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12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

14 FEDERAL TRADE COMMISSION,)
15)
16 Plaintiff,)
17 v.)
18 FIBERTHIN, LLC,)
OBESITY RESEARCH)
19 INSTITUTE, LLC,)
HENNY DEN UIJL,)
20 BRYAN CORLETT,)
JAMES AYRES, and)
DR. JONATHAN M. KELLEY,)
21 Defendants.)

CIVIL NO.

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF

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24 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), through its
25 undersigned attorneys, for its Complaint alleges:

- 26 1. Plaintiff FTC v1Rm its

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omplaint alleges:

1 relief against Defendants for engaging in deceptive acts or practices in violation of Sections 5(a)
2 and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

3 **JURISDICTION AND VENUE**

4 2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 52,
5 53(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

6 3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b)
7 and (c).

8 **THE PARTIES**

9 4. Plaintiff, the Federal Trade Commission, is an independent agency of the United
10 States Government created by statute. 15 U.S.C. §§ 41-58. The Commission enforces Section
11 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
12 affecting commerce. The Commission also enforces Section 12 of the FTC Act, 15 U.S.C. § 52,
13 which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or
14 affecting commerce. The Commission, through its own attorneys, may initiate federal district
15 court proceedings to enjoin violations of the FTC Act and to secure such equitable relief,
16 including rescission of contacts and restitution, and the disgorgement of ill-gotten gains caused
17 by Defendants' law violations, as may be appropriate in each case. 15 U.S.C. § 53(b).

18 5. Defendant FiberThin, LLC ("FiberThin") is a California limited liability company
19 with offices located at 1601 Aryana Drive, Encinitas, California. At times relevant to the
20 complaint, acting individually or in concert with others, FiberThin has advertised, marketed,
21 distributed, and sold the dietary supplements FiberThin and MetaboUp to consumers in the
22 United States. FiberThin transacts business in this district and throughout the United States.

23 6. Defendant Obesity Research Institute, LLC ("ORI") is a California limited
24 liability company with offices located at 1601 Aryana Drive, Encinitas, California. At times
25 relevant to the complaint, acting individually or in concert with others, ORI has advertised,
26 marketed, distributed, and sold the dietary supplements Propolene and Excelerene to consumers
27 in the United States. ORI transacts business in this district and throughout the United States.

28 7. Defendant Henny den Uijl is a Managing Member of both FiberThin and ORI, and

1 has a 50% ownership interest in each company. Mr. den Uijl is the registered agent for both
2 companies, and is listed as the administrative contact for the www.fiberthin.com website. At
3 times relevant to this Complaint, acting individually or in concert with others, Mr. den Uijl has
4 formulated, directed, controlled, or participated in the acts or practices of FiberThin and ORI,
5 including the acts or practices alleged in this Complaint. He transacts business in this district and
6 throughout the United States.

7 8. Defendant Bryan Corlett is a Managing Member of both FiberThin and ORI, and
8 has a 50% ownership interest in each company. He also holds the trademarks for “FiberThin”
9 and “MetaboUp.” At times relevant to this Complaint, acting individually or in concert with
10 others, Mr. Corlett has formulated, directed, controlled, or participated in the acts or practices of
11 FiberThin and ORI, including the acts or practices alleged in this Complaint. He transacts
12 business in this district and throughout the United States.

13 9. Defendant James Ayres is a partner in the company Ayres Weight Management,
14 which conducted purported studies on FiberThin and MetaboUp. His business address is 31600
15 Railroad Canyon Road, Canyon Lake, California. He has aided in the promotion of FiberThin by
16 appearing as a “weight loss consultant” and providing endorsements for the product in
17 advertisements. Mr. Ayres transacts business in this district and throughout the United States.

18 10. Defendant Jonathan M. Kelley, M.D. is a retired anesthesiologist. He has aided in
19 the promotion of Propolene by appearing and providing endorsements for the product in
20 advertisements. Dr. Kelley transacts business in this district and throughout the United States.

