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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 **Federal Trade Commission,**

6 Plaintiff,

7 v.

8 **National Vending Consultants, Inc.**, a New
Mexico corporation; **Success Vending Group,**
9 **Inc.**, a New Mexico corporation;
10 **USA Candy Express, Inc.**, a Nevada corporation;
11 **Patrick Abeyta, Jr.**, individually and as an officer
of National Vending Consultants, Inc.;
12 **Debra Abeyta**, individually and as an officer of
National Vending Consultants, Inc.; **Larry Welli**,
individually and as an officer of Success Vending
Group, Inc.; **Richard Savard**, individually and as
13 an officer of Success Vending Group, Inc.;

14 Defendants,

15 and **Darlene Savard**, a/k/a **Darlene Robarge**,

16 Relief Defendant.
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Civil Action No.
CV-S-05-0160-RCJ-PAL

**FINAL JUDGMENT AND
PERMANENT INJUNCTION
ORDER**

20 Plaintiff, Federal Trade Commission ("FTC" or "Commission"), filed a
21 Complaint for Permanent Injunction and Other Relief ("Complaint"), including redress
22 to consumers, pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission
23 Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b(a), and moved for an *Ex Parte* Temporary
24 Restraining Order ("TRO"). On February 8, 2005, the Court issued a TRO with an asset
25 freeze, appointed Matthew Q. Callister as Receiver for the Corporate Defendants, and
26 granted other equitable ancillary relief. On March 17, 2005, the court held a preliminary

1 injunction hearing and, on May 2, 2005, entered a preliminary injunction order, which,
2 among other things, continued the asset freeze and receivership. Upon the FTC's
3 motion, the Court subsequently modified the preliminary injunction on March 10, 2006,
4 as to Defendants Richard Savard and Patrick Abeyta to include a ban against
5 involvement in any business venture. On January 12, 2006, the FTC filed a Motion for
6 Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and a
7 memorandum of law and volumes of exhibits in support thereof. Having considered
8 the pleadings, testimony, declarations, and exhibits presented by the parties, and after
9 hearing oral argument on February 27, 2006, the Court ruled that summary judgment
10 would be granted in favor of the FTC. The Court hereby makes the following findings
11 and enters the following permanent injunction:

12 **FINDINGS**

- 13 1. This Court has jurisdiction of the subject matter of this action and the parties
14 pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b) and 57b.
- 15 2. Venue in the United States District Court for the District of Nevada is proper as
16 to all parties under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).
- 17 3. The activities of Defendants are in or affecting commerce, as defined in Section 4
18 of the FTC Act, 15 U.S.C. § 44.
- 19 4. The Complaint states a claim upon which relief may be granted against
20 Defendants under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the
21 Commission's Rule entitled Disclosure Requirements and Prohibitions
22 Concerning Franchise and Business Opportunity Ventures (the "Franchise
23 Rule"), 16 C.F.R. Part 436.
- 24 5. Defendants National Vending Consultants, Inc. ("NVC"), Success Vending
25 Group, Inc. ("SVG"), USA Candy Express, Inc. ("USA Candy"), Patrick Abeyta,
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1 Jr., Debra Abeyta, Larry Welli, and Richard Savard have engaged in and are
2 likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15
3 U.S.C. § 45(a), and the Franchise Rule.

4 6. Corporate Defendants and Individual Defendants have transferred substantial
5 amounts of money they obtained from consumers to Relief Defendant, Darlene
6 Savard, and she has no legitimate claim to those funds.

7 7. There is no genuine dispute as to any material fact. As a matter of law, Plaintiff
8 is entitled to entry of summary judgment against Defendants and to a permanent
9 injunction against the Individual Defendants and Corporate Defendants.

10 8. Judgment in the amount of \$9,298,447.29 is hereby entered against the Corporate
11 Defendants and Individual Defendants, jointly and severally, as provided in
12 Section IV.

13 9. Judgment is hereby entered against Relief Defendant Darlene Savard in the
14 amount of \$568,242.93.

15 10. Entry of this order is in the public interest.

