFlex does not cause users to lose from four to 14
9 inches across six body areas in the first seven days without reducing
10 calories. Therefore, the Defendants' representation as set forth in Paragraph
11 30 is false or misleading and constitutes a deceptive act or practice, and the
12 making of false advertisements, in or affecting commerce, in violation of
13 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

14 **COUNT TWO**
15 **FALSE FAT BURNING CLAIMS**

16 **32.** Through the means described in Paragraphs 21-28, the Defendants have
17 represented, expressly or by implication, that BodyFlex causes users to burn
18 enough body fat to lose four to 14 inches across six body areas in the first
19 seven days.

20 **33.** In truth and in fact, BodyFlex does not cause users to burn enough body fat
21 to lose four to 14 inches across six body areas in the first seven days.
22 Therefore, the Defendants' representation as set forth in Paragraph 32 is
23 false or misleading and constitutes a deceptive act or practice, and the
24 making of false advertisements, in or affecting commerce, in violation of
25 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

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CONSUMER INJURY

38. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of the Defendants' unlawful acts or practices. In addition, the Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, the Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

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THIS COURT'S POWER TO GRANT RELIEF

39. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including, but not limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains, caused by the Defendants' law violations.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that this Court:

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1. Permanently enjoin the Defendants from violating Sections 5(a) and 12 of the FTC Act as alleged herein, including committing such violations in connection with the advertising or sale of food, drugs, dietary supplements, devices, cosmetics, or other products, services or programs;

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2. Award Plaintiff all temporary and preliminary injunctive and ancillary relief that may be necessary to avert the likelihood of consumer injury during the pendency of this action, and to preserve the possibility of effective and final relief,

1 including, but not limited to, temporary and preliminary injunctions and an asset
2 freeze;

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