

ORIGINAL

1 WILLIAM BLUMENTHAL
General Counsel

2 Sarah Schroeder (Cal. Bar No. 221528)
3 David M. Newman (Cal. Bar No. 54218)
Federal Trade Commission
4 901 Market Street, Suite 570
San Francisco, CA 94103
5 Phone (415) 848-5100; Fax (415) 848-5184
E-mail address: sschroeder@ftc.gov

6 Raymond E. McKown (Cal. Bar. No. 150975)
7 Federal Trade Commission
10877 Wilshire Blvd., Suite 700
8 Los Angeles, CA 90024
Phone (310) 824-4343; Fax (310) 824-4380
9 E-mail address: rmckown@ftc.gov

FILED
CLERK, U.S. DISTRICT COURT
OCT 17 2006
CENTRAL DISTRICT OF CALIFORNIA
BY

10 Attorneys for Plaintiff
11 Federal Trade Commission

12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 CENTRO NATURAL SERVICES, INC.,
a corporation,

19 XAVIER RODRIGUEZ,
20 individually and as an officer
of Centro Natural Services,
21 Inc., and

22 ROCIO DIAZ,
23 individually and as an officer
of Centro Natural Services,
24 Inc.,

25 Defendants.

Case No.

SACV06-989 JVS (RNBx)

~~PROPOSED~~

TEMPORARY RESTRAINING
ORDER WITH EQUITABLE
RELIEF, AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE

26
27 Plaintiff Federal Trade Commission ("FTC" or "Commission");
28 having filed its Complaint for Injunctive and Other Equitable

[Proposed] Temporary Restraining Order

LOGGED

2006 OCT 16 AM 11:10
DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
BY [Signature]

1 Relief, including redress to consumers, and having applied for a
2 noticed *ex parte* temporary restraining order and other equitable
3 relief against defendants Centro Natural Services, Inc., Xavier
4 Rodriguez, and Rocio Diaz ("defendants") pursuant to Fed. R.
5 Civ. P. 65(b), and notice having been provided to defendants,
6 the Court having considered the Complaint, plaintiff's
7 Application for Temporary Restraining Order, Memorandum of
8 Points and Authorities, and other materials filed in support
9 thereof, finds:

10 1. This Court has jurisdiction over the subject matter of
11 this case and jurisdiction over all parties, and venue in this
12 district is proper;

13 2. Good cause exists to believe that defendants have
14 engaged in and are likely to engage in acts that violate
15 Sections 5(a) and 12 of the Federal Trade Commission Act ("FTC
16 Act"), as amended, 15 U.S.C. §§ 45(a) and 52, and that the
17 Commission is likely to prevail on the merits of this action;

18 3. Good cause exists to believe that immediate and
19 irreparable harm will result from defendants' ongoing violations
20 of the FTC Act through the present advertising, marketing, and
21 sale of the Centro Natural de Salud Obesity Treatment ("CNS
22 Obesity Treatment") unless defendants are restrained and
23 enjoined by order of this Court;

24 4. Good cause exists for requiring defendants to preserve
25 business records, notify plaintiff of business activities, and
26 produce an accounting of the business;

27 5. Good cause exists for requiring defendants to produce
28 any scientific substantiation related to products the defendants

1 market and sell to consumers;

2 6. Weighing the equities and considering the Commission's
3 likelihood of ultimate success, a temporary restraining order
4 and other equitable relief is in the public interest; and

5 7. No security is required of any agency of the United
6 States for issuance of a restraining order. Fed. R. Civ. P.
7 65(c).