16 **DEFINITIONS**

17 1. "Assets" means any legal or equitable interest in, right to, or claim to, any real
18 and personal property, including, but not limited to, chattel, goods, instruments,
19 equipment, fixtures, general intangibles, inventory, checks, notes, leaseholds,
20 effects, contracts, mail or other deliveries, shares of stock, lists of consumer
21 names, accounts, credits, premises, receivables, funds, and cash, wherever
22 located, whether in the United States or abroad;

23 2. "Business venture" means any written or oral business arrangement, however
24 denominated, regardless of whether covered by the Franchise Rule, which
25 consists of the payment of any consideration for:
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1 a. the right or means to offer, sell, or distribute goods or services (regardless
2 of whether identified by a trademark, service mark, trade name,
3 advertising, or other commercial symbol); and

4 b. more than nominal assistance to any person or entity in connection with
5 or incident to the establishment, maintenance, or operation of a new
6 business or the entry by an existing business into a new line or type of
7 business;

8 3. "Corporate Defendants" means NVC, SVG, and USA Candy, and their
9 successors, assigns, affiliates or subsidiaries;

10 4. "Individual Defendants" means Patrick Abeyta, Jr., Debra Abeyta, Larry Welli,
11 and Richard Savard;

12 5. "Relief Defendant" means Darlene Savard;

13 6. "Defendants" means (a) each Corporate Defendant; (b) each Individual
14 Defendant; and (c) the Relief Defendant. Furthermore, any person insofar as he
15 or she is acting in the capacity of an officer, agent, servant, employee or attorney
16 of any Corporate Defendant, any Individual Defendant, or the Relief Defendant,
17 and any person or entity in active concert or participation with any of the
18 foregoing who receives actual notice of this Order by personal service or
19 otherwise, is bound to comply with this Order, whether these persons or entities
20 are acting directly or through a trust, corporation, subsidiary, division, or other
21 device; and

22 7. "Document" is synonymous in meaning and equal in scope to the usage of the
23 term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings,
24 graphs, charts, photographs, audio and video recordings, computer records, and
25 other data compilations from which information can be obtained and translated,
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1 if necessary, through detection devices into reasonably usable form. A draft or
2 non-identical copy is a separate document within the meaning of the term.
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4 **I. BAN AGAINST ANY INVOLVEMENT WITH BUSINESS VENTURES**

5 **IT IS THEREFORE ORDERED** that Defendants Patrick Abeyta, Jr., Richard
6 Savard, Debra Abeyta, and the Corporate Defendants, whether acting directly or
7 through any corporation, limited liability company, subsidiary, division, or other
8 device, and any person or entity in active concert or participation with any of the
9 foregoing who receives actual notice of this Order by personal service or otherwise, are
10 hereby permanently enjoined from:

11 A. Advertising, marketing, promoting, offering for sale, or selling any
12 business venture; and

13 B. Receiving any remuneration of any kind whatsoever from, holding any
14 ownership interest, share, or stock in, or serving as an employee, officer, director,
15 trustee, general manager of, or consultant or advisor to, any business entity engaged in
16 or assisting in the advertising, marketing, promoting, offering for sale, or sale of any
17 business venture.
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19 **II. PROHIBITION AGAINST VIOLATION OF SECTION 5**
20 **OF THE FEDERAL TRADE COMMISSION ACT**

21 **IT IS FURTHER ORDERED** that, in connection with the offering for sale or
22 selling of any business venture, Defendant Larry Welli, whether acting directly or
23 through any corporation, limited liability company, subsidiary, division, or other
24 device, and any person or entity in active concert or participation with him who
25 receives actual notice of this Order by personal service or otherwise, is hereby
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1 permanently restrained and enjoined from making any material misrepresentation or
2 assisting others in making any material misrepresentation, either expressly or by
3 implication, to any prospective purchaser of a business venture, including but not
4 limited to, the following:

5 A. that consumers who purchase business ventures are likely to earn
6 substantial income;

7 B. that references or other individuals have purchased a business venture
8 and/or will provide reliable descriptions of experiences with the business venture;

9 C. that consumers who purchase a business venture will be provided with
10 pre-screened locations or accounts;

11 D. that consumers who purchase a business venture will be able to begin
12 operating their businesses within a certain period of time.

