

1 WILLIAM E. KOVACIC
General Counsel

2 KERRY O'BRIEN (Cal. Bar No. 149264)
3 SARAH SCHROEDER (Cal. Bar No. 221528)
Federal Trade Commission
4 901 Market Street, Suite 570
San Francisco, CA 94103
5 (415) 848-5100; Fax (415) 848-5184

6 JOHN JACOBS (Cal. Bar No. 134154)
Federal Trade Commission
7 10877 Wilshire Blvd., Suite 700
Los Angeles, CA 90024
8 (310) 824-4343; Fax (310) 824-4380

9 Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 FEDERAL TRADE COMMISSION

14 Plaintiff,

15 v.

16 ROSARIO PARTNERSHIP,

17 FUNES, INC.,

18 LEONARDO SPELZINI,

19 MAITE DE NEGRIS, and

20 HECTOR DE NIGRIS,

21 Defendants.

Case No.

**STIPULATED FINAL
JUDGMENT FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF**

22
23 WHEREAS Plaintiff, the Federal Trade Commission
24 ("Commission" or "FTC"), has commenced this action by filing the
25 Complaint herein; defendants Rosario Partnership, Funes, Inc.,

1 prosecution of this action to the date of this Order.

2 F. Each party shall bear its own costs and attorneys'
3 fees.

4 G. Entry of this Order is in the public interest.

5

6

DEFINITIONS

7 For purposes of this Order, the following definitions shall
8 apply:

9 A. Unless otherwise specified, "defendants" shall mean
10 Rosario Partnership ("Rosario"), Funes, Inc. ("Funes"), and their
11 successors and assigns, and Leonardo Spelzini, Maite De Negriz,
12 and Hector De Nigriz.

13 B. "Commerce" shall mean as defined in Section 4 of the
14 Federal Trade Commission Act, 15 U.S.C. § 44.

15 C. "Competent and reliable scientific evidence" shall mean
16 tests, analyses, research, studies, or other evidence based on
17 the expertise of professionals in the relevant area, that have
18 been conducted and evaluated in an objective manner by persons
19 qualified to do so, using procedures generally accepted in the
20 profession to yield accurate and reliable results.

21 D. "Covered product or service" shall mean any
22 health-related service or program, weight loss product, dietary
23 supplement, food, drug, or device.

24 E. "Endorsement" means as defined in 16 C.F.R. § 255.0(b).

25 F. "Food," "drug," and "device" shall mean as "food,"

1 "drug," and "device," are defined in Section 15 of the Federal
2 Trade Commission Act, 15 U.S.C. § 55.

3 G. "FTC" or "Commission" shall mean the Federal Trade
4 Commission.

5 H. A requirement that defendants "notify the Commission"
6 shall mean that the defendants shall send the necessary
7 information via first class mail, costs prepaid, to the Regional
8 Director, Western Region, Federal Trade Commission, 901 Market
9 Street, Suite 570, San Francisco, CA 94103. Attn: FTC v. Rosario
10 (C.D.C.A).

11 I. "Weight loss product" shall mean any product, program,
12 or service designed, used, or purported to produce weight loss,
13 reduction or elimination of fat, slimming, or caloric deficit; or
14 to prevent weight gain, in a user of the product, program, or
15 service.

16 J. The term "including" in this Order shall mean
17 "including, without limitation."

18 K. The terms "and" and "or" in this Order shall be
19 construed conjunctively or disjunctively as necessary, to make
20 the applicable phrase or sentence inclusive rather than
21 exclusive.

22

23

24

25

I.

