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18 Federal Trade Commission

19 **UNITED STATES DISTRICT COURT**  
20 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

21 FEDERAL TRADE COMMISSION,  
22  
23 Plaintiff,  
24  
25 v.  
26  
27 LATIN HUT, INC.,  
28 also d/b/a Maya Sales Corporation,  
Defendant.

CIVIL ACTION NO. /

**STIPULATED FINAL ORDER  
FOR PERMANENT  
INJUNCTIVE AND OTHER  
EQUITABLE RELIEF**

WHEREAS plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has commenced this action by filing the Complaint herein; defendant Latin Hut, Inc., has waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without defendant admitting liability for any of the matters alleged in the Complaint;

**COPY**



1 5. "Drug" and "cosmetic" mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

2 6. "Person" means a natural person, organization or other legal entity, including a  
3 partnership, corporation, proprietorship, association, cooperative, or any other group acting  
4 together as an entity.

5 7. The term "including" in this Order means "including, without limitation."

6 **I.**

7 **PROHIBITED REPRESENTATIONS**

8 **IT IS ORDERED** that defendant, and its officers, agents, employees, and attorneys, and  
9 all persons and entities in active concert or participation with them who receive actual notice of  
10 this Order by personal service or otherwise, whether acting directly or through any corporation,  
11 subsidiary, division, or other entity, in connection with the manufacturing, labeling, advertising,  
12 promotion, offering for sale, sale, or distribution of the following products, in or affecting  
13 commerce, are hereby permanently enjoined from representing, in any manner, expressly or by  
14 implication, including through the use of endorsements or trade name, that:

- 15 A. Parche Para Bajar Peso, or any other product applied to the skin to deliver the  
16 product's ingredients into the body, causes substantial weight loss; or
- 17 B. Iman de Grasa, or any substantially similar product, causes weight loss by  
18 blocking or absorbing a substantial portion or amount of dietary fat.

19 **II.**

20 **REPRESENTATIONS PROHIBITED UNLESS TRUE AND SUBSTANTIATED**

21 **IT IS FURTHER ORDERED** that defendant, and its officers, agents, employees, and  
22 attorneys, and all persons and entities in active concert or participation with them who receive  
23 actual notice of this Order by personal service or otherwise, whether acting directly or through  
24 any corporation, subsidiary, division, or other entity, in connection with the manufacturing,  
25 labeling, advertising, promotion, offering for sale, sale, or distribution any product, service, or  
26 program, in or affecting commerce, are permanently enjoined from making any representation,  
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1 expressly or by implication, including through the use of endorsements or trade name:

2 A. That any such product, service, or program:

- 3 1. Causes weight loss;
- 4 2. Increases metabolism;
- 5 3. Suppresses appetite;
- 6 4. Prevents weight gain;
- 7 5. Increases breast size;
- 8 6. Increases breast size in most women;
- 9 7. Firms or lifts the breast;
- 10 8. Permanently enlarges or firms the breast; or

11 B. About the benefits, performance, efficacy, safety, or side effects, of any such  
12 product, service, or program;

13 unless, at the time the representation is made, the representation is true, and they possess and rely  
14 upon competent and reliable scientific evidence that substantiates the representation.

15 **III.**

16 **PROHIBITED MISREPRESENTATIONS ABOUT**  
17 **TESTS, STUDIES, AND RESEARCH**

18 **IT IS FURTHER ORDERED** that defendant, and its officers, agents, employees, and  
19 attorneys, and all persons and entities in active concert or participation with them who receive  
20 actual notice of this Order by personal service or otherwise, whether acting directly or through  
21 any corporation, subsidiary, division, or other entity, in connection with the manufacturing,  
22 labeling, advertising, promotion, offering for sale, sale, or distribution of any product, service, or  
23 program, in or affecting commerce, are hereby permanently enjoined from making any  
24 misrepresentation, expressly or by implication, including through the use of endorsements, about  
25 the existence, contents, validity, results, conclusions, or interpretations of any test, study, or  
26 research.

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**IV.**

**FOOD AND DRUG ADMINISTRATION**

**IT IS FURTHER ORDERED** that nothing in this Order prohibits defendant from:

- A. Making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and
- B. Making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

**V.**

**MONETARY RELIEF**

**IT IS FURTHER ORDERED** that judgment in the amount of One Hundred Forty-Nine Thousand Four Hundred Twenty Five Dollars and Ninety-Seven Cents (\$149,425.97) is hereby entered against defendant Latin Hut, which shall be paid as follows:

- A. Within ten (10) days of defendant's execution of this Order, defendant shall transfer the sum of \$149,425.97 to the Commission in full and final satisfaction of the judgment. The defendant's payment to the Commission under this Section shall be made by wire transfer in accord with directions provided by the Commission or by certified check or other guaranteed funds made payable to and delivered to the Commission and shall not accrue interest. By signing this Order, defendant relinquishes all dominion, control and title to the monies transferred to the Commission, and agrees that all legal and equitable title to said monies is vested in the Commission, for use according to the terms of this Order. In the event the Commission does not approve this Order or the Court does not enter this Order, the monies transferred to the Commission under this Section shall be

1 returned to the defendant (which monies shall not accrue interest).

2 B. In the event of default on the payment required to be made by this Paragraph, the  
3 entire unpaid monetary amount, together with interest computed under 28 U.S.C.  
4 § 1961 -- accrued from the date of default until the date of payment -- shall be  
5 immediately due and payable. Defendant agrees that, in such event, the facts as  
6 alleged in the Complaint filed in this action shall be taken as true in any  
7 subsequent litigation filed by the Commission to enforce its rights pursuant to this  
8 Order, including but not limited to a nondischargeability complaint in any  
9 subsequent bankruptcy proceeding.