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14 **III. PROHIBITION AGAINST VIOLATION OF THE FRANCHISE RULE**

15 **IT IS FURTHER ORDERED** that Defendant Larry Welli, whether acting directly
16 or through any corporation, limited liability company, subsidiary, division, or other
17 device, and any person or entity in active concert or participation with him who
18 receives actual notice of this Order by personal service or otherwise, is hereby
19 permanently restrained and enjoined from violating or assisting others to violate any
20 provisions of the Franchise Rule, 16 C.F.R. Part 436, by, including but not limited to:

21 A. Failing to provide a prospective purchaser with a complete and accurate
22 disclosure document within the time required, as prescribed by the Franchise Rule, 16
23 C.F.R. § 436.1(a);

24 B. Failing to provide a prospective purchaser with an earnings claim
25 document as prescribed by the Franchise Rule, 16 C.F.R. § 436.1(b)-(e);
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1 C. Failing to have a reasonable basis for any earnings claim at the time such
2 claim is made, as required by the Franchise Rule, 16 C.F.R. § 436.1(b)-(c);

3 D. Failing to disclose, in immediate conjunction with any earnings claim, and
4 in a clear and conspicuous manner, that material which constitutes a reasonable basis
5 for the earnings claim is available to the prospective purchasers;

6 E. Failing to provide material which constitutes a reasonable basis for any
7 earnings claim to prospective purchasers, the Commission, or its staff upon reasonable
8 demand; or

9 F. Making any statement that contradicts information required to be
10 disclosed in the disclosure document as required by the Franchise Rule. 16 C.F.R.
11 § 436.1(f).

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13 **IV. MONETARY JUDGMENT**

14 **IT IS FURTHER ORDERED** that:

15 A. Judgment is hereby entered against the Corporate Defendants and
16 Individual Defendants, jointly and severally, in the amount of \$9,298,447.29. Provided,
17 however, that Defendant Larry Welli's individual liability for this monetary judgment
18 shall be limited to \$7,870,507.34. The monetary judgment shall include post-judgment
19 interest at the legal rate, for equitable monetary relief, including but not limited to
20 consumer redress and disgorgement, and for paying any attendant expenses of
21 administering any redress fund. The monetary judgment set forth in Paragraph A of
22 this section is enforceable against any assets owned individually, jointly by or held on
23 behalf of, for the benefit of, or in trust by or for any Corporate Defendant or Individual
24 Defendant.

25 B. Judgment is hereby entered against the Relief Defendant in the amount of
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1 \$568,242.93 with post-judgment interest at the legal rate, for equitable monetary relief,
2 including but not limited to consumer redress and disgorgement, and for paying any
3 attendant expenses of administering any redress fund. The monetary judgment set
4 forth in Paragraph B of this section is enforceable against any assets owned
5 individually, jointly by or held on behalf of, for the benefit of, or in trust by or for the
6 Relief Defendant;

7 C. Defendants relinquish all right, title, and interest to: (1) all frozen assets
8 held by or on behalf of the Receiver or receivership estate, or the Commission; (2) all
9 assets subject to claims by the Receiver, or the receivership estate, or the Commission
10 pursuant to the TRO and Preliminary Injunction previously entered in this case;

11 D. The Commission may apply any or all funds received from the
12 Defendants and the Receiver pursuant to this Order, and any interest received thereon,
13 to a consumer redress program and to related administrative expenses. Consumers
14 shall be entitled to a claim for redress monies, or a pro rata claim if insufficient funds
15 are available, in the following amounts: (1) Consumers who purchased Defendants'
16 business opportunity but did not receive any vending machines from Defendants will
17 be entitled to claim the total amount of money they paid to Defendants; and (2)
18 Consumers who purchased Defendants' business opportunity and received vending
19 machines will be entitled to claim the amount of money they paid to Defendants less the
20 cost of the machines to Defendants. If the Commission determines a consumer redress
21 program is not feasible, or if there are funds remaining after full implementation of the
22 redress plan, the Commission shall deposit these funds into the United States Treasury.
23 Defendants shall have no right to challenge the Commission's choice of remedies under
24 this Paragraph;

25 E. All amounts the Receiver has in Receivership accounts and in segregated
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1 trust accounts in this matter may be used in partial satisfaction of this judgment; and

2 F. The equitable monetary relief is solely remedial in nature and is not a fine,
3 penalty, punitive assessment, or forfeiture.