PROHIBITED REPRESENTATIONS

IT IS THEREFORE ORDERED that defendants, and their officers,

1 or affecting commerce, are hereby permanently enjoined from
2 making any representation, expressly or by implication, including
3 through the use of endorsements or trade name:

4 A. That any such covered product or service:

- 5 1. Causes weight loss;
- 6 2. Causes rapid and substantial weight loss;
- 7 3. Reduces or eliminates body fat;
- 8 4. Reduces or eliminates cellulite; or

9 B. About the health benefits, performance, efficacy,
10 safety or side effects of such product or service;

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

15
16 **III.**

17 **FOOD AND DRUG ADMINISTRATION**

18 **IT IS FURTHER ORDERED** that nothing in this Order shall
19 prohibit defendants from making any representation for any drug
20 that is permitted in the labeling for such drug under any
21 tentative final or final standard promulgated by the Food and
22 Drug Administration ("FDA"), or under any new drug application
23 approved by the FDA. Nothing in this Order shall prohibit
24 defendants from making any representation for any product that is
25 specifically permitted in labeling for such product by

1 regulations promulgated by the FDA pursuant to the Nutrition.
2 Labeling and Education Act of 1990.

3
4 **IV.**

5 **SUSPENDED JUDGMENT**

6 **IT IS FURTHER ORDERED** that:

- 7 A. Judgment in the amount of one hundred and fifty seven
8 thousand dollars (\$157,000) is hereby entered in favor
9 of the Commission against defendants, for equitable
10 monetary relief; provided, however, that this judgment
11 shall be suspended subject to the conditions set forth
12 in Paragraph V of this Order.
- 13 B. All funds paid pursuant to this Order shall be
14 deposited into a fund administered by the Commission or
15 its agents to be used for equitable relief, including
16 but not limited to consumer redress and any attendant
17 expenses for the administration of any redress funds.
18 In the event that direct redress to consumers is wholly
19 or partially impracticable or funds remain after
20 redress is completed, the Commission may apply any
21 remaining funds for such other equitable relief
22 (including consumer information remedies) as it
23 determines to be reasonably related to the defendants'
24 practices alleged in the Complaint. Any funds not used
25 for such equitable relief shall be deposited to the

1 Treasury as disgorgement. Defendants shall have no
2 right to challenge the Commission's choice of remedies
3 under this Paragraph.
4

5 V.

6 **TERMINATION OF SUSPENSION**

7 **IT IS FURTHER ORDERED** that the Commission's agreement to,
8 and the Court's approval of, this Order is expressly premised
9 upon the truthfulness, accuracy, and completeness of defendants'
10 financial conditions, as represented in their financial
11 statements dated May 25, 2004 and May 31, 2004, including
12 attachments, and in any other documents submitted by defendants,
13 upon which the Commission relied in negotiating and agreeing to
14 the terms of this Order. If, upon motion by the Commission to
15 the Court, the Court finds the defendants, in the
16 above-referenced financial statements and information, failed to
17 disclose any material asset, materially misrepresented the value
18 of any asset, or made any other material misrepresentation or
19 omission, the suspension of the monetary judgment will be
20 terminated and the entire judgment amount of one hundred and
21 fifty seven thousand dollars (\$157,000), representing the
22 approximate amount of consumer injury, will become immediately
23 due and payable, less any payments already made. For purposes of
24 this Paragraph, and any subsequent proceedings to enforce
25 payment, including but not limited to a non-dischargeability

1 complaint filed in bankruptcy proceedings, defendants waive any
2 right to contest any of the allegations set forth in the
3 Complaint filed in this matter or the one hundred and fifty seven
4 thousand dollar (\$157,000) judgment referenced above.

5
6 **VI.**

7 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

8 **IT IS FURTHER ORDERED** that defendants, within five (5)
9 business days of receipt of this Order as entered by the Court,
10 must execute and submit to the Commission a truthful sworn
11 statement, in the form shown on Appendix A, acknowledging receipt
12 of this Order.

13
14 **VII.**

15 **DISTRIBUTION OF ORDER**

16 **IT IS FURTHER ORDERED** that:

- 17 A. For a period of three (3) years from the date of entry
18 of this Order, defendants Rosario and Funes, and their
19 successors and assigns, must deliver a copy of this
20 Order to all principals, officers, directors, managers,
21 employees, agents, and representatives, including
22 distributors, having responsibilities with respect to
23 the subject matter of this Order, and must secure from
24 each such person a signed and dated statement
25 acknowledging receipt of the Order. Defendants Rosario

1 and Funes, and their successors and assigns, must
2 deliver this Order to current personnel within
3 thirty(30) days after the date of service of this
4 Order, and to new personnel within thirty (30) days
5 after the person assumes such position or
6 responsibilities.