8 **ORDER**

9 **DEFINITIONS**

10 For the purposes of this Order, the following definitions
11 shall apply:

12 1. "Advertising" means any written or verbal statement,
13 illustration or depiction that is designed to effect a sale or
14 create interest in the purchasing of goods or services, whether
15 it appears in a brochure, newspaper, magazine, pamphlet,
16 leaflet, circular, mailer, book insert, free standing insert,
17 letter, catalogue, poster, chart, billboard, public transit
18 card, point of purchase display, packaging, package insert,
19 label, film, slide, radio, television or cable television, audio
20 program transmitted over a telephone system, program-length
21 commercial ("infomercial"), Internet, or in any other medium;

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

28 3. "Corporate Defendant" means Centro Natural Services,

1 Inc.;

2 4. "Defendants" means Centro Natural Services, Inc., Xavier
3 Rodriguez, and Rocio Diaz, and any entity through which they do
4 business;

5 5. "Target product" means any food, drug, or device within
6 the meaning of Section 12 of the FTC Act, 45 U.S.C. § 52, or
7 dietary supplement, including, but not limited to the CNS
8 Obesity Treatment and any product containing Vitamin A
9 palmitate, vitamin E, vitamin C, folic acid, vitamin B-1,
10 vitamin B-2, niacinamide, vitamin B-6, vitamin B-12, vitamin D,
11 biotin, pantotenic acid, calcium, phosphorus, iodine, iron,
12 magnesium, copper, potassium chloride, chromium, molybdenum,
13 selenium, zinc, vitamin K, fenugreek, white kidney bean extract,
14 gymnema sylvestre, turmeric, green tea extract, senna leaf
15 powder, casara sagrada bark powder, rhubarb root powder,
16 asparagus root powder, celery leaf, cranberries, Irish moss,
17 parsley leaf, spinach, fragrance, aloe gel, and/or seaweed
18 powder; and

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

23 I. PROHIBITED BUSINESS ACTIVITIES

24 IT IS HEREBY ORDERED that defendants and their officers,
25 directors, agents, servants, employees, salespersons,
26 distributors, corporations, subsidiaries, affiliates,
27 successors, assigns, and those persons or entities in active
28 concert or participation with them who receive actual notice of

1 this Order by personal service, facsimile, or otherwise are
2 hereby enjoined from:

3 A. Making, or assisting others in making, expressly or by
4 implication, including through the use of endorsements, any
5 false or misleading oral or written statement or representation
6 in connection with the advertising, marketing, promotion, offer
7 for sale, distribution, or sale of any target product,
8 including, but not limited to:

9 1. Misrepresenting that any target product, or any
10 ingredients or aspects of a target product, causes users to lose
11 substantial amounts of weight rapidly, including as much as 35
12 pounds in two months, without reducing caloric intake;

13 2. Misrepresenting that any target product, or any
14 ingredients or aspects of a target product, causes users to
15 safely lose as much as a half pound per day for multiple weeks
16 and months; and

17 3. Misrepresenting that any target product, or any
18 ingredients or aspects of a target product, causes users to lose
19 weight permanently.

20 B. Making any representation about the health benefits,
21 performance, efficacy, or safety of any target product, or any
22 ingredients or aspects of a target product, unless, at the time
23 of making such representation, defendants possess and rely upon
24 competent and reliable scientific evidence that substantiates
25 the representation.

26 II. PRESERVATION OF RECORDS AND OTHER EVIDENCE

27 IT IS FURTHER ORDERED that defendants, and their officers,
28

1 directors, agents, servants, employees, salespersons,
2 distributors, corporations, subsidiaries, affiliates,
3 successors, assigns, and those persons or entities in active
4 concert or participation with them who receive actual notice of
5 this Order by personal service, facsimile, or otherwise, are
6 hereby enjoined from:

7 A. Destroying, erasing, mutilating, concealing, altering,
8 transferring or otherwise disposing of, in any manner, directly
9 or indirectly, any target product advertised, marketed,
10 promoted, offered for sale, distributed, sold, or purchased by
11 any defendant;

12 B. Destroying, erasing, mutilating, concealing, altering,
13 transferring or otherwise disposing of, in any manner, directly
14 or indirectly, contracts, agreements, customer files, customer
15 lists, customer addresses and telephone numbers, correspondence,
16 advertisements, brochures, sales material, training material,
17 sales presentations, documents evidencing or referring to
18 defendants' target products, data, computer tapes, disks, or
19 other computerized records, books, written or printed records,
20 handwritten notes, telephone logs, receipt books, invoices,
21 postal receipts, ledgers, personal and business canceled checks
22 and check registers, bank statements, appointment books, copies
23 of federal, state or local business or personal income or
24 property tax returns, and other documents or records of any
25 kind, including electronically-stored materials, that relate to
26 the business practices or business or personal finances of any
27 defendant or other entity directly or indirectly under the
28

1 control of any defendant; and

2 C. Failing to create and maintain books, records, and
3 accounts which, in reasonable detail, accurately, fairly, and
4 completely reflect the incomes, assets, disbursements,
5 transactions, and use of monies by any defendant or other entity
6 directly or indirectly under the control of any defendant.