10 C. All funds paid pursuant to this Order shall be deposited into a fund administered  
11 by the Commission or its agent to be used for equitable relief, including but not  
12 limited to consumer redress and any attendant expenses for the administration of  
13 such equitable relief. In the event that direct redress to consumers is wholly or  
14 partially impracticable or funds remain after redress is completed, the  
15 Commission may apply any remaining funds for such other equitable relief  
16 (including consumer information remedies) as it determines to be reasonably  
17 related to defendant's practices alleged in the Complaint. Any funds not used for  
18 such equitable relief shall be deposited to the United States Treasury as  
19 disgorgement. Defendant shall have no right to challenge the Commission's  
20 choice of remedies under this Paragraph. Defendant shall have no right to contest  
21 the manner of distribution chosen by the Commission.

22 D. In accordance with 31 U.S.C. § 7701, defendant is hereby required, unless it has  
23 done so already, to furnish to the Commission its taxpayer identifying number,  
24 which shall be used for purposes of collecting and reporting on any delinquent  
25 amount arising out of defendant's relationship with the government.

26 E. Defendant shall provide a separate and complete customer list for (1) Total Bust,  
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1 (2) Parche Para Bajar Peso, and (3) Iman de Grasa, to the Commission within  
2 thirty (30) days of the date of entry of this Order. Each of the customer lists shall  
3 be in a searchable electronic format and shall include (a) names, (b) phone  
4 numbers, and (c) addresses, regarding all purchasers of the product.

5 F. Other than as provided above, Defendant shall make no claim to or demand for  
6 the return of the funds, directly or indirectly, through counsel or otherwise; and in  
7 the event of defendant's bankruptcy, defendant acknowledges that the funds are  
8 not part of the debtor's estate, nor does the estate have any claim or interest  
9 therein.

#### 10 VI.

#### 11 ACKNOWLEDGMENT OF RECEIPT OF ORDER

12 IT IS FURTHER ORDERED that defendant, within five (5) business days of receipt of  
13 this Order as entered by the Court, must execute and submit to the Commission a truthful sworn  
14 statement acknowledging receipt of this Order.

#### 15 VII.

#### 16 DISTRIBUTION OF ORDER

17 IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry  
18 of this Order, defendant must deliver a copy of this Order to all principals, officers, directors,  
19 managers, employees, agents, and representatives, including distributors, having responsibilities  
20 with respect to the subject matter of this Order, and must secure from each such person a signed  
21 and dated statement acknowledging receipt of the Order. Defendant Latin Hut must deliver this  
22 Order to current personnel within thirty (30) days after the date of service of this Order, and to  
23 new personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

COMPLIANCE MONITORING

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

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, defendant must submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in defendant's possession or direct or indirect control to inspect the business operation;
- B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:
  - 1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
  - 2. Posing as consumers and suppliers to defendant, defendant's employees, or any other entity managed or controlled in whole or in part by defendant, without the necessity of identification or prior notice;

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

- C. Defendant must permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.



IX.

COMPLIANCE REPORTING

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

- A. For a period of five (5) years from the date of entry of this Order, defendant shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which defendant learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.
- B. One hundred eighty (180) days after the date of entry of this Order, defendant must provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which it has complied and are complying with this Order. This report must include, but not be limited to:
  - 1. Any changes required to be reported pursuant to Subpart A above; and
  - 2. A copy of each acknowledgment of receipt of this Order obtained by defendant pursuant to Part VII.
- C. For the purposes of this Order, defendant must, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to: Associate Director for Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Attn: FTC v. Latin



1 materials identified in Subpart E;

2 G. All other documents evidencing or referring to the accuracy of any claim therein  
3 or to the safety or efficacy of any product, service, or program, including, but not  
4 limited to, all tests, reports, studies, demonstrations, or other evidence that  
5 confirm, contradict, qualify, or call into question the safety or efficacy of any such  
6 product, service, or program; and

7 H. Records accurately reflecting the name, address, and telephone number of each  
8 manufacturer or laboratory engaged in the development or creation of any testing  
9 obtained for the purpose of advertising, labeling, promoting, offering for sale,  
10 distributing, or selling any product, service, or program.

11 **XI.**

12 **RETENTION OF JURISDICTION**

13 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for  
14 purposes of construction, modification, and enforcement of this Order.

15 **XII.**

16 **SCOPE OF ORDER**

17  
18 **IT IS FURTHER ORDERED** that this Order resolves only the claims set forth in the  
19 Complaint against the named defendant and does not preclude the Commission from initiating  
20 further action or seeking any remedy against any other persons or entities, including without  
21 limitation persons or entities who may be subject to portions of this Order by virtue of actions  
22 taken in concert or participation with defendant, and persons or entities in any type of  
23 indemnification or contractual relationship with defendant.

1 **JUDGMENT IS THEREFORE ENTERED** in favor of plaintiff and against defendant

2 Latin Hut, pursuant to all the terms and conditions recited above.

3 **IT IS SO ORDERED.**

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6 \_\_\_\_\_  
Date

\_\_\_\_\_ Judge of the District Court

9  
10 FOR THE FEDERAL TRADE COMMISSION:

FOR DEFENDANT LATIN HUT, INC.

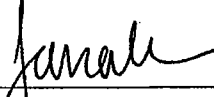
11 ELAINE D. KOLISH

12 Associate Director for Enforcement

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By:   
\_\_\_\_\_

[Name of President or CEO]

JOSE BALLESTER

GUEVARA, PHIPPARD, & JAMES, P.C.

Attorneys for Defendant

By:   
\_\_\_\_\_

FRED C. JAMES

A Member of the Firm