7 B. For a period of three (3) years from the date of entry
8 of this Order, defendants Leonardo Spelzini, Maite de
9 Negris, and Hector De Nigris must deliver a copy of
10 this Order to the principals, officers, directors,
11 managers, and employees under their control for any
12 business that (a) hires defendants Leonardo Spelzini,
13 Maite de Negris, or Hector De Nigris as an employee,
14 consultant or independent contractor and (b) has
15 responsibilities with respect to the subject matter of
16 this Order. Defendants Leonardo Spelzini, Maite de
17 Negris, and Hector De Nigris must secure from each such
18 person a signed and dated statement acknowledging
19 receipt of the Order within thirty (30) days after the
20 date of service of the Order or the commencement of the
21 employment relationship.

22
23 **VIII.**

24 **COMPLIANCE MONITORING**

25 **IT IS FURTHER ORDERED** that, for the purpose of monitoring

1 and investigating compliance with any provision of this Order:

2 A. Within ten (10) days of receipt of written notice from
3 a representative of the Commission, defendants each
4 must submit additional written reports, sworn to under
5 penalty of perjury; produce documents for inspection
6 and copying; appear for deposition; and/or provide
7 entry during normal business hours to any business
8 location in such defendants' possession or direct or
9 indirect control to inspect the business operation;

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

- 13 1. Obtaining discovery from any person, without
14 further leave of court, using the procedures
15 prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36,
16 and 45;
- 17 2. Posing as consumers and suppliers to defendants,
18 defendants' employees, or any other entity managed
19 or controlled in whole or in part by defendants,
20 without the necessity of identification or prior
21 notice;

22 *Provided* that nothing in this Order limits the
23 Commission's lawful use of compulsory process, pursuant
24 to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49,
25 57b-1, to obtain any documentary material, tangible

1 things, testimony, or information relevant to unfair or
2 deceptive acts or practices in or affecting commerce
3 (within the meaning of 15 U.S.C. § 45(a)(1)).

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

10
11 **IX.**

12 **COMPLIANCE REPORTING**

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

15 A. For a period of three (3) years from the date of entry
16 of this Order:

17 1. Defendants Leonardo Spelzini, Maite de Negriz, and
18 Hector De Nigriz must notify the Commission of the
19 following:

20 a. Any changes in their residence, mailing
21 addresses, and telephone numbers, within ten
22 (10) days of the date of such change;

23 b. Any changes in their employment status
24 (including self-employment) within ten (10)
25 days of the date of such change. Such notice

1 must include the name and address of each
2 business that he or she is affiliated with,
3 employed by, or performs services for; a
4 statement of the nature of the business; and
5 a statement of his or her duties and
6 responsibilities in connection with the
7 business;

8 c. Any changes in his or her name or use of any
9 aliases or fictitious names; and

10 2. Defendants Rosario and Funes, and their successors
11 and assigns, must notify the Commission of any
12 changes in corporate structure that may affect
13 compliance obligations arising under this Order,
14 including but not limited to a dissolution,
15 assignment, sale, merger, or other action that
16 would result in the emergence of a successor
17 corporation; the creation or dissolution of a
18 subsidiary, parent, or affiliate that engages in
19 any acts or practices subject to this Order; the
20 filing of a bankruptcy petition; or a change in
21 the corporate name or address, at least thirty
22 (30) days prior to such change, provided that,
23 with respect to any proposed change in the
24 corporation about which defendants Rosario and
25 Funes learn less than thirty (30) days prior to

1 the date such action is to take place, defendants
2 Rosario and Funes must notify the Commission as
3 soon as is practicable after obtaining such
4 knowledge.

5 B. One hundred eighty (180) days after the date of entry
6 of this Order, defendants each must provide a written
7 report to the FTC, sworn to under penalty of perjury,
8 setting forth in detail the manner and form in which
9 they have complied and are complying with this Order.