7 III. NOTIFICATION OF BUSINESS ACTIVITIES

8 IT IS FURTHER ORDERED that defendants Xavier Rodriguez and
9 Rocio Diaz are hereby restrained and enjoined from creating,
10 operating, or exercising any control over any business entity,
11 including any partnership, limited partnership, joint venture,
12 sole proprietorship, or corporation, without first providing
13 counsel for the Commission with a written statement disclosing
14 the following: (1) the name of the business entity; (2) the
15 address and telephone number of the business entity; (3) the
16 names of the business entity's officers, directors, principals,
17 managers, and employees; and (4) a detailed description of the
18 business entity's intended activities.

19 IT IS FURTHER ORDERED that defendants Xavier Rodriguez and
20 Rocio Diaz shall notify the Commission at least seven (7) days
21 prior to any affiliation with any new or previously inactive
22 business or employment. Each notice shall include the
23 applicable defendant's new business address and a statement of
24 the nature of the new business or employment and of his duties
25 and responsibilities in connection with that business or
26 employment.

1 IV. ACCOUNTING PROVISIONS

2 IT IS FURTHER ORDERED that, within three (3) calendar days
3 after service of this Order for all target products advertised,
4 marketed, promoted, offered for sale, distributed, or sold by
5 the defendants, and their officers, directors, agents, servants,
6 employees, salespersons, distributors, corporations,
7 subsidiaries, affiliates, successors, or assigns,

8 A. Defendants shall serve on counsel for the Commission a
9 detailed accounting of:

- 10 1. all gross revenues obtained from the sale, either
11 directly or through distributors, of all such target
12 products from inception of sales through the date of the
13 entry of this Order;
- 14 2. all net profits obtained from the sale, either directly
15 or through distributors, of all such target products
16 from inception of sales through the date of the entry of
17 this Order;
- 18 3. the total amount of all such target products sold; and
19 4. the full names, addresses, and telephone numbers of all
20 purchasers of all such target products, and the amount
21 of target product purchased by each purchaser; *provided*
22 *that this customer list shall be provided in the form of*
23 *a searchable electronic document formatted in Word, Word*
24 *Perfect, Excel, or Access.*

25 V. EXPEDITED DISCOVERY CONCERNING SCIENTIFIC SUBSTANTIATION

26 IT IS FURTHER ORDERED that the Commission is granted leave
27 at any time after service of this Order to demand the production
28

1 of documents from any person or entity relating to the nature,
2 status, location, or other relevant information relating to any
3 scientific studies, reports, or other documents concerning the
4 efficacy of the target products. Forty-eight (48) hours notice
5 shall be deemed sufficient for any such production of documents
6 from the defendants and three (3) business days notice shall be
7 deemed sufficient for any such production of documents from any
8 other person or entity. The production of documents submitted
9 pursuant to this provision shall not in any way waive the
10 Commission's rights to seek additional documents. The
11 conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) regarding
12 subsequent depositions of an individual shall not apply to
13 depositions taken pursuant to this paragraph, nor shall any
14 depositions taken pursuant to this provision count towards the
15 ten-deposition limit set forth in Fed. R. Civ. P. 30(a)(2)(A).

16 VI. DISTRIBUTION OF ORDER BY DEFENDANTS

17 IT IS FURTHER ORDERED that defendants shall immediately
18 provide a copy of this Order to each affiliate, subsidiary,
19 division, sales entity, successor, assign, officer, director,
20 employee, independent contractor, distributor, agent, attorney,
21 ad broker, advertising agency, fulfillment house, call center,
22 domain registrar, mail receipt facility, and representative of
23 the defendants, and, within ten (10) calendar days following
24 service of this Order on defendants, defendants shall provide
25 the Commission with an affidavit identifying the names, titles,
26 addresses, and telephone numbers of the persons and entities
27 that defendants have served with a copy of this Order in
28

1 compliance with this provision.

