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12
13 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 THE CAR WASH GUYS INTL., INC.,
WASH GUY.COM, INC.,
LANCE WINSLOW, III,
19 individually and as an officer
of said companies, and
MICHELLE PORTNEY, a/k/a
20 MICHELLE WINSLOW,

21 Defendants.
22

No. CV 00-8197 ABC (RNBx)

STIPULATED FINAL
ORDER FOR PERMANENT
INJUNCTION

23 On July 31, 2000, Plaintiff, the Federal Trade
24 Commission ("Commission"), commenced this action by filing
25 its Complaint for a Permanent Injunction and Other Relief,
26 pursuant to Sections 5, 13(b) and 19 of the Federal Trade
27 Commission Act ("FTC ACT"), 15 U.S.C. §§ 45, 53(b) and 57b,
28 charging that the Defendants engaged in deceptive acts or

1 practices in violation of Section 5 of the FTC Act, 15
2 U.S.C. § 45, and the Commission's Trade Regulation Rule
3 entitled "Disclosure Requirements and Prohibitions
4 Concerning Franchising And Business Opportunity Ventures"
5 (the "Franchise Rule" or the "Rule"), 16 C.F.R. Part 436.
6 Pursuant to the Commission's application, this Court issued
7 an Ex Parte Temporary Restraining Order pursuant to Rule
8 65(b) of the Federal Rules of Civil Procedure (Fed. R. Civ.
9 P. 65(b)) and C.D. Cal. Local Rule 7.18.2 and ordered
10 Defendants to show cause why a preliminary injunction should
11 not issue. The parties subsequently agreed to a Stipulated
12 Preliminary Injunction, entered August 29, 2000. The
13 Commission and all Defendants, by and through counsel, now
14 hereby stipulate to entry of this Stipulated Final Order for
15 Permanent Injunction ("Order") to resolve all matters of
16 dispute between them in this action.

17 **THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED**
18 as follows:

19 **FINDINGS**

20 1. This Court has jurisdiction of the subject matter
21 and the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), and
22 1345, and 15 U.S.C. §§ 53(b), and 57b.

23 2. Venue in this Court is proper as to all parties.

24 3. The activities of the Defendants are in or affecting
25 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C.
26 § 44.

27 4. Without admitting the substantive allegations of the
28 Complaint, for the purposes of this agreement, Defendants do

1 not dispute that the Complaint states a claim upon which
2 relief may be granted against the Defendants under Sections
3 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a),
4 53(b) and 57b.

5 5. Defendants have entered into this Order to resolve
6 this matter. Defendants acknowledge that they have
7 consulted with counsel, they have read and understand the
8 terms of this Order, and they are prepared to abide by those
9 terms.

10 6. Plaintiff and Defendants, by and through counsel,
11 have agreed that entry of this Order resolves all matters of
12 dispute between them arising from the Complaint in this
13 action. This Order is in addition to, and not in lieu of,
14 any other civil or criminal remedies available to any other
15 agency or person that may be provided by law.

16 7. Defendants waive all rights to seek appellate
17 review or otherwise challenge or contest the validity of
18 this Order. Defendants further waive and release any claim
19 they may have against the Commission or its employees,
20 representatives, or agents.

21 8. Defendants have agreed that this Order does not
22 entitle Defendants to seek or to obtain attorneys' fees as a
23 prevailing party under the Equal Access to Justice Act, 28
24 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847,
25 863-64 (1996), and Defendants further waive any right to
26 attorneys' fees that may arise under said provision of law.

27 9. Entry of this Order is in the public interest.
28

1 **DEFINITIONS**

2 For the purpose of this Order, the following
3 definitions shall apply:

4 1. "**Assets**" means any legal or equitable interest in,
5 right to, or claim to, any real and personal property,
6 including, but not limited to, "goods," "instruments,"
7 "equipment," "fixtures," "general intangibles," "inventory,"
8 "checks," or "notes" (as these terms are defined in the
9 Uniform Commercial Code), and all chattel, leaseholds,
10 contracts, mail or other deliveries, shares of stock,
11 accounts, effects, credits, premises, receivables, funds,
12 and cash, wherever located.

13 2. "**Business venture**" means any written or oral
14 business arrangement, however denominated, whether or not
15 covered by the Franchise Rule, which consists of a payment
16 for: (a) the right or means to offer, sell, or distribute
17 goods or services (whether or not identified by a trademark,
18 service mark, trade name, advertising, or other commercial
19 symbol); or, (b) assistance to any person or entity in
20 connection with or incident to the establishment,
21 maintenance, or operation of a new business or entry by an
22 existing business into a new line or type of business.