10 This report must include, but not be limited to:

- 11 1. Any changes required to be reported pursuant to
- 12 Subpart A above; and
- 13 2. A copy of each acknowledgment of receipt of this
- 14 Order obtained by defendants pursuant to Part VII.

15 C. For the purposes of this Order, defendants must, unless
16 otherwise directed by the Commission's authorized
17 representatives, mail all written notifications to the
18 Commission to: Regional Director, Western Region,
19 Federal Trade Commission, 901 Market Street, Suite 570,
20 San Francisco, CA 94103. Attn: FTC v. Rosario
21 (C.D.C.A).

22 D. For purposes of the compliance reporting required by
23 this Part, the Commission is authorized to communicate
24 directly with defendants.

1 X.

2 RECORD KEEPING PROVISIONS

3 IT IS FURTHER ORDERED that, for a period of six (6) years
4 from the date of entry of this Order, defendants Rosario and
5 Funes, and their successors and assigns, and any business where
6 (1) Defendants Leonardo Spelzini, Maite de Negris or Hector De
7 Nigris are the majority owner, officer, or director of the
8 business, or directly or indirectly manage or control the
9 business and where (2) the business engages, or assists others
10 engaged in the manufacturing, advertising, promotion, offering
11 for sale, distribution or sale of any covered product, service,
12 or program, must maintain, and upon request, make available to
13 the Commission, copies of all business records demonstrating
14 compliance with the terms and provisions of this Order,
15 including, but not limited to the following:

- 16 A. Accounting records that reflect the cost of products,
17 services, or programs sold, revenues generated, and the
18 disbursement of such revenues;
- 19 B. Personnel records accurately reflecting the name,
20 address, and telephone number of each person employed
21 in any capacity by such business, including as an
22 independent contractor; that person's job title or
23 position; the date upon which the person commenced
24 work; and the date and reason for the person's
25 termination, if applicable;

- 1 C. Customer files containing the names, addresses,
2 telephone numbers, dollar amounts paid, quantity of
3 products, services, or programs purchased, and
4 description of products, services, or programs
5 purchased, to the extent such information is obtained
6 in the ordinary course of business;
- 7 D. Complaints and refund requests (whether received
8 directly, indirectly, or through any third party) and
9 any responses to those complaints or requests;
- 10 E. Copies of all advertisements, promotional materials,
11 sales scripts, training materials, or other materials
12 utilized in the advertising, labeling, promotion,
13 offering for sale, distribution or sale of any product,
14 service, or program;
- 15 F. All materials that were relied upon in making any
16 representations contained in the materials identified
17 in Subpart E;
- 18 G. All other documents evidencing or referring to the
19 accuracy of any claim therein or to the safety or
20 efficacy of any product, service, or program,
21 including, but not limited to, all tests, reports,
22 studies, demonstrations, or other evidence that
23 confirm, contradict, qualify, or call into question the
24 safety or efficacy of any such product, service, or
25 program; and

1 H. Records accurately reflecting the name, address, and
2 telephone number of each manufacturer or laboratory
3 engaged in the development or creation of any testing
4 obtained for the purpose of advertising, labeling,
5 promoting, offering for sale, distributing, or selling
6 any product, service, or program.

7
8 **XI.**

9 **RETENTION OF JURISDICTION**

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

13
14 **XII.**

15 **SCOPE OF ORDER**

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

22 //

23 //

24 //

25 //

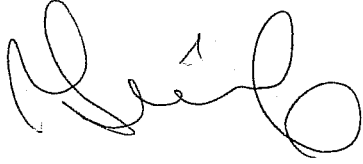
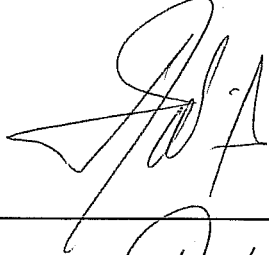
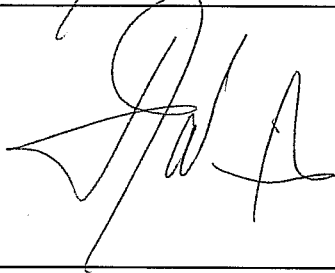

persons or entities in any type of indemnification or contractual relationship with defendants.