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6 **V. TURNOVER OF FROZEN ASSETS**

7 **IT IS FURTHER ORDERED** that:

8 A. Any law firm, financial or brokerage institution, escrow agent, title
9 company, commodity trading company, business entity, or person, whether located
10 within the United States or outside the United States, that holds, controls, or maintains
11 accounts or assets of, on behalf of, or for the benefit of, any Corporate Defendant shall
12 turn over such account or asset to the Receiver within ten (10) business days of
13 receiving notice of this Order by any means, including but not limited to via facsimile.

14 B. Any law firm, financial or brokerage institution, escrow agent, title
15 company, commodity trading company, business entity, or person, whether located
16 within the United States or outside the United States, that holds, controls, or maintains
17 accounts or assets of, on behalf of, or for the benefit of, any Individual Defendant or
18 Relief Defendant, which were frozen pursuant to the TRO, Preliminary Injunction
19 Order, and Modified Preliminary Injunction Order previously entered in this case, shall
20 turn over such frozen account or asset to the Commission within ten (10) business days
21 of receiving notice of this Order by any means, including but not limited via facsimile,
22 in such manner as the FTC directs in writing.

23 C. The Receiver is directed to turn over to the Commission within fifteen (15)
24 business days of the date of entry of this Order all assets in the receivership estate less
25 \$150,000. The Receiver shall retain in the receivership estate the amount of \$150,000.

1 plus such additional assets that the Receiver is hereafter able to marshal. Such assets
2 shall be used to reimburse, upon application to and approval by the Court, the Receiver
3 for his reasonable and necessary costs and expenses in administering and winding up
4 the receivership estate. Upon termination of the receivership and final payment to the
5 Receiver of all approved costs and expenses, the Receiver shall turn over to the
6 Commission all remaining assets in the receivership estate.

7 D. Each Corporate Defendant shall provide an accounting of, and repatriate
8 and turn over to the Receiver, within ten (10) business days following the entry of this
9 Order, all assets in foreign countries held either: (a) by such Corporate Defendant (b)
10 for such Corporate Defendant's benefit, or (c) under such Corporate Defendant's direct
11 or indirect control, jointly or singly, including but not limited to all assets placed in trust
12 by, for, for the benefit of, on account of, or on behalf of any Corporate Defendant.

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14 **VI. COMPLETION OF RECEIVERSHIP**

15 **IT IS FURTHER ORDERED** that Matthew Callister, the Receiver appointed by
16 the Preliminary Injunction Order entered by this Court on May 2, 2005, shall continue
17 as Receiver for the Corporate Defendants for the purpose of taking the necessary steps
18 to wind down the businesses of the Corporate Defendants, liquidate their assets, and
19 pay any net assets to the FTC to partially satisfy the monetary judgment in this
20 Permanent Injunction. In acting as Receiver under this Permanent Injunction, the
21 Receiver shall be the agent of this Court and shall be accountable directly to this Court.
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23 In carrying out these duties, the Receiver is authorized and directed to:
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25 A. Take all steps necessary or advisable to locate and liquidate all assets of
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1 the Corporate Defendants, cancel the Corporate Defendants' contracts,
2 collect on amounts owed to the Corporate Defendants, and take such
3 other steps as may be necessary to terminate and dissolve the Corporate
4 Defendants efficiently;

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6 B. Continue to exercise full control of the Corporate Defendants and
7 continue to collect, marshal, and take custody, control and possession of
8 all the funds, property, premises, accounts, documents, mail, and other
9 assets of, or in the possession or under the control of, the Corporate
10 Defendants, wherever situated, the income and profits therefrom, and all
11 sums of money now or hereafter due or owing to the Corporate
12 Defendants, with full power to collect, receive and take possession of all
13 goods, chattels, rights, credits, monies, effects, lands, leases, books and
14 records, limited partnership records, work papers, and records of
15 accounts, including computer-maintained information, contracts, financial
16 records, monies on hand in banks and other financial institutions, and
17 other papers and documents of other individuals, partnerships or
18 corporations whose interests are now held by or under the direction,
19 possession, custody or control of the Corporate Defendants;

