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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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13 **FEDERAL TRADE COMMISSION**) **Civil Action No. CV03-8159 FMC (JTLx)**
14)
15 **Plaintiff,**) **STIPULATED FINAL JUDGMENT**
16) **AND ORDER AS TO DEFENDANTS**
17 **vs.**) **SAVVIER, INC., SAVVIER, LP,**
18) **BODY FLEX, INC., GREER CHILDERS,**
19 **SAVVIER, INC.**) **AND JEFFREY T. TULLER**
20 **SAVVIER, LP,**)
21 **BODY FLEX, INC.**)
22 **GREER CHILDERS,**)
23 **JACK CHING CHUNG CHANG, and)**
24 **JEFFREY T. TULLER,**)
25)
26 **Defendants.**)
27)
28)

23 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), pursuant to
24 Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b),
25 filed an Amended Complaint for Permanent Injunction and Other Equitable Relief,
26 against Savvier, Inc., Savvier, LP, Body Flex, Inc., Greer Childers, Jack Ching Chung
27 Chang and Jeffrey T. Tuller. Prior to the effective date of this Order, the FTC has agreed
28 to the dismissal of defendant Jack Ching Chung Chang.

1
2 WHEREAS, the FTC alleges that Defendants violated Sections 5 and 12 of the
3 FTC Act, 15 U.S.C. §§ 45 and 52; and

4 WHEREAS, the Commission and Defendants Savvier, Inc., Savvier, LP, Body
5 Flex, Inc., Greer Childers and Jeffrey T. Tuller, by and through their respective counsel,
6 have agreed to entry of this Stipulated Final Judgment and Order (“Order”) to resolve all
7 matters of dispute between the settling parties with respect to the conduct alleged in the
8 Amended Complaint;

9 NOW THEREFORE, Plaintiff FTC and the settling defendants, as defined below,
10 having requested the Court to enter this Order,

11 IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

12 **FINDINGS**

13 A. The Commission has the authority under Section 13(b) of the FTC Act, 15
14 U.S.C. § 53(b), to seek the relief it has requested.

15 B. This Court has jurisdiction over the subject matter of the case, and over the
16 Settling Defendants.

17 C. Venue lies properly with this Court.

18 D. The Amended Complaint states a claim upon which relief may be granted
19 against the Settling Defendants under Sections 5(a), 12, and 13(b) of the Federal Trade
20 Commission Act, 15 U.S.C. §§ 45(a), 52, and 53(b).

21 E. The Plaintiff and the Settling Defendants have entered into this stipulation
22 without adjudication of any issue of fact or law and the Settling Defendants do not admit
23 to the allegations in the Amended Complaint, other than the jurisdictional facts.

24 F. This Order does not constitute and shall not be interpreted to constitute
25 either an admission by the Settling Defendants or a finding by the Court that the Settling
26 Defendants have engaged in violations of the FTC Act.

27 G. The activities of the Settling Defendants, as alleged in the Amended
28 Complaint, are or were in or affecting Commerce, as defined in Section 4 of the FTC Act,
15 U.S.C. § 44.

1 H. The Settling Defendants waive all right to seek judicial review or otherwise
2 challenge or contest the validity of this Order and have waived any rights that may arise
3 under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121,
4 110 Stat. 847, 863-64 (1996) concerning the prosecution of this action to the date of this
5 Order.

6 I. The parties agree that each party shall bear his, her, or its own costs and
7 attorneys' fees incurred in connection with this action.

8 J. Entry of this Order is in the public interest.

9 **ORDER**

10 **Definitions**

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

16 B. **"BodyFlex Purchaser"** means any individual consumer who purchased a
17 BodyFlex from the Savvier Defendants, except any entity or person who purchased
18 BodyFlex for resale.

19 C. **"Commerce"** means as defined in Section 4 of the Federal Trade
20 Commission Act, 15 U.S.C. § 44.

21 D. **"Competent and reliable scientific evidence"** means tests, analyses,
22 research, studies, or other evidence based on the expertise of professionals in the relevant
23 area, that has been conducted and evaluated in an objective manner by persons qualified
24 to do so, using procedures generally accepted in the profession to yield accurate and
25 reliable results.