23 3. "**Defendants**" means The Car Wash Guys International,
24 Inc. ("CWGI"), Wash Guy.Com, Inc. ("Washguy"), Lance
25 Winslow, III ("Winslow"), and Michelle Portney, a/k/a
26 Michelle Winslow ("Portney"), and each of them, and any
27 entity through which they do business. "**Corporate**
28 **Defendants**" means CWGI and Washguy, and each of them, and

1 all their predecessors, affiliates, subsidiaries, affiliated
2 entities, successors, purchasers, and assigns. **"Individual**
3 **Defendants"** means Lance Winslow, III and Michelle Portney,
4 a/k/a Michelle Winslow, and each of them.

5 4. The **"Franchise Rule"** or **"Rule"** means the FTC Trade
6 Regulation Rule entitled "Disclosure Requirements and
7 Prohibitions concerning Franchising and Business Opportunity
8 Ventures," 16 C.F.R. Part 436, as promulgated or as the Rule
9 may hereinafter be amended. A copy of the current
10 Franchise Rule is attached hereto as Appendix A and
11 incorporated herein as if fully set forth.

12 5. **"Franchise"** and **"Franchisor"** are defined as those
13 terms are defined in Sections 436.2(a) and (c) of the
14 Franchise Rule, 16 C.F.R. § 436.2(a) and (c), and include
15 "business opportunity ventures" as defined in Sections
16 436.2(a)(1)(ii) and (2) of the Rule, and discussed in the
17 FTC's Final Interpretive Guide for the Franchise Rule, 44
18 Fed. Reg. 49966-68 (August 24, 1979). The term "franchise"
19 in this Order shall also encompass any successor definition
20 of "franchise," "business opportunity" or "business
21 opportunity venture" in any future trade regulation rule or
22 rules that may be promulgated by the Commission to modify or
23 supersede the Franchise Rule, in whole or part, from the
24 date any such rule takes effect.

25 6. **"Franchise broker"** is defined as that term is
26 defined in Section 436.2(j) of the Franchise Rule, 16 C.F.R.
27 § 436.2(j). The term "franchise broker" in this Order shall
28 also encompass any other entity through which the franchisor

1 sells franchises, including, but not limited to,
2 subfranchisors, master franchisees, or regional franchisees.

3 7. "**Person**" means a natural person, organization or
4 other entity, including a corporation, partnership,
5 proprietorship, association, or cooperative, or any other
6 group or combination acting as an entity.

7 8. "**UFOC**" is defined as the Uniform Franchise Offering
8 Circular disclosure and guidelines, the current version of
9 which is shown at Appendix B, and which has been adopted by
10 the North American Securities Administrators' Association
11 and is now accepted by the Commission for use in lieu of the
12 Franchise Rule's disclosure format.

13 **ORDER**

14 **PROHIBITION AGAINST FALSE OR MISLEADING STATEMENTS**

15 **I.**

16 **IT IS THEREFORE ORDERED** that, in connection with the
17 promoting, marketing, advertising, offering for sale, or
18 sale of any franchise or business venture, Defendants CWGI,
19 Washguy, Winslow, and Portney, and each of them, and their
20 officers, directors, controlling shareholders, agents,
21 servants, employees, salespersons, franchise brokers,
22 corporations, subsidiaries, affiliates, successors, assigns,
23 or entities in active concert or participation with them who
24 receive actual notice of this Order by personal service,
25 facsimile or otherwise, are hereby permanently restrained
26 and enjoined from making, or assisting in the making of, any
27 express or implied representation or omission of material
28 fact that is false or misleading, in any manner, orally or

1 in writing, including over the Internet, including, but not
2 limited to, the following:

3 A. False or misleading representations concerning the
4 income, profits, or sales volume achieved by existing or
5 past purchasers or operators of any franchise or business
6 venture or the degree of success achieved by such
7 purchasers;

8 B. False or misleading representations concerning the
9 income, profits, or sales volume achieved by any Defendant
10 or concerning any Defendant's finances or financial
11 position, or the degree of success achieved by any
12 Defendant;

13 C. False or misleading representations concerning the
14 income, profits, or sales volume likely to be achieved in
15 connection with the purchase of any franchise or business
16 venture;

17 D. False or misleading representations concerning any
18 Defendant's business activities, concerning the number or
19 identity of persons employed by or affiliated with any
20 Defendant, or concerning the size or scope of any
21 Defendant's operations;