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23 C. Dispose of, or arrange for the disposal of, the records of the Corporate
24 Defendants no later than three months after the Court's approval of the
25 Receiver's final report, except that, to the extent that such records are
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1 reasonably available, the Receiver shall arrange for records sufficient to
2 ascertain the funds that an individual consumer paid to the Corporate
3 Defendants, and any refund payments that the Corporate Defendants
4 made to an individual consumer to be retained for a minimum of one year
5 from the entry of this Permanent Injunction. Provided, however, that to
6 safeguard the privacy of consumers, records containing personal financial
7 information shall be shredded, incinerated, or otherwise disposed of in a
8 secure manner. For records that must be retained, the Receiver may elect
9 to retain records in their original form, or to retain photographic or
10 electronic copies;
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13 D. Continue to take all steps necessary to secure each location from which the
14 Corporate Defendants operated their business;

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16 E. Continue to perform all acts necessary or advisable to complete an
17 accounting of the assets, and prevent unauthorized transfer, withdrawal,
18 or misapplication of assets;

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20 F. Make payments and disbursements from the Receivership estate that are
21 necessary or advisable for carrying out the directions of, or exercising the
22 authority granted by, this Permanent Injunction. The Receiver shall apply
23 to the Court for prior approval of any payment of any debt or obligation
24 incurred by the Corporate Defendants prior to the date of entry of the
25 temporary restraining order in this action, except payments that the
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1 Receiver deems necessary or advisable to secure and liquidate assets of
2 the Corporate Defendants, such as rental payments or payment of liens;

3 G. Enter into contracts and purchase insurance as advisable or necessary;
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5 H. Perform all incidental acts that the Receiver deems to be advisable or
6 necessary, which includes retaining, hiring, or dismissing any employees,
7 independent contractors, or agents;

8 I. Continue to institute, compromise, adjust, appear in, intervene in, or
9 become party to such actions or proceedings in state, federal, or foreign
10 courts or arbitration proceedings as the Receiver deems necessary and
11 advisable to carry out the Receiver's mandate under this Permanent
12 Injunction, including but not limited to, actions challenging fraudulent or
13 voidable transfers;

14 J. Continue to defend, compromise, adjust, or otherwise dispose of any or all
15 actions or proceedings instituted in the past or in the future against the
16 Receiver in his role as Receiver, or against the Corporate Defendants, as
17 the Receiver deems necessary and advisable to carry out the Receiver's
18 mandate under this Permanent Injunction;
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20 K. Issue subpoenas to obtain documents and records pertaining to the
21 receivership, and conduct discovery in this action on behalf of the
22 Receivership estate;
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24 L. Open one or more bank accounts as designated depositories for funds of
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1 the Corporate Defendants, and make all payments and disbursements
2 from the Receivership estate from such an account. The Receiver shall
3 serve copies of monthly account statements on all parties;
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5 M. Continue to maintain accurate records of all receipts and expenditures
6 that he makes as Receiver; and

7 N. Continue to cooperate with reasonable requests for information or
8 assistance from any state or federal law enforcement agency.
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10 VII. COMPENSATION OF RECEIVER

11 **IT IS FURTHER ORDERED** that the Receiver and all personnel hired by the
12 Receiver, including counsel to the Receiver and accountants, are entitled to reasonable
13 compensation for the performance of duties pursuant to this Permanent Injunction and
14 for the cost of actual out-of-pocket expenses incurred by them, from the assets now held
15 by, in the possession or control of, or which may be received by, the Corporate
16 Defendants. The Receiver must not increase the hourly rates used as the bases for such
17 fee applications without prior approval of the Court.
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2 **VIII. RECEIVER'S FINAL REPORT AND DISBURSEMENT OF ASSETS OF THE**
3 **CORPORATE DEFENDANTS**

4 **IT IS FURTHER ORDERED** that:

5 A. The Receiver shall liquidate the assets of the Corporate Defendants. No
6 later than sixty (60) days from the date of the entry of this Permanent
7 Injunction, the Receiver shall file and serve on the parties a report (the
8 "Final Report") to the Court that details the steps taken to dissolve the
9 Receivership estate. The Final Report must include an accounting of the
10 Receivership estate's finances and total assets and a description of what
11 other actions, if any, must be taken to wind-up the Receivership.
12 Promptly thereafter, but no later than thirty (30) days after submission of
13 the Final Report, the Receiver shall file an application for payment of
14 compensation and expenses associated with his performance of duties as
15 Receiver under this Permanent Injunction and under the TRO and
16 Preliminary Injunction Order entered in this proceeding. The Receiver
17 shall mail copies of the Final Report to all known creditors of the
18 Corporate Defendants with a notice stating that any objections to paying
19 any assets of the Corporate Defendants to satisfy the Receiver's costs and
20 expenses and the monetary judgment set forth in this Permanent
21 Injunction must be submitted to the Court and served by mail upon the
22 Receiver and the parties within thirty days of the mailing of the Final
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1 Report. If subsequent actions (such as the completion of tax returns or
2 further actions to recover funds for the Receivership) are appropriate, the
3 Receiver shall file additional report or reports (the "Supplemental
4 Reports") describing the subsequent actions and a subsequent application
5 for the payment of fees and expenses related to the subsequent acts;
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7 B. The Court will review the Final Report and any objections to the report
8 and, absent a valid objection, will issue an order directing that the
9 Receiver:

- 10 1. Pay the reasonable costs and expenses of administering the
11 Receivership, including compensation of the Receiver and the
12 Receivers' personnel authorized by Section VII of this Permanent
13 Injunction or other orders of this Court, and the actual out-of-
14 pocket costs incurred by the Receiver in carrying-out his duties;
15 and
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- 17 2. To the extent that funds remain, pay all remaining funds to the FTC
18 or its designated agent to reduce the monetary judgment in
19 Paragraph A of Section IV.
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IX. COOPERATION WITH THE RECEIVER

IT IS FURTHER ORDERED that:

- A. Defendants and all other persons or entities served with a copy of this Permanent Injunction shall fully cooperate with and assist the Receiver in taking possession, custody, or control of the assets of the Corporate Defendants. This cooperation and assistance shall include, but not be limited to, providing information to the Receiver that the Receiver deems necessary in order to exercise the authority and discharge the responsibilities of the Receiver under this Permanent Injunction; providing any password required to access any computer, electronic file, or telephonic data in any medium; and advising all persons who owe money to the Corporate Defendants that all debts should be paid directly to the Receiver;
- B. Upon service of a copy of this Permanent Injunction, all entities that hold assets or records related to the business of the Corporate Defendants shall cooperate with all reasonable requests of the Receiver relating to implementation of this Permanent Injunction, including transferring funds at the Receiver's direction and producing records related to the assets and sales of the Corporate Defendants. The entities obligated to cooperate with the Receiver under this provision include, but are not limited to, banks, broker-dealers, savings and loans, escrow agents, title companies,

1 commodity trading companies, precious metals dealers and other
2 financial institutions and depositories of any kind, and all third-party
3 billing agents, local exchange carriers, common carriers, and other
4 telecommunications companies, that have transacted business with the
5 Corporate Defendants.
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7 C. Unless directed by the Receiver, Defendants are hereby restrained and
8 enjoined from directly or indirectly:

- 9 1. Interfering with the Receiver managing, or taking custody, control,
10 or possession of, the assets or documents subject to this
11 Receivership;
- 12 2. Transacting any of the business of the Corporate Defendants;
- 13 3. Transferring, receiving, altering, selling, encumbering, pledging,
14 assigning, liquidating, or otherwise disposing of any assets owned,
15 controlled, or in the possession or custody of, or in which an
16 interest is held or claimed by, the Corporate Defendants, or the
17 Receiver; and
- 18 4. Refusing to cooperate with the Receiver or the Receiver's duly
19 authorized agents in the exercise of their duties or authority under
20 any order of this Court.
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X. ASSET FREEZE

IT IS FURTHER ORDERED that the asset freeze contained in the Preliminary Injunction Order and Modified Preliminary Injunction Order previously entered in this case shall remain in effect pending completion of the turnover of the Corporate Defendants' assets to the Receiver, and the Individual Defendants' and Relief Defendant's assets to the Commission pursuant to Section V of this Order.