26 E. **"Covered product or service"** shall mean any product, service or program
27 that purportedly provides weight-loss, inch-loss, fat-loss, exercise or fitness benefits, or
28 any dietary supplement, food or drug.

1 F. “**Endorsement**” means as defined in 16 C.F.R § 255.0(b).

2 G. “**Savvier Defendants**” means: (1) Savvier, Inc., a corporation, its
3 divisions and subsidiaries, its successors and assigns; and (2) Savvier, LP, a partnership,
4 its successors and assigns.

5 H. “**Settling Defendants**” means: (1) Savvier, Inc., a corporation, its
6 divisions and subsidiaries, its successors and assigns; (2) Savvier, LP, a partnership, its
7 successors and assigns; (3) Body Flex, Inc., a corporation, its divisions and subsidiaries,
8 its successors and assigns; (4) Greer Childers, individually and as an officer of BodyFlex,
9 Inc., and (5) Jeffrey T. Tuller, individually and as an officer of Savvier, Inc. When
10 referring to Jeffrey T. Tuller and Greer Childers alone, they shall be referred to as “**the**
11 **Individual Settling Defendant(s).**”

12 I. CONSUMER REFUNDS

13 **IT IS HEREBY ORDERED** that Savvier, LP shall offer to all BodyFlex
14 Purchasers a prompt refund in accordance with the following provisions:

15 A. Within fifteen (15) days after entry of this Order, Savvier, LP shall compile
16 a mailing list containing the name and last known address of all BodyFlex Purchasers. In
17 addition, Savvier LP shall retain a National Change of Address System (“NCOA”)
18 licensee to update this list by processing the list through the NCOA database.

19 Within sixty (60) days after entry of this Order, Savvier, LP shall provide Commission
20 staff with a computer readable and print-out copy of the mailing list.

21 B. Within thirty (30) days after the entry of this Order, Savvier, LP shall:

22 (1) Send, via first-class mail, a Notice of BodyFlex refund offer, in the form
23 set forth in Appendix A to this Order, to all BodyFlex Purchasers listed on the
24 mailing list. The envelope shall contain only the Notice of BodyFlex refund offer
25 and shall be in the form identified on Appendix B.

26 (a) For each mailing returned by the U.S. Postal Service as
27 undeliverable for which Savvier, LP thereafter obtains a corrected address,
28 Savvier, LP shall, within fifteen (15) business days after receiving the

1 corrected address, send a Notice of BodyFlex Plus refund offer to the
2 corrected address.

3 (2) Establish and, thereafter, maintain and staff during the refund offer a toll-
4 free number to respond to inquiries from BodyFlex Purchasers, including those
5 who have lost or discarded their BodyFlex GymBar ("GymBar"). Savvier, LP
6 shall provide BodyFlex Purchasers who contact Savvier via this toll-free number
7 with a refund eligibility form, in the form set forth in Appendix C to this Order,
8 within five (5) days after receiving the request.

9 C. Within one hundred twenty (120) days after entry of this Order, Savvier, LP
10 shall:

11 (1) Send a refund check or issue a credit card refund of \$61.85 to each
12 BodyFlex Purchaser who returns the completed certification included in the Notice
13 of BodyFlex refund offer and the BodyFlex GymBar(s) to Savvier, LP within
14 forty-five (45) days from the date of the postmark on the notification letter. The
15 \$61.85 refund represents reimbursement to the BodyFlex Purchaser of \$39.90 for
16 the cost of the BodyFlex product; \$14.95 for the shipping and handling; and \$7 for
17 the cost of returning the GymBar to Savvier, LP.

18 (2) Send a refund check or issue a credit card refund of \$54.85 to each
19 BodyFlex Purchaser who lost or discarded his/her GymBar and returns the refund
20 eligibility form within forty-five (45) days from the date of the postmark on the
21 notification letter.