22 E. False or misleading representations concerning the
23 length of time in which a franchise or business venture
24 purchaser is likely to recoup the purchase price or initial
25 investment costs;

26 F. False or misleading representations concerning the
27 number of or identity of current or former franchisees or
28 business venture purchasers or false or misleading

1 representations concerning the number, identity, or
2 percentage of franchisees or business venture purchasers who
3 are actively engaged in operating any Defendant's franchises
4 or business ventures;

5 G. False or misleading representations concerning any
6 accounts or customers to be provided to franchise or
7 business venture purchasers, or false or misleading
8 representations concerning the amount or number of accounts
9 or customers that will be provided or that the franchise or
10 business venture purchaser is likely to obtain;

11 H. False or misleading representations concerning the
12 the nature, effectiveness, methods, or techniques used by
13 any Defendant in connection with advertising, marketing or
14 promoting any franchise or business venture;

15 I. False or misleading representations concerning the
16 nature, scope, or amount of any training provided to any
17 franchisee or business venture purchaser;

18 J. False or misleading representations concerning the
19 nature or scope of any Defendant's business relationship
20 with other entities, including falsely representing that any
21 Defendant performs services on a nationwide basis for such
22 entities;

23 K. False or misleading representations concerning any
24 payments or services provided to any franchisee or business
25 venture purchaser;

26 L. False or misleading representations concerning the
27 amount, nature, or degree of assistance that will be
28 provided to any franchisee or business venture purchaser;

1 M. False or misleading representations concerning the
2 nature of the Commission's action against Defendants or
3 concerning the nature of this Order, including
4 misrepresenting that any Defendant has received any type of
5 approval or endorsement from the Federal Trade Commission,
6 or false or misleading representations concerning any
7 lawsuit or other action against any Defendant; and

8 N. False or misleading representations concerning any
9 Defendant's affiliation or membership in any trade
10 association.

11 **PROHIBITION AGAINST VIOLATING THE FRANCHISE RULE**

12 **II.**

13 **IT IS FURTHER ORDERED** that, in connection with the
14 promoting, marketing, advertising, offering for sale, or
15 sale of any franchise, Defendants CWGI, Washguy, Winslow,
16 and Portney, and each of them, and their officers,
17 directors, controlling shareholders, agents, servants,
18 employees, salespersons, franchise brokers, corporations,
19 subsidiaries, affiliates, successors, assigns, and other
20 entities or persons directly or indirectly under their
21 control, and all persons in active concert or participation
22 with them who receive actual notice of this Order by
23 personal service, facsimile or otherwise, are permanently
24 restrained and enjoined from violating, or assisting others
25 in violating, any provision of the Franchise Rule, 16 C.F.R.
26 Section 436, as promulgated, or as it may hereinafter be
27 amended; *provided, however,* that Defendants may choose to
28 comply with the disclosure requirements of the Franchise

1 Rule by truthfully, fully and completely complying with the
2 disclosure requirements set forth in the UFOC guidelines,
3 the current version of which is attached to this Order as
4 Appendix B, for so long as the Commission permits
5 franchisors to comply with the Franchise Rule by using a
6 UFOC disclosure document in lieu of the Franchise Rule's
7 disclosure format. If the Commission permits use of the
8 UFOC guidelines to comply with the Franchise Rule, and
9 Defendants elect to comply with the Franchise Rule by using
10 the UFOC guidelines, Defendants are hereby permanently
11 enjoined from failing to comply with any provision of the
12 UFOC guidelines. The conduct prohibited by this Paragraph,
13 includes, but is not limited to:

14 A. Failing to provide prospective franchisees with a
15 complete and accurate disclosure document containing all the
16 information required by Sections 436.1(a)(1)-(24) of the
17 Franchise Rule or permitted alternative UFOC guidelines, in
18 the manner and within the time frame prescribed by the Rule;

19 B. Making or assisting others in making statements,
20 orally or in writing, including through the Internet, that
21 are inconsistent with the relevant disclosure document, in
22 violation of the Franchise Rule, 16 C.F.R. Part 436.1(f);

23 C. Forming, incorporating, or utilizing another
24 corporation or business entity, under whose name disclosure
25 documents are distributed, or using any other artifice, for
26 the purpose of avoiding, concealing, or failing to make
27 disclosures required by the Franchise Rule or permitted
28 alternative UFOC guidelines. Accordingly, in any disclosure