SO ORDERED:

JUDGMENT IS THEREFORE ENTERED in favor of plaintiff and against defendants, pursuant to all the terms and conditions recited above.

Dated this _____ day of _____, 2004.

	<hr/> <p>[NAME] UNITED STATES DISTRICT JUDGE</p>
<p>FOR THE PLAINTIFF:</p> <p>WILLIAM E. KOVACIC General Counsel</p> <p>JEFFREY A. KLURFELD Regional Director</p>	<p>FOR THE DEFENDANTS:</p> <p>ROSARIO PARTNERSHIP</p> <p>By: <i>Leonardo Spelzini</i></p> <p>LEONARDO SPELZINI, Owner of Rosario</p>
<p><i>Kerry O'Brien</i></p> <p>KERRY O'BRIEN SARAH E. SCHROEDER Attorneys for Plaintiff Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103 (415) 848-5100 (phone) (415) 848-5184 (facsimile)</p>	<p><i>Leonardo Spelzini</i></p> <p>LEONARDO SPELZINI, Individually and as Owner of Rosario</p>

	<p>MATEO DE NIGRIS INDIVIDUALLY AND AS OWNER of Rosario</p>
	<p>FUNES, INC. By: HECTOR DE NIGRIS, President of Funes, Inc.</p>
	<p>By: HECTOR DE NIGRIS, Individually and as President of Funes, Inc.</p>
	<p>— MARIELA CARAVETTA, ESQ. Attorney for Defendants 6211 Van Nuys Blvd., Suite 200 Van Nuys, CA 91401 (818) 902-2111</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

John Jacobs / kjs

JOHN JACOBS
Attorney for Plaintiff
Federal Trade Commission
10877 Wilshire Blvd., Suite 700
Los Angeles, CA 90024
(310) 824-4343 (phone)
(310) 824-4380 (facsimile)

1 **APPENDIX A**

2 WILLIAM E. KOVACIC
3 General Counsel

4 KERRY O'BRIEN (Cal. Bar No. 149264)
5 SARAH SCHROEDER (Cal. Bar No. 221528)
6 Federal Trade Commission
7 901 Market Street, Suite 570
8 San Francisco, CA 94103
9 (415) 848-5100; Fax (415) 848-5184

7 JOHN JACOBS (Cal. Bar No. 134154)
8 Federal Trade Commission
9 10877 Wilshire Blvd., Suite 700
10 Los Angeles, CA 90024
11 (310) 824-4343; Fax (310) 824-4380

10 Attorneys for Plaintiff
11 FEDERAL TRADE COMMISSION

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 FEDERAL TRADE COMMISSION

15 Plaintiff,

16 v.

17 ROSARIO PARTNERSHIP,

18 FUNES, INC.,

19 LEONARDO SPELZINI,

20 MAITE DE NEGRIS, and

21 HECTOR DE NIGRIS,

22 Defendants.

Case No.

AFFIDAVIT OF
DEFENDANT _____

23
24 [Name of defendant], being duly sworn, hereby states and
25 affirms as follows:

1 1. My name is _____ . My current residence
2 address is _____ . I
3 am a citizen of the United States and am over the age of eighteen.
4 I have personal knowledge of the facts set forth in this
5 Affidavit.

6 2. I am a defendant in FTC v. Rosario Partnership, et al.
7 (United States District Court for the Central District of
8 California).

9 3. On [date], I received a copy of the Stipulated Final
10 Judgment For Permanent Injunction and Other Equitable Relief,
11 which was signed by the Honorable [name of U.S. District Judge]
12 and entered by the Court on [date of entry of Order].

13
14 Pursuant to 28 U.S.C. § 1746, I declare under penalty of
15 perjury that the statements made in this Affidavit are true and
16 correct. Executed on [date], at [city and state].

17
18 _____
19 [Full name of defendant]
20
21
22
23
24
25