22 (3) *If, however*, the total requests for refunds exceed \$2,600,000, Savvier, LP
23 shall provide refunds to BodyFlex Purchasers on a *pro rata* basis, calculated by
24 dividing \$2,600,000 by the total number of BodyFlex Purchasers requesting a
25 refund, under the terms outlined below. Under these circumstances:

26 (a) Within one hundred twenty (120) days after entry of this Order,
27 Savvier, LP shall send a letter to all BodyFlex Purchasers that requested a
28 refund and returned the GymBar ("second letter"), in the form set forth in
Appendix D to this Order, offering them a choice to either: (i) receive a

1 partial refund payment equal to a *pro rata* share; or (ii) have the GymBar
2 returned to the BodyFlex Purchaser with a \$7 refund check. The second
3 letter shall provide BodyFlex Purchasers with fifteen (15) days to return a
4 tear-off postcard at the bottom of the letter indicating that they want the
5 GymBar returned with a \$7 refund check. Savvier, LP shall send a partial
6 refund payment to any BodyFlex Purchaser that does not return the
7 postcard within fifteen (15) days.

8 (b) Within one hundred sixty-five (165) days after entry of the Order,
9 and taking into account the Purchasers that elected to receive their GymBar
10 and a \$7 refund in lieu of the partial refund, Savvier, LP shall perform a
11 second calculation of the partial refund to be issued to BodyFlex Purchasers
12 and shall: (i) send a check or issue a credit card refund of *pro rata* share to
13 each BodyFlex Purchaser who elected to receive the partial refund and each
14 Purchaser who returned a refund eligibility form for Purchasers who lost or
15 discarded their GymBar; and (ii) return the GymBar along with a \$7 refund
16 check to each BodyFlex Purchaser who declined the partial refund.

17 D. Savvier, Inc. shall guaranty the obligations of Savvier, LP for purposes of
18 this Paragraph I and for Paragraphs II and V.

19 **II. REFUND ACCOUNT**

20 **IT IS FURTHER ORDERED** that:

21 A. To effectuate the refund offer set forth in Paragraph I of this Order, Savvier,
22 LP has deposited \$2,000,000 into an escrow account located at a third party bank that
23 has been identified to the Commission in a sworn declaration by a representative of
24 Savvier, LP (the "Refund Account"). Within one hundred twenty (120) days after entry
25 of this Order, Savvier, LP shall deposit an additional \$600,000 into the Refund Account.

26 B. The Settling Defendants and their officers, agents, servants, employees, and
27 attorneys, and all persons and entities in active concert or participation with them who
28 receive actual notice of this Order by personal service or otherwise, whether acting

1 directly or through any corporation, partnership, subsidiary, division or other device, are
2 hereby permanently enjoined from directly or indirectly selling, liquidating, assigning,
3 transferring, converting, loaning, encumbering, pledging, concealing, dissipating,
4 spending, withdrawing or otherwise disposing of any of the funds in the Refund Account,
5 except for the purpose of issuing BodyFlex Purchaser refunds in accordance with
6 Paragraph I of this Order, which shall not include the costs of administering the refund
7 offer.

8 C. Savvier, LP shall provide account statements for the Refund Account to the
9 Commission every thirty (30) days following entry of this Order until such time as the
10 refund offer has been concluded. Within one hundred eighty (180) days after entry of
11 this Order, all remaining funds in the Refund Account shall be paid to the Commission or
12 its designated agent. The Commission may apply any remaining funds for such other
13 equitable relief (including consumer information remedies) as it determines to be
14 reasonably related to the Defendants' practices alleged in the Amended Complaint. Any
15 funds not used for such equitable relief shall be deposited to the U.S. Treasury as
16 determined by the Commission. Defendants have no right to challenge the Commission's
17 choice of remedies under this Sub-Paragraph, however, no portion of the payment as
18 herein provided shall be deemed a payment of any fine, penalty or punitive assessment.