1 document Defendants distribute, Defendants shall disclose
2 information for each corporation or entity through which
3 Defendants have sold any franchise of the same type, or in
4 the same line of business, or allowing for the use of the
5 same trademark, service mark, or service or trade name,
6 during the time period specified in the applicable
7 disclosure requirement of the Franchise Rule or the
8 applicable disclosure requirement of permitted alternative
9 UFOC guidelines, including any required disclosure of
10 audited financial statements, litigation history, and
11 number, status, and identity of franchisees. For the
12 purposes of this Order, CWGI and Washguy have sold
13 franchises of the same type, and in any disclosure documents
14 Defendants distribute for CWGI or Washguy, or for any
15 franchise of the same type, or in the same line of business,
16 or allowing for the use of the same trademark, service mark,
17 or service or trade name, as franchises sold by CWGI or
18 Washguy, Defendants are required to disclose information
19 about CWGI and Washguy for the relevant time periods,
20 including audited financial statements, litigation history,
21 and number, status, and identity of franchisees. In the
22 event that Defendants submit for state registration a
23 disclosure document containing information required by this
24 Paragraph, and such registration is rejected by that state
25 as not conforming to state disclosure requirements,
26 Defendants may distribute a disclosure document to
27 prospective franchisees in that state in a format approved
28 by the state agency; *provided, however,* that Defendants

1 shall also distribute to prospective franchisees in that
2 state a separate document that provides the information
3 required by this Paragraph;

4 D. Failing to revise the disclosure statement or attach
5 quarterly updates as required by Section 436.1(a)(22) of the
6 Franchise Rule; *provided however*, Defendants are prohibited
7 from distributing a disclosure document that fails to
8 reflect the existence of this action for so long as
9 disclosure of this action is required by the Franchise Rule
10 or applicable provision of the permitted alternative UFOC
11 guidelines, and regardless of whether this action falls
12 between a revision or updating period;

13 E. Failing to include in any advertisement that states
14 or suggests a specific level of sales, income, or gross or
15 net profits that appears in a newspaper or other medium of
16 general dissemination, including the Internet, the
17 disclosures required by Section 436.1(e) of the Franchise
18 Rule, including a clear and conspicuous disclosure of the
19 number and percentage of prior purchasers known to have
20 earned or made the amount claimed;

21 F. Making any earnings claim or projection without
22 having a reasonable basis for the claim or projection at the
23 time such claim or projection is made, including possessing
24 written substantiation that supports such claim, as required
25 by Sections 436.1(b)-(e) of the Franchise Rule or comparable
26 provision of the permitted alternative UFOC guidelines;

27 G. In the event Defendants make any earnings claims,
28 representations, or projections to prospective franchisees:

1 failing to provide, within the time frame prescribed by the
2 Rule, an earnings claim document as required by Sections
3 436.1(b)-(e) of the Franchise Rule or with earnings claim
4 disclosures required by permitted alternative UFOC
5 guidelines; failing to notify prospective franchisees of the
6 availability of written substantiation to support such
7 earnings claims; or failing to provide copies of such
8 substantiation upon request; and

9 H. Engaging in any other act or practice prohibited by
10 Sections 436.1(f)-(h) of the Franchise Rule, or failing to
11 fulfill any obligation imposed by the Franchise Rule.

12 **PROHIBITION AGAINST UNSUBSTANTIATED REPRESENTATIONS**

13 **III.**

14 **IT IS FURTHER ORDERED** that, in connection with the
15 promoting, marketing, advertising, offering for sale, or
16 sale of any franchise or business venture, Defendants CWGI,
17 Washguy, Winslow, and Portney, and each of them, and their
18 officers, directors, controlling shareholders, agents,
19 servants, employees, salespersons, franchise brokers,
20 corporations, subsidiaries, affiliates, successors, assigns,
21 or entities in active concert or participation with them who
22 receive actual notice of this Order by personal service,
23 facsimile or otherwise, are hereby permanently restrained
24 and enjoined from making, or assisting in the making of, any
25 representation of material fact, in any manner, expressly or
26 by implication, implied, orally or in writing, including
27 over the Internet, unless, at the time the representation is
28 made, Defendants have a reasonable basis for such

1 representation, including the possession of written
2 substantiation supporting the representation.