21 COMMERCE

22 11. The acts and practices of Defendants alleged in this Complaint have been in or
23 affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

24 DEFENDANTS’ COURSE OF CONDUCT

25 12. Since at least 2003, Defendants FiberThin, den Uijl, and Corlett have advertised,
26 labeled, offered for sale, and sold products to the public throughout the United States, including
27 FiberThin and MetaboUp, two dietary supplements marketed and sold for weight loss.
28 Defendants primarily advertise and offer these products for sale through a 30-minute television

1 infomercial and an Internet website, www.fiberthin.com. The infomercial aired on numerous
2 television stations, including The Learning Channel, PAX Family Entertainment Network, Home
3 and Garden TV, and CNBC. Defendant Ayres appears in the television infomercial and endorses
4 the FiberThin product.

5 13. Since at least 2003, Defendants ORI, den Uijl, and Corlett have advertised,
6 labeled, offered for sale, and sold products to the public throughout the United States, including
7 Propolene and Excelerene, two dietary supplements marketed and sold for weight loss.
8 Defendants primarily advertise and offer Propolene for sale through television commercials and
9 an Internet website, www.propolene.com, and offer Excelerene for sale through the
10 www.propolene.com website. Defendant Kelley appears in the television commercials and
11 endorses the Propolene product. Propolene and FiberThin appear to be identical products with
12 different names. Excelerene and MetaboUp appear to be identical products with different
13 names.

14 The Supplements

15 14. FiberThin and Propolene are tablets that purportedly contain glucomannan as their
16 primary ingredient. MetaboUp and Excelerene are tablets that purportedly contain green tea,
17 chromium, and bitter orange as their primary ingredients. FiberThin and MetaboUp are sold
18 together for weight loss, as are Propolene and Excelerene. The initial 60-day supply of FiberThin
19 and MetaboUp offered through the www.fiberthin.com website costs \$99.80, including \$9.95 for
20 shipping and handling, and \$29.95 per month thereafter if customers join Defendants' "Take it
21 off, Keep it off" automatic shipping program. The initial 60-day supply of Propolene and
22 Excelerene offered through the www.propolene.com website costs \$89.85, and \$29.95 per month
23 thereafter if customers join Defendants' "Take it off, Keep it off" automatic shipping program.

24 Advertisements for FiberThin and MetaboUp

25 15. To induce consumers to purchase FiberThin and MetaboUp, Defendants
26 FiberThin, den Uijl, and Corlett have disseminated, or caused to be disseminated, advertisements
27 for the supplements, including but not limited to the attached Exhibits A and B. These
28 advertisements contain the following statements or depictions, among others:

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A. Excerpts From Television Infomercial

MALE ANNOUNCER: Do you dream of having that thin, lean body but you just can't seem to lose that w

Thin are clinically proven to deliver dramatic weight loss results.

FiberThin works!
It's easy!
You'll feel full!
No dieting!

* * *

What is included in the Fiber Thin System?

...
Metabo-Up tablets. These tablets are a blend of all natural herbs that are scientifically proven to increase your metabolism by 40%.
We are including the Guide to healthy living with your order. As with any diet program, the right diet and exercise plan can accelerate your results. This guide will outline different ways you can supplement the Fiber Thin tablets with diet and exercise to lose weight even faster.

* * *

How much weight will I lose?

... Fiber Thin guarantees you'll lose up to 20 pounds in 30 days if you use the Fiber Thin System, which is what you are looking for, right?

* * *

How does each product work?

Fiber Thin creates a fiber sponge that makes you feel full. Fiber Thin traps and binds some of the fat in the foods you eat so that it is not absorbed into your system. As a result, Fiber Thin reduces caloric intake from fat and adds healthy fiber into your diet. Metabo-Up contains green tea. Green tea is proven to increase your metabolism safely so you burn more calories.

(Exhibit B)

Advertisements for Propolene and Excelerene

_____ 16. To induce consumers to purchase Propolene and Excelerene, Defendants ORI, den Uijl, and Corlett have disseminated, or caused to be disseminated, advertisements for the supplements, including but not limited to the attached Exhibits C through E. These advertisements contain the following statements or depictions, among others:

A. Excerpts From Television Commercials

ON SCREEN: Jonathan Kelley, M.D.
Harvard Medical School Graduate
Individual results vary (remainder of sentence illegible)

JONATHAN Kelley: If you're 20 pounds or more overweight, there's news from the Obesity Research Institute. Dramatic weight loss can now be achieved without diet or exercise.