19 **III. PROHIBITED FALSE REPRESENTATIONS**

20 **IT IS FURTHER ORDERED** that the Settling Defendants and their officers,
21 agents, servants, employees, and attorneys, and all persons and entities in active concert
22 or participation with them who receive actual notice of this Order by personal service or
23 otherwise, whether acting directly or through any corporation, partnership, subsidiary,
24 division or other device, in connection with the manufacturing, labeling, advertising,
25 promotion, offering for sale, sale or distribution of BodyFlex, or any substantially similar
26 product, in or affecting Commerce, are hereby permanently enjoined from making, or
27 assisting others in making, any representation, in any manner, expressly or by
28 implication, including through the use of endorsements, that:

1 A. Such product causes users to lose four to 14 inches across six body areas in
2 the first seven days of use without reducing calories;

3 B. Such product causes users to burn enough body fat to lose four to 14 inches
4 across six body areas in the first seven days of use; or

5 C. A clinical study proves that such product causes significant fat loss and
6 inch loss in the first seven days of use.

7 **IV. PROHIBITED MISREPRESENTATIONS**

8 **IT IS FURTHER ORDERED** that the Settling Defendants and their officers,
9 agents, servants, employees, and attorneys, and all persons and entities in active concert
10 or participation with them who receive actual notice of this Order by personal service or
11 otherwise, whether acting directly or through any corporation, partnership, subsidiary,
12 division or other device, in connection with the manufacturing, labeling, advertising,
13 promotion, offering for sale, sale or distribution of BodyFlex or any other Covered
14 product or service, in or affecting Commerce, are hereby permanently enjoined from:

15 A. Making any representation, in any manner, expressly or by implication,
16 including through the use of endorsements, about the benefits, performance, safety, or
17 efficacy of such Covered product or service, unless the representation is true and, at that
18 time the representation is made, the Settling Defendants possess and rely upon competent
19 and reliable scientific evidence that substantiates the representation; and

20 B. Misrepresenting, in any manner, expressly or by implication, including
21 through the use of endorsements, the existence, contents, validity, results, conclusions, or
22 interpretations of any test, study or research.

23 **V. FINANCIAL STATEMENTS AND RIGHT TO REOPEN**

24 **IT IS FURTHER ORDERED** that the Commission's agreement to this Order is
25 expressly premised on the truthfulness, accuracy and completeness of the Savvier
26 Defendants' financial condition as represented in the financial statements dated
27 November 17, 2003 and January 14, 2004 provided by the Savvier Defendants to
28 Commission staff. These financial statements include material information upon which

1 the Commission relied in negotiating and consenting to this Final Order. If, upon motion
2 by the Commission, the Court finds that either Savvier Defendant's financial statement
3 failed to disclose any material asset, materially misrepresented the value of any asset, or
4 made any other material misrepresentation or omission, then this Order shall be reopened
5 for the purpose of requiring payment from the Savvier Defendants to the Commission in
6 the amount of thirty-six million dollars (\$36,000,000.00) less the combined amount of all
7 verified payments made by the Settling Defendants in this action pursuant to Paragraphs I
8 and II of this Order. Provided, however, that in all other respects this Order shall remain
9 in full force and effect unless otherwise ordered by the Court; and, provided further, that
10 proceedings instituted under this provision would be in addition to, and not in lieu of, any
11 other civil or criminal remedies as may be provided by law, including any other
12 proceedings that the Commission may initiate to enforce this Order. For purposes of this
13 Paragraph V, the Savvier Defendants waive any right to contest any of the allegations in
14 the Amended Complaint.

15 16 **VI. COMPLIANCE MONITORING**

17 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and
18 investigating compliance with any provision of this Order,

19 A. Within thirty (30) days of receipt of written notice from a representative of
20 the Commission, the Settling Defendants shall submit additional written reports, sworn to
21 under penalty of perjury; produce documents for inspection and copying; appear for
22 deposition; and/or provide entry during normal business hours to any business location in
23 such defendants' possession or direct or indirect control to inspect the business operation;

24 B. In addition, the Commission is authorized to monitor compliance with this
25 Order by all other lawful means, including but not limited to the following:

26 (1) obtaining discovery from any person, without further leave of court, using
27 the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and
28

1 (2) posing as consumers and suppliers to the Settling Defendants, their
2 employees, or any other entity they managed or controlled in whole or in part
3 without the necessity of identification or prior notice;

4 **Provided that** nothing in this Order shall limit the Commission's lawful use of
5 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-
6 1, to obtain any documentary material, tangible things, testimony, or information relevant
7 to unfair or deceptive acts or practices in or affecting Commerce (within the meaning of
8 15 U.S.C. § 45(a)(1)).