3 **PROHIBITION AGAINST ENFORCING EXISTING FRANCHISE AGREEMENTS**

4 **IV.**

5 **IT IS FURTHER ORDERED** that Defendant(s) are hereby
6 permanently restrained and enjoined from threatening or
7 initiating any legal action against any person who entered
8 into a franchise agreement with any Defendant prior to the
9 date of this Order for breach of such agreement, to enforce
10 such agreement, or for any cause of action arising out of
11 the franchise relationship, including any action for breach
12 of any noncompetition provision, or for payment of notes,
13 debts, royalties or other amounts purportedly due in
14 connection with the operation of such franchise, and from
15 initiating any legal action against any person relating to
16 that person's provision of a statement or other evidence or
17 information to the Federal Trade Commission. Nothing in this
18 Order, including this Paragraph, prohibits, limits, or
19 restricts any private right of action any franchisee may
20 have to recover or obtain monetary or other relief against
21 any Defendant. Should any such action be brought by any
22 franchisee, Defendant(s) shall not be precluded from filing
23 any cross-complaints they may have against any franchisee to
24 recover or obtain monetary or other relief.

25 **VOIDING OF PROMISSORY NOTES**

26 **V.**

27 **IT IS FURTHER ORDERED** that any promissory notes or
28 other evidence of indebtedness executed prior to the date of

1 this Order in favor of any Defendant by any person who
2 entered into a franchise agreement with any Defendant, or
3 who agreed to pay franchise fees, marketing fees, or any
4 other any amounts due pursuant to such agreement or pursuant
5 to the operation of a franchise shall, at the election of
6 the person purportedly owing on the note, be declared null
7 and void.

8 **RIGHT TO REOPEN**

9 **VI.**

10 A. The Commission's agreement to and the Court's
11 approval of this Order are expressly premised upon: 1)
12 Defendants' assurances of future compliance with the
13 injunctive provisions provided in Paragraphs I through III;
14 and 2) the truthfulness, accuracy, and completeness of the
15 financial statements and information provided by each of the
16 Defendants to the Commission; namely, Financial Statement of
17 Corporate Defendant CWGI, signed August 17, 2000, and
18 accompanying tax returns; Financial Statement of Corporate
19 Defendant Washguy, signed August 17, 2000; Financial
20 Statement of Individual Defendant Lance Winslow, signed
21 August 17, 2000, and accompanying tax returns; and Financial
22 Statement of Individual Defendant Michele Portney, signed
23 August 15, 2000, and accompanying tax returns; CWGI Cash
24 Flow and Register Reports for the years 1997, 1998, and
25 1999; reports of deposits and expenses submitted in
26 connection with the Stipulated Preliminary Injunction,
27 Letter of Defense Counsel dated October 24, 2000; and
28 related documents that were submitted to the Commission by

1 Defendants in support of the respective financial statements
2 or otherwise reflecting the Defendants' financial condition
3 or receipt of funds. Defendants' assurances of future
4 compliance and financial statements and related documents
5 contain material information upon which the Commission
6 relied in negotiating and agreeing to this Order. If, upon
7 noticed motion by the Commission, this Court finds that any
8 Defendant, other than Defendant Portney, has engaged in
9 material violations of Paragraphs I through III above,
10 failed to disclose any material asset, or materially
11 misstated the value of any asset in the financial statements
12 and related documents described above, or has made any other
13 material misstatement or omission in the financial
14 statements and related documents described above, the Court
15 shall enter judgment against all Defendants except Defendant
16 Portney in the amount of Four Hundred Seventy-three Thousand
17 Dollars (\$473,000), or for such other amount shown by
18 Defendants, through the use of audited financial statements,
19 as the amount of franchise fees and marketing fees received
20 by Defendants prior to the date of the Commission's action,
21 but in no event, shall such judgment be less than Three
22 Hundred and Twenty Thousand Dollars (\$320,000). If, upon
23 noticed motion by the Commission, this Court finds that
24 Defendant Portney has engaged in material violations of
25 Paragraphs I through III above, failed to disclose any
26 material asset, or materially misstated the value of any
27 asset in the financial statements and related documents
28 described above, or has made any other material misstatement

1 or omission in the financial statements and related
2 documents described above, the Court shall enter judgment
3 against Defendant Portney in the amount of Four Hundred
4 Seventy-three Thousand Dollars (\$473,000), or for such other
5 amount shown by Defendant Portney, through the use of
6 audited financial statements, as the amount of franchise
7 fees and marketing fees received by Defendants prior to the
8 date of the Commission's action, but in no event, shall such
9 judgment be less than Three Hundred and Twenty Thousand
10 Dollars (\$320,000);

11 B. In accordance with 31 U.S.C. § 7701, Defendants
12 acknowledge that they have furnished the Commission their
13 respective taxpayer identifying numbers (social security
14 numbers or employer identification numbers) and that such
15 information may be used for purposes of collecting and
16 reporting on any delinquent amount arising out of this
17 agreement with the Commission;

18 C. Proceedings instituted under this Paragraph are in
19 addition to, and not in lieu of, any other civil or criminal
20 remedies that may be provided by law, including any other
21 proceedings the Commission may initiate to enforce this
22 Order;