XI. PROHIBITION ON DISCLOSING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that the Defendants are hereby permanently restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, or other identifying information of any person who purchased or paid to participate in a business venture at any time prior to the date this Order is entered; and

B. Benefitting from or using the name, address, telephone number, credit card number, bank account number, date of birth, email address, or other identifying or financial information of any person who submitted this information to the Defendants as a result of, or otherwise related to, the activities alleged in the FTC's Complaint;

Provided, however, that the Defendants may disclose identifying information to a law enforcement agency or as required by any law, regulation, or court order.

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XII. 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, each Corporate Defendant and Individual Defendant shall 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 such Corporate Defendant's or Individual 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: Corporate Defendants and Individual Defendants, Corporate Defendants' and Individual Defendants' employees, or any other entity managed or controlled in whole or in part by Corporate Defendants and Individual Defendants, without the necessity of identification or prior notice;
- and

C. Corporate Defendants and Individual Defendants shall permit

1 representatives of the Commission to interview any employer, consultant, independent
2 contractor, representative, agent, or employee who has agreed to such an interview,
3 relating in any way to any conduct subject to this Order. The person interviewed may
4 have counsel present.
5

6 *Provided, however,* that nothing in this Order shall limit the Commission's lawful
7 use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C.
8 §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or
9 information relevant to unfair or deceptive acts or practices in or affecting commerce
10 (within the meaning of 15 U.S.C. § 45(a)(1)).
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12 13 **XIII. COMPLIANCE REPORTING BY DEFENDANTS**

14 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions
15 of this Order may be monitored:
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17 A. For a period of five (5) years from the date of entry of this Order,

18 1. Each Individual Defendant shall notify the Commission of the
19 following:

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

23 b. Any changes in employment status (including self-
24 employment) of the Individual Defendant, and any change
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1 in the ownership of the Individual Defendant in any
2 business entity, within ten (10) days of the date of such
3 change. Such notice shall include the name and address of
4 each business that the Individual Defendant is affiliated
5 with, employed by, creates or forms, or performs services
6 for; a statement of the nature of the business; and a
7 statement of the Individual Defendant's duties and
8 responsibilities in connection with the business or
9 employment; and
10
11

12 c. Any changes in the Individual Defendant's name or use of
13 any aliases or fictitious names; and

14 2. Corporate Defendants and Individual Defendants each shall notify
15 the Commission of any changes in corporate structure or any business entity that
16 a Corporate Defendant or Individual Defendant directly or indirectly controls, or
17 has an ownership interest in, that may affect compliance obligations arising
18 under this Order, including but not limited to a dissolution, assignment, sale,
19 merger, or other action that would result in the emergence of a successor entity;
20 the creation or dissolution of a subsidiary, parent, or affiliate that engages in any
21 acts or practices subject to this Order; the filing of a bankruptcy petition; or a
22 change in the corporate name or address, at least thirty (30) days prior to such
23 change, *provided that*, with respect to any proposed change in the corporation
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1 about which the Corporate Defendants or Individual Defendants learn less than
2 thirty (30) days prior to the date such action is to take place, the Corporate
3 Defendants or Individual Defendants shall notify the Commission as soon as is
4 practicable after obtaining such knowledge.
5

6 B. One hundred eighty (180) days after the date of entry of this Order, each
7 Corporate and Individual Defendant shall provide a written report to the FTC, sworn to
8 under penalty of perjury, setting forth in detail the manner and form in which they
9 have complied and are complying with this Order. This report shall include, but not be
10 limited to:
11

12 1. For each Individual Defendant:

13 a. The then-current residence address, mailing addresses, and
14 telephone numbers of the Individual Defendant;

15 b. The then-current employment and business addresses and
16 telephone numbers of the Individual Defendant, a
17 description of the business activities of each such employer
18 or business, and the title and responsibilities of the
19 Individual Defendant, for each such employer or business;
20
21 and