9 C. The Settling Defendants shall permit representatives of the Commission to
10 interview any employer, consultant, independent contractor, representative, agent, or
11 employee who has agreed to such an interview, relating in any way to any conduct
12 subject to this Order. The person interviewed may have counsel present.

13 **VII. COMPLIANCE REPORTING BY THE SETTLING DEFENDANTS**

14 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions
15 of this Order may be monitored:

- 16 A. For a period of three (3) years from the date of entry of this Order,
17 (1) The Individual Settling Defendants each shall notify the Commission of the
18 following:
- 19 (a) Any changes in his or her residence, mailing addresses, and telephone
20 numbers, within ten (10) days of the date of such change;
 - 21 (b) Any changes in his or her employment status (including self
22 employment) within ten (10) days of the date of such change. Such notice
23 shall include the name and address of each business that the Individual
24 Settling Defendant is affiliated with, employed by, or performs services for;
25 a statement of the nature of the business; and a statement of his or her
26 duties and responsibilities in connection with the business;
 - 27 (c) Any changes in the name or use of any aliases or fictitious names by
28 the Individual Settling Defendant.

1 (2) The Settling Defendants shall notify the Commission of any changes in
2 corporate structure or partnership that may affect compliance obligations arising
3 under this Order, including but not limited to a dissolution, assignment, sales,
4 merger or other actions that would result in the emergence of a successor
5 corporation or entity; the creation or dissolution of a subsidiary, parent, or affiliate
6 that engages in any acts or practices subject to this Order; the filing of a
7 bankruptcy petition; or a change in the corporate or partnership name or address,
8 at least thirty (30) days prior to such change, provided that, with respect to any
9 proposed changes in the corporation or partnership about which the Defendant
10 learns less than thirty (30) days prior to the date such action is to take place,
11 Defendant shall notify the Commission as soon as is practicable after obtaining
12 such knowledge.

13 B. One hundred eighty (180) days after the date of entry of this Order, the
14 Settling Defendants each shall provide a written report to the FTC, sworn to under
15 penalty of perjury, setting forth in detail the manner and form in which they have
16 complied and are complying with this Order. This report shall include, but not be limited
17 to:

18 (1) Any changes required to be reported pursuant to subparagraph (A) above;
19 and

20 (2) A copy of each acknowledgment of receipt of this Order obtained by the
21 Settling Defendants pursuant to Paragraph IX.

22 (3) A report detailing the manner in which Savvier, LP has administered the
23 refund offer pursuant to Paragraph I of this Order, including, but not limited to, the
24 following:

25 (a) In computer readable and computer print-out form, a list of the
26 names and addresses of all BodyFlex Purchasers who were sent refund
27 checks or received credit card refunds pursuant to Paragraph I of this Order,
28 and for each name included on the list, the amount, check or transaction
number and mailing or transaction date of every refund sent or applied;

1 (b) The total number of: (i) Notices of BodyFlex refund offers sent by
2 U.S. mail; (ii) BodyFlex Purchasers who responded to the offer; (iii)
3 BodyFlex Purchasers who returned the GymBar; (iv) BodyFlex Purchasers
4 who returned a refund eligibility form for lost or discarded GymBars; (v)
5 the total amount of refunds provided to BodyFlex Purchasers; and (vi) the
6 total number of BodyFlex Purchasers who received a *pro rata* refund.

7 (c) A list of all Notices of BodyFlex refund offer and all second letters
8 returned to Savvier, LP as undeliverable or rejected; refund offers or second
9 letters that were resent; and all credit card refunds that could not be applied
10 to BodyFlex Purchaser's credit cards;

11 (d) A description of all efforts made and actions taken by Savvier, LP
12 to identify, locate, contact and provide refunds to BodyFlex Purchasers
13 requesting a refund.