2 VII. SERVICE OF THIS ORDER BY THE COMMISSION

3 IT IS FURTHER ORDERED that copies of this Order may be
4 served by facsimile transmission, personal or overnight
5 delivery, or U.S. Mail, by employees of the Commission,
6 employees of any other law enforcement agency, agents of any
7 process servers retained by the Commission on (1) defendants,
8 (2) any financial or brokerage institution, entity, or person
9 that holds, controls, or maintains custody of any account or
10 asset of any defendant, or (3) any other person or entity that
11 may be subject to any provision of this Order. Service upon any
12 branch or office of any entity shall effect service upon the
13 entire entity.

14 VIII. RIGHT TO INVESTIGATE AND ADD ADDITIONAL PARTIES AND CLAIMS

15 Nothing in this Temporary Restraining Order should be
16 construed as limiting or restricting the Commission's right or
17 ability to investigate, take discovery from, add to this action,
18 or bring further actions against any person or entity not
19 specifically named herein as a defendant who may be in active
20 concert or participation with any defendant.

21 IX. ORDER TO SHOW CAUSE

22 IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 65(b),
23 that defendants shall appear before this Court on the 27th day of
24 October, 2006 at 3:00 P.m., to show cause, if there is any, why
25 this Court should not enter a preliminary injunction, pending
26 final ruling on the Complaint, against defendants enjoining them
27 from violations of Sections 5(a) and 12 of the FTC Act, 15
28

1 U.S.C. §§ 45(a) and 52, and imposing such additional relief as
2 may be appropriate.

3 **X. SERVICE OF ANSWERING AFFIDAVITS, MEMORANDA, AND EVIDENCE**

4 IT IS FURTHER ORDERED that:

5 A. Defendants shall file any answering affidavits,
6 pleadings, or legal memoranda with the Court and serve the same
7 on counsel for the Commission no later than four (4) business
8 days prior to the preliminary injunction hearing in this matter.
9 The Commission may file responsive or supplemental pleadings,
10 materials, affidavits, or memoranda with the Court and serve the
11 same on counsel for defendants no later than two (2) business
12 days prior to the preliminary injunction hearing in this matter.
13 *Provided that* service shall be performed by personal or
14 overnight delivery or by facsimile, and documents shall be
15 delivered so that they shall be received by the other parties no
16 later than 4 p.m. Pacific Time on the appropriate service dates
17 required by this Subparagraph.

18 B. There will be no direct examination of witnesses at the
19 preliminary injunction hearing in this matter. Direct testimony
20 shall be presented in the form of declarations or affidavits.

21 **XI. SERVICE UPON THE COMMISSION**

22 IT IS FURTHER ORDERED, with regard to any correspondence,
23 pleadings, or notifications related to this Order, that service
24 on the Commission shall be performed by either (A) overnight
25 delivery or (B) facsimile and first class mail delivery to:

26 Sarah Schroeder
27 Federal Trade Commission
28

1 901 Market Street, Suite 570
 2 San Francisco, CA 94103
 3 Phone (415) 848-5100/Fax (415) 848-5184

4 XII. EXPIRATION OF THIS ORDER

5 IT IS FURTHER ORDERED that the Temporary Restraining Order
 6 granted herein shall expire ten (10) days after entry unless
 7 within such time the Order, for good cause shown, is extended,
 8 or unless, as to any defendant, the defendant consents that it
 9 should be extended for a longer period of time and the reasons
 10 therefor are entered of record.

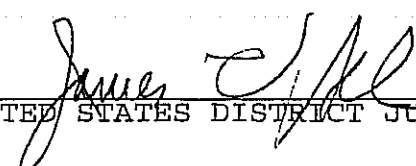
11 XIII. RETENTION OF JURISDICTION

12 IT IS FURTHER ORDERED that this Court shall retain
 13 jurisdiction of this matter for all purposes.

14 IT IS SO ORDERED:

15 DATED:

16 10.17.06

17 
 18 UNITED STATES DISTRICT JUDGE