23 D. In the event the Commission collects any funds
24 pursuant to this Paragraph, Defendants acknowledge that such
25 funds may be deposited into a fund administered by the
26 Commission or its agent to be used for equitable relief,
27 including but not limited to consumer redress and any
28 attendant expenses for the administration of any redress

1 fund. If the Commission determines, in its sole discretion,
2 that redress to purchasers is wholly or partially
3 impracticable, any funds not so used may be paid to the
4 United States Treasury as disgorgement or may be used to
5 educate consumers affected by the practices in the
6 Commission's complaint in this action. Defendants shall
7 have no right to contest the manner of distribution chosen
8 by the Commission. The Commission, in its sole discretion,
9 may use a designated agent to administer consumer redress;

10 **LIFTING OF ASSET FREEZE**

11 **VII.**

12 **IT IS FURTHER ORDERED** that the freeze against the
13 Defendants' assets, pursuant to Paragraph V of the
14 Stipulated Preliminary Injunction shall be lifted upon entry
15 of this Order.

16 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

17 **VIII.**

18 **IT IS FURTHER ORDERED** that within five (5) business
19 days of receipt of this Order as entered by the Court,
20 Defendants shall submit to the Commission a truthful sworn
21 statement, in the form shown on Appendix C, that shall
22 acknowledge receipt of this Order.

23 **DISTRIBUTION OF ORDER BY DEFENDANTS**

24 **IX.**

25 **IT IS FURTHER ORDERED** that, for a period of four (4)
26 years from the date of entry of this Order, Defendants
27 shall:

28 A. Provide a copy of this Order to, and obtain a signed

1 and dated acknowledgment of receipt of same from, each
2 officer and director, each individual serving in a
3 management capacity, all personnel involved in responding to
4 consumer complaints or inquiries, and all sales personnel or
5 franchise brokers, whether designated as employees,
6 consultants, independent contractors or otherwise, within
7 ten (10) business days after receipt of this Order, and
8 thereafter immediately upon employing any such person, for
9 any business that any Defendant directly or indirectly
10 manages, controls, or has a majority ownership interest in,
11 that is engaged in the sale or distribution of any franchise
12 or business venture, or assisting others engaged in these
13 activities; and

14 B. Maintain for a period of three (3) years after
15 creation, and upon reasonable notice make available to
16 representatives of the Commission, the original signed and
17 dated acknowledgments of receipt of copies of this Order, as
18 required in Subsection A of this Paragraph.

19 **COMPLIANCE REPORTING BY DEFENDANTS**

20 **X.**

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

23 A. For a period of four (4) years after the date of
24 entry of this Order, the Defendants shall notify the
25 Commission in writing of the following:

26 1. Any changes in residence, mailing addresses and
27 telephone numbers of any Individual Defendant, within
28 fifteen (15) days of the date of such change;

1 2. Any changes in employment status (including
2 self-employment) of any Individual Defendant, within
3 fifteen (15) days of such change. Such notice shall
4 include the name and address of each business that the
5 Individual Defendant is affiliated with or employed by,
6 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;

10 3. Any proposed change in the structure of any
11 Corporate Defendant, or any business entity that any
12 Individual Defendant directly or indirectly manages,
13 controls, or has a majority ownership interest in, such
14 as creation, incorporation, dissolution (including the
15 dissolution of any subsidiaries), assignment, proposed
16 filing of a bankruptcy petition, or sale or merger
17 resulting in the emergence of a successor corporation,
18 or any other change in that entity, including a change
19 in the corporate name or address or any change in the
20 name or names in which the entity does business, that
21 may affect any compliance obligation arising out of
22 this Order, at least thirty (30) days prior to the
23 effective date of any such change; *provided, however,*
24 that with respect to any proposed change in the
25 structure of any Corporate Defendant or business entity
26 that any Individual Defendant directly or indirectly
27 manages, controls, or has a majority ownership interest
28 in, about which the Defendant learns less than thirty

1 (30) days prior to the date such action is to take
2 place, the Defendant shall notify the Commission as
3 soon as is practicable after learning of such proposed
4 change;

5 4. Upon written request by a representative of the
6 Commission, Defendants shall provide a written report
7 to the Commission, sworn to under penalty of perjury,
8 setting forth in detail the manner and form in which
9 Defendants have complied and are complying with this
10 Order. This report shall include but not be limited to:

11 a. Each Individual Defendant's then current
12 residence address, mailing addresses, and telephone
13 numbers;