14 C. For the purposes of this Order, the Settling Defendants shall, unless
15 otherwise directed by the Commission's authorized representative, mail all written
16 notifications to the Commission to:

17 Associate Director
18 Division of Enforcement
19 Federal Trade Commission
20 600 Pennsylvania Ave. NW
21 Washington, DC 20580
22 Re: FTC v. Savvier, Case No. CV03-8159 FMC (JTLx)

23 D. For purposes of the compliance reporting required by this Paragraph, the
24 Commission is authorized to communicate directly with the Settling Defendants.

25 **VIII. RECORD KEEPING PROVISIONS**

26 **IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of
27 entry of this Order, the Settling Defendants in connection with the advertising,
28 promotion, offering for sale or sale of a Covered product or service, and the Settling
Defendants' agents, employees, officers, corporations, successors, and assigns, and all
persons in active concert or participation with them who receive actual notice of this

1 Order by personal services or otherwise, are hereby restrained and enjoined from failing
2 to create and retain the following records:

3 A. Accounting records that reflect the cost of goods or services sold, revenues
4 generated, and the disbursement of such revenues;

5 B. Personnel records accurately reflecting: the name, address, and telephone
6 number of each person employed in any capacity by such business, including as an
7 independent contractor; that person's job title or position, the date upon which the person
8 commenced work; and the date and reason for the person's termination, if applicable;

9 C. Customer files containing the names, addresses, phone numbers, dollar
10 amounts paid, quantity of items or services purchased, and description of items or
11 services purchased, to the extent such information is obtained in the ordinary course of
12 business;

13 D. Complaints and refund requests (whether received directly, indirectly or
14 through any third party) and any responses to those complaints or requests;

15 E. Copies of all sales scripts, training materials, advertisements, websites, or
16 other marketing materials (but only insofar as there are material differences among non-
17 identical versions of such materials);

18 F. All materials that were relied upon in disseminating any claim that falls
19 within the scope of Paragraphs III or IV of this Order, including but not limited to tests,
20 studies, surveys, demonstrations, research or other evidence; and

21 G. All tests, studies, surveys, demonstrations, research or other evidence that
22 confirm, contradict, qualify or call into question any claim that falls within the scope of
23 Paragraphs III or IV of this Order, or the basis relied upon for the claim, including
24 complaints and other communications with consumers, government entities, Better
25 Business Bureaus, and consumer protection organizations.

1 **IX. DISTRIBUTION OF ORDER BY THE SETTLING DEFENDANTS**

2 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date
3 of entry of this Order,

4 **A. Corporate Defendants:** The Savvier Defendants and Body Flex, Inc.,
5 must deliver a copy of this Order to all principals, officers, directors and managers. The
6 Savvier Defendants and Body Flex, Inc., also must deliver copies of this Order to all of
7 their employees, agents and representatives who engage in conduct related to the subject
8 matter of the Order. For current personnel, delivery shall be within five (5) days after
9 service of the Order. For new personnel, delivery shall occur prior to them assuming
10 their responsibilities.

11 **B. The Individual Settling Defendants as Control Persons:** For any
12 business that Individual Settling Defendants control, directly or indirectly, or in which
13 they have a majority interest, the Individual Settling Defendants must deliver a copy of
14 this Order to all principals, officers, directors, and managers of that business. The
15 Individual Settling Defendants also must deliver copies of this Order to all employees,
16 agents and representatives of that business who engage in conduct related to the subject
17 matter of the Order. For current personnel, delivery shall be within five (5) days after
18 service of the Order. For new personnel, delivery shall occur prior to them assuming
19 their responsibilities.

20 **C. The Individual Settling Defendants as Employees or Non-Control**
21 **Persons:** For any business where the Individual Settling Defendants are not controlling
22 persons of a business but otherwise engage in conduct related to the subject matter of this
23 Order, the Individual Settling Defendants must deliver a copy of this Order to all
24 principals and managers of such business before engaging in such conduct.

25 **D. Corporate and Individual Settling Defendants:** The Settling Defendants
26 must secure a signed and dated statement acknowledging receipt of the Order, within
27 thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to
28 this Paragraph IX.