* * *

1 **ON SCREEN: Dr. Jose Echevarria**
2 **Lost 80 Pounds in 4 Months!**
3 **Individual results vary. For maximum weight loss, diet and exercise are (illegible).**

4 DR. JOSE ECHEVARRIA: The first week I lost like about 10 and then every month like 20
5 pounds.

6 **ON SCREEN: Propolene**
7 **Scientifically Proven to Reduce Weight**
8 **9 Clinical Studies**

9 FEMALE ANNOUNCER: Propolene, scientifically proven to reduce weight without special diet
10 and exercise, backed by nine clinical studies.

11 **ON SCREEN: Only For Weight Loss of 20 Pounds or More**
12 JONATHAN Kelley: Please understand, Propolene is so powerful that it was formulated only
13 for those that need to lose 20 pounds or more.

14 (Exhibit C)

15 ...
16 **ON SCREEN: Mike Deckert**
17 **Lost 30 Pounds in 8 Weeks!**
18 **Results not typical and may vary**

19 MIKE DECKERT: I was 247 eight weeks ago and I'm 30 pounds lighter today.

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ON SCREEN: Christa Lizzarga
Lost Weight With No Exercise
Results not typical and may vary

CHRISTA LIZZARGA: If this could work for me, it could work for anybody because I haven't been to the gym in over a month, to be honest, I have not gone to the gym even once. I don't have the time.

* * *

ON SCREEN: Jim Backman
Lost 25 Pounds in 6 Weeks!
Results not typical and may vary

JIM BACKMAN: They told me if I didn't lose weight, I was going to die. You don't c TD(going t)Tj46.4400t C

1 Weight loss varies depending on the individual. Propolene™ guarantees you will lose up to 20
2 pounds in 30 days if you use the Propolene™.

3 * * *

4 **How does each product work?**

5 Propolene™ creates a viscous fiber mass, which is 100% natural soluble dietary fiber and
6 provides a feeling of satiety. Propolene™ encapsulates some of the fat in the foods you eat and
7 prevents its absorption by digestive tract (sic), resulting in reduced caloric intake from fat and
8 adding healthy fiber to your diet.

9 Excelerene™ contains Green Tea. Green tea is proven to increase your metabolism safely so you
10 burn more calories.

11 * * *

12 **Healthy Living Guide**

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- a. FiberThin and MetaboUp cause rapid and substantial weight loss without the need to reduce caloric intake or increase exercise;
- b. FiberThin and MetaboUp enable users to lose as much as 4 to 5 pounds per week over multiple weeks and months without the need to reduce caloric intake or increase exercise;
- c. FiberThin and MetaboUp work for all users;
- d. FiberThin causes substantial weight loss through blocking the absorption of fat calories;
- e. FiberThin is scientifically proven to block absorption of up to 400 fat calories per day;
- f. MetaboUp is scientifically proven to boost users' metabolism up to 43%; and
- g. FiberThin and MetaboUp are clinically proven to cause rapid and substantial weight loss, including as much as 50 pounds in three months, without the need to reduce caloric intake or increase exercise.

19. The representations set forth in Paragraph 18 are false or were not substantiated at the time the representations were made. Therefore, Defendants' representations as set forth in Paragraph 18 constitute a deceptive act or practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT II

Claims for Propolene and Excelerene

20. Through the means described in Paragraph 16, including through the advertisements attached as Exhibits C through E, Defendants ORI, Henny den Uijl, and Bryan Corlett have represented, expressly or by implication, that:

- a. Propolene causes rapid and substantial weight loss without the need to reduce caloric intake or increase exercise;
- b. Propolene enables users to lose as much as 4 to 5 pounds per week over multiple weeks and months without the need to reduce caloric intake or increase exercise;
- c. Excelerene is scientifically proven to boost users' metabolism by 40%; and
- d. Propolene is scientifically proven to cause rapid and substantial weight loss, including as much as 80 pounds in four months, without the need to reduce caloric intake or increase exercise.

1 purported expertise in the field of weight loss in the form of an examination or testing of
2 Propolene at least as extensive as an expert in that field would normally conduct in order to
3 support the conclusions presented in his endorsement. Therefore, the making of the
4 representation set forth in Paragraph 24 constitutes a deceptive act or practice, and the making of
5 false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC
6 Act, 15 U.S.C. §§ 45(a) and 52.

7 **INJURY**

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

13 **THIS COURT'S POWER TO GRANT RELIEF**

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

19 **PRAAYER FOR RELIE**

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