14 b. Each Individual Defendant's then current
15 employment and business addresses and telephone
16 numbers, a description of the business activities of
17 each such employer or business, and the Individual
18 Defendant's title and responsibilities for each such
19 employer or business;

20 c. A copy of each acknowledgment of receipt of
21 this Order obtained by the Corporate or Individual
22 Defendants pursuant to Paragraph IX above; and

23 d. A statement describing the manner in which the
24 Corporate or Individual Defendants have complied and
25 are complying with any continuing obligations
26 required by this order;

27 B. For the purposes of this Order, Defendants shall,
28 unless otherwise directed by a representative of the

1 Commission, identify all written notifications to the
2 Commission as being provided in reference to FTC Matter No.
3 X000089, Civil No. 00-8197 ABC (RNBx), in the Western
4 District of California, by Defendant [name of Defendant] and
5 mail them or send them by facsimile with a subsequent
6 mailing to:

7 Associate Director for Marketing Practices
8 Federal Trade Commission
9 600 Pennsylvania Ave. N.W. - Room 238
10 Washington, DC 20580
11 (202) 326-3395;

12 D. For the purposes of this Paragraph, "employment"
13 includes the performance of services as an employee,
14 consultant, or independent contractor; and "employers"
15 include any individual or entity for whom any Individual
16 Defendant performs services as an employee, consultant, or
17 independent contractor; and

18 E. For purposes of the compliance reporting required by
19 this Paragraph, the Commission is authorized to communicate
20 with Defendants through their counsel at:

21 Zelle, Hofmann, Voelbel & Gette
22 11601 Wilshire Blvd., Suite 600
23 Los Angeles, CA 90025
24 ATTN: Jeffrey K. Compton, Esq.

25 **MONITORING COMPLIANCE OF SALES PERSONNEL**

26 **XI.**

27 **IT IS FURTHER ORDERED** that, in connection with any
28 business that any Defendant directly or indirectly manages,
controls or has a majority ownership interest in, that is
engaged in the promoting, marketing, advertising, offering
for sale, or sale of any franchise or business venture, or

1 assisting others engaged in these activities, Defendants and
2 their successors, assigns, officers, directors, controlling
3 shareholders, agents, servants, employees, and those persons
4 in active concert or participation with them who receive
5 actual notice of this Order by personal service or
6 otherwise, are hereby permanently restrained and enjoined
7 from:

8 A. Failing to take reasonable steps sufficient to
9 monitor and ensure that all employees, franchise brokers,
10 and independent contractors engaged in advertising,
11 marketing, sales, or otherwise engaged in communications or
12 correspondence with prospective or actual franchisees or
13 business venture purchasers comply with Paragraphs I through
14 III of this Order. Such steps include taking steps to
15 ensure that any promotional or other material or information
16 Defendants provide to such persons contains truthful,
17 accurate, substantiated, and non-misleading information, and
18 that, to the extent that Defendants have provided
19 promotional or other materials that contain untruthful,
20 inaccurate, unsubstantiated, or misleading information, such
21 materials are immediately withdrawn from circulation or use
22 by such persons;

23 B. Failing promptly to investigate fully any complaint
24 made to Defendants or allegation made to Defendants that
25 Defendants, or their employees, franchise brokers, or
26 independent contractors engaged in advertising, marketing,
27 sales, or otherwise engaged in communications or
28 correspondence with prospective or actual franchisees or

1 business venture purchasers are providing untruthful,
2 inaccurate, unsubstantiated, or misleading information or
3 materials; and

4 C. Failing to take corrective action with respect to
5 any employee, franchise broker, or independent contractor
6 engaged in advertising, marketing, sales, or otherwise
7 engaged in communications or correspondence with prospective
8 or actual franchisees or business venture purchasers who has
9 not complied with the terms of this order, including
10 training, disciplining, and/or terminating such person;
11 *provided, however,* that this Paragraph does not authorize or
12 require a Defendant to take any action that violates any
13 federal, state, or local law.