1 **X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY THE SETTLING**
2 **DEFENDANTS**

3 **IT IS FURTHER ORDERED** that each of the Settling Defendants, within five
4 (5) business days of receipt of this Order as entered by the Court, must submit to the
5 Commission a truthful sworn statement acknowledging receipt of this Order.

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1 **XI. RETENTION OF JURISDICTION**

2 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this
3 matter for purposes of construction, modification and enforcement of this Order.

4 **IT IS SO STIPULATED.**

5 For the Federal Trade Commission:

6 William E. Kovacic
7 General Counsel

8 Elaine Kolish
9 Associate Director for Enforcement
10 Joni Lupovitz
11 Assistant Director for Enforcement

12 Samuel W. Dowdy
13 Samuel Dowdy
14 Robin Rosen Spector
15 Victor DeFrancis
16 Mark Morelli
17 Attorneys, Division of Enforcement
18 Federal Trade Commission
19 600 Pennsylvania Avenue, N.W.
20 Mail Drop NJ-2122
21 Washington D.C. 20580

22 John Jacobs
23 John Jacobs
24 Attorney, Western Region
25 Federal Trade Commission
26 10877 Wilshire Boulevard, Suite 700
27 Los Angeles, CA 90024

28 For the Settling Defendants:

Savvier, Inc.
By: Jeffrey T. Tuller
Jeffrey T. Tuller, its President

Savvier, Inc.
By: Jack C. Chung
Jack Chung Chung Chang, on behalf of
Savvier Inc.

Savvier, LP

By: Jeffrey T. Tuller
Jeffrey T. Tuller, President of Savvier, Inc.,
its general partner

Joseph P. Costa
Joseph P. Costa
Costa, Abrams & Coate, LLP
1221 Second Street, Third Floor
Santa Monica, CA 90401
Attorneys for Savvier, Inc. and Savvier, LP

Jeffrey T. Tuller
Jeffrey T. Tuller, an individual

Kelly O. Scott
Kelly O. Scott
Ervin, Cohen & Jessup LLP
9401 Wilshire Blvd., Ninth Floor
Beverly Hills, CA 90212
Attorneys for Jeffrey T. Tuller, an individual

Body Flex Inc.

By: Greer Childers
Greer Childers, its President
Greer Childers
Greer Childers, an individual

Kerry Garys Wright
Kerry Garys Wright
Christensen, Miller, Fink, Jacobs, Glaser,
Weil and Shapiro, LLP
10250 Constellation Blvd., Nineteenth Floor
Los Angeles, CA 90067
Attorneys for Body Flex Inc. and Greer
Childers, an individual

25 **IT IS SO ORDERED.**

26 Dated: _____

27 _____
28 UNITED STATES DISTRICT JUDGE

NOTICE OF BODYFLEX PLUS REFUND OFFER

Dear BodyFlex Plus Customer:

To settle a dispute over advertising claims with the Federal Trade Commission, we are offering you a refund if you are NOT SATISFIED with the BodyFlex Plus product. If you are SATISFIED with the BodyFlex Plus product, you should disregard this refund offer.

AMOUNT OF YOUR REFUND: The amount of your refund may include the full amount you paid for the BodyFlex Plus product and shipping and handling (\$54.85), plus \$7.00 to cover your cost for returning the Gym Bar. If we receive more refund requests than anticipated, we will not be able to give full refunds. Under these circumstances, we will send you a letter by _____, 2004 [90 days]. This letter will give you a choice (a) to receive a partial refund payment or (b) to have your Gym Bar returned to you with \$7.00 (to cover your shipping costs).

HOW TO GET A REFUND:

1. COMPLETE AND SIGN THIS FORM:

I hereby certify under penalty of perjury that: (1) I purchased the BodyFlex Plus product; (2) I tried to use the program according to the instructions in the kit; (3) I am NOT SATISFIED with the BodyFlex Plus product; (4) I have not previously received a refund for the BodyFlex Plus product through Savvier's "30-day satisfaction guarantee"; and (5) I understand that I may not receive a refund of my full purchase price if Savvier receives more refund requests than anticipated, but I will receive at least \$7.00.