22 c. Any other changes required to be reported under
23 subparagraph A of this Section.
24

25 2. For Corporate Defendants and Individual Defendants:
26

- 1 a. A copy of each acknowledgment of receipt of this Order,
2 obtained pursuant to Section XVI; and
3 b. Any other changes required to be reported under
4 subparagraph A of this Section.
5

6 C. For the purposes of this Order, Corporate Defendants and Individual
7 Defendants shall, unless otherwise directed by the Commission's authorized
8 representatives, mail all written notifications to the Commission to:

9 Associate Director for Division of Enforcement
10 Federal Trade Commission
11 601 New Jersey Avenue, N.W.
12 Room NJ-2119
13 Washington, D.C. 20580
14 Re: FTC v. National Vending Consultants, et al.,
15 Civil Action No. CV-S-05-0160-RCJ-PAL.

16 D. For purposes of the compliance reporting and monitoring required by this
17 Order, the Commission is authorized to communicate directly with the Corporate
18 Defendants and Individual Defendants.

19 **XIV. RECORD-KEEPING PROVISIONS**

20 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of
21 entry of this Order, any Individual Defendant who is the majority owner or otherwise
22 controls a business and their agents, employees, officers, corporations, successors, and
23 assigns, and those persons in active concert or participation with them who receive
24 actual notice of this Order by personal service or otherwise, are hereby restrained and
25
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1 enjoined from failing to create and retain the following records:

- 2 A. Accounting records that reflect the cost of goods or services sold, revenues
3 generated, and the disbursement of such revenues;
4
- 5 B. Personnel records accurately reflecting: the name, address, and telephone
6 number of each person employed in any capacity by such business,
7 including as an independent contractor; that person's job title or position;
8 the date upon which the person commenced work; and the date and
9 reason for the person's termination, if applicable;
10
- 11 C. Customer files containing the names, addresses, phone numbers, dollar
12 amounts paid, quantity of items or services purchased, and description of
13 items or services purchased, to the extent such information is obtained in
14 the ordinary course of business;
15
- 16 D. Complaints and refund requests (whether received directly, indirectly or
17 through any third party) and any responses to those complaints or
18 requests;
19
- 20 E. Copies of all sales scripts, training materials, advertisements, or other
21 marketing materials; and
22
- 23 F. All records and documents necessary to demonstrate full compliance
24 with each provision of this Order, including but not limited to, copies of
25 acknowledgments of receipt of this Order, required by Section XVI, and
26 all reports submitted to the FTC pursuant to Section XIII.

XV. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Corporate Defendants and Individual Defendants shall deliver copies of the Order as directed below:

A. Corporate Defendants: Corporate Defendants must deliver a copy of this Order to all of its principals, officers, directors, and managers. Corporate Defendants also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities;

B. Individual Defendant as Control Person: For any business that the Individual Defendant controls, directly or indirectly, or in which the Individual Defendant has a majority ownership interest, the Individual Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that business. The Individual Defendant must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon the Individual Defendant. For new personnel, delivery shall occur prior to them assuming their

1 responsibilities;

2 C. Individual Defendant as employee or non-control person: For any
3 business where the Individual Defendant is not a controlling person of a
4 business but otherwise engages in conduct related to the subject matter of
5 this Order, the Individual Defendant must deliver a copy of this Order to
6 all principals and managers of such business before engaging in such
7 conduct; and
8

9 D. Corporate and Individual Defendants must secure a signed and dated
10 statement acknowledging receipt of the Order, within thirty days of
11 delivery, from all persons receiving a copy of the Order pursuant to this
12 Section.
13

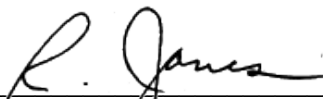
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17 **XVI. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

18 **IT IS FURTHER ORDERED** that each Corporate Defendant, Individual
19 Defendant, and Relief Defendant, within five (5) business days of receipt of this Order
20 as entered by the Court, must submit to the Commission a truthful sworn statement
21 acknowledging receipt of this Order.
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1 **XVII. 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.
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8 IT IS SO ORDERED this 21st day of March, 2006.
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12 _____
13 The Honorable Robert C. Jones
14 United States District Court Judge
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