Customer signature: _____	Dated: _____
Name (please print): _____	E-mail: _____
Mailing Address: _____	

2. MAIL THIS SIGNED FORM ALONG WITH THE GYM BAR IN A PACKAGE POSTMARKED BEFORE _____, 2004 [45 days] to the following address:

**BodyFlex
P.O. Box tbd
Van Nuys, CA 91409**

3. If you purchased by credit card, do you want us to credit your refund to the same credit card? YES / NO (Circle one.) If "No," or if you purchased by check or money order, we will send your refund to the address you provided above.

Please DO NOT attempt to call us regarding this refund offer or regarding the status of your refund. You will receive your refund payment or notification from us by mail within 90 days.

If you DO NOT HAVE THE GYM BAR, call 1-800-522-4905 within 15 days of the postmark of this letter to obtain a refund eligibility form.

BodyFlex
[P.O. Box / Return Address]

**Prepaid
First-Class
Presorted
Postage**

Ms. Cathy Consumer
123 Main Street
Anytown, Anystate 00000



RSAYR01637786

Important Refund Information



12 point type

Trifold Mailer

REFUND CERTIFICATION FORM

You may obtain your refund by signing and completing the refund certification below:

I declare under penalty of perjury that: (1) I purchased the BodyFlex Plus product; (2) I personally used the program by following the instructions in the kit; (3) I have not previously received a refund for the BodyFlex Plus product through Savvier's "30-day satisfaction guarantee"; (4) I am NOT SATISFIED with the BodyFlex Plus product; and (5) I have lost or discarded the Gym Bar.

Customer signature: _____ Dated: _____

Name (please print): _____ E-mail: _____

Mailing Address: _____

If you purchased by credit card, do you want us to credit your refund to the same credit card? **YES / NO** (Circle one.) If "No," or if you purchased by check or money order, we will send your refund to the address you provided above.

Your refund request must be postmarked no later than _____, 2004 [30 days from the postmark of this letter]. Return this completed form to the following address:

BodyFlex
P.O. Box tbd
Van Nuys, CA 91409

Please DO NOT attempt to call us regarding this refund offer or regarding the status of your refund. You will receive your refund payment or notification from us by mail within 90 days. Customers who have previously received a refund through Savvier's "30-day satisfaction guarantee" are not eligible for any additional refund.

PRORATED REFUND NOTICE

Dear BodyFlex Plus Customer:

You recently requested a refund of your purchase price for the BodyFlex Plus product. The refund offer was oversubscribed; based on the number of customers who have requested a refund, the prorated refund amount will be \$ _____. (The amount you receive may be slightly greater depending upon the number of refund requests actually processed.)

If you DO NOT WANT TO RECEIVE this prorated refund amount, please COMPLETE the attached form and mail it to Savvier, postmarked no later than _____, 2004 [15 days]. Requests postmarked after that date cannot be honored. Following receipt of the completed form, Savvier will return your BodyFlex Plus Gym Bar to you along with a payment of \$7.00 to cover your shipping costs. YOU MUST RETURN THE ATTACHED FORM FOR YOUR GYM BAR TO BE RETURNED. Customers who do not return the attached card will be sent the prorated refund amount.

If you DO WANT TO RECEIVE this prorated refund amount, you do not need to do anything further. Savvier will mail your prorated refund to you within approximately 45 days of the date of this notification.

Please DO NOT attempt to call us regarding this refund offer or regarding the status of your refund. You will receive your refund payment or your returned BodyFlex Plus Gym Bar within 45 days of the date of this notification.

(BODYFLEX PLUS CUSTOMER: PLEASE TEAR AT PERFORATION AND MAIL)

No, I DO NOT WANT TO RECEIVE the prorated refund amount of \$ _____, and I understand that my BodyFlex Plus Gym Bar will be returned to me.

Customer signature: _____ Dated: _____

Name (please print): _____

Mailing Address: _____

Your refund request must be postmarked no later than _____, 2004 [15 days from the postmark of this letter]. Return this completed form to the following address:

**BodyFlex
P.O. Box tbd
Van Nuys, CA 91409**