14 **RECORD-KEEPING PROVISIONS**

15 **XII.**

16 **IT IS FURTHER ORDERED** that, for a period of four (4)
17 years from the date of entry of this Order, in connection
18 with any business that any Defendant directly or indirectly
19 manages, controls, or has a majority ownership interest in,
20 that is engaged in the promoting, marketing, advertising,
21 offering for sale, or sale or distribution of any franchise
22 or business venture, or assisting others engaged in these
23 activities, Defendants, their successors, assigns, officers,
24 directors, controlling shareholders, agents, servants,
25 employees, and those persons in active concert or
26 participation with them who receive actual notice of this
27 Order by personal service or otherwise are hereby restrained
28 and enjoined from failing to create and maintain for a

1 period of four (4) years following the date of their
2 creation, unless otherwise specified:

3 A. Books, records and accounts that, in reasonable
4 detail, accurately and fairly reflect the cost of goods or
5 services sold, revenues generated, and the disbursement of
6 such revenues;

7 B. Records containing the name, address, telephone
8 number and social security number of each person employed by
9 any Defendant in any capacity, including as an independent
10 contractor, that person's job title or position, the date
11 upon which the person commenced work, and the date and
12 reason for the person's termination, if applicable;

13 C. Records containing the name, address, telephone
14 number, quantity of goods or services purchased or fees or
15 other payments made, and a description of the goods or
16 services purchased or purpose of fees or other payments
17 made, and the amount paid therefor, for all persons to whom
18 the business has sold, licensed, or entered into a contract
19 concerning any franchise or business venture;

20 D. Records that reflect, for every written or oral
21 complaint, allegation of misrepresentation, Franchise Rule
22 violation, or other unlawful conduct, or request for
23 rescission, mutual termination, or damages by any
24 prospective or actual franchisee or business venture
25 purchaser, or in connection with any default, termination or
26 other adverse notice to any franchisee or business venture
27 purchaser, received or made by any of the Defendants, their
28 successors, assigns, officers, directors, controlling

1 shareholders, agents, servants, employees, and those persons
2 in active concert or participation with them who receive
3 actual notice of this Order by personal service or
4 otherwise, whether directly or indirectly or through any
5 third party: (1) the prospective or actual franchise or
6 business venture purchaser's name, address, telephone
7 number; (2) the dollar amount paid by or requested from such
8 person; (3) all written letters or other documentation
9 concerning the complaint, allegation, request, or adverse
10 notices, if any; (4) the basis of the complaint, allegation,
11 request, or adverse notice, including the name of any
12 salesperson, independent contractor or other person,
13 complained about; (5) the nature and result of any
14 investigation conducted concerning the complaint,
15 allegation, request, or adverse notice; (6) each response
16 and the date of the response to the complaint, allegation,
17 request, or adverse notice; and (7) any final resolution of
18 the complaint, allegation, request, or adverse notice and
19 the date of the resolution; and

20 E. Copies of all sales scripts, training materials,
21 operating manuals, Web pages, bulletin board postings, or
22 other materials or information posted on the Internet,
23 marketing materials, disclosure documents and all
24 attachments to such documents, and executed franchise or
25 business venture agreements, which shall be retained for
26 three (3) years after the last date of their dissemination
27 or use.

28

1 **ACCESS TO BUSINESS PREMISES**

2 **XIII.**

3 IT IS FURTHER ORDERED that for a period of four (4)
4 years from the date of entry of this Order, for the purposes
5 of determining or securing compliance with its provisions,
6 the Defendants, their successors, assigns, officers,
7 directors, controlling shareholders, agents, servants,
8 employees, and those persons in active concert or
9 participation with them who receive actual notice of this
10 Order by personal service or otherwise shall grant to
11 representatives of the Commission, within five (5) business
12 days of receipt of written notice from the Commission:

13 A. Access during normal business hours to any office or
14 facility storing documents of any business that any of the
15 Defendants directly or indirectly manages, controls, or has
16 a majority ownership interest in, that is engaged in the
17 sale or distribution of any franchise or business venture,
18 or assisting others engaged in such activities. In
19 providing such access, Defendants shall permit
20 representatives of the Commission to inspect and copy all
21 non-privileged documents relevant to any matter contained in
22 this Order. Defendants and their counsel may be present
23 during such inspection and copying;

24 B. The opportunity to interview, without restraint or
25 interference, officers, directors, controlling shareholders,
26 employees, contractors, all sales personnel, franchise
27 brokers, and any other agents or representatives, whether
28 designated as employees, consultants, independent

1 contractors or otherwise, engaged in advertising, marketing,
2 sales, or otherwise engaged in communications or
3 correspondence with prospective or actual franchisees or
4 business venture purchasers of any business to which this
5 Paragraph applies, regarding compliance with the provisions
6 of this Order. Any person interviewed may have counsel
7 present.

8 *Provided, however,* nothing in this Order shall limit the
9 Commission's ability to request or obtain, pursuant to
10 applicable law, an *ex parte* order granting immediate access
11 to Defendants' business premises for the purposes of
12 inspecting and copying all documents relevant to any matter
13 contained in this Order.

14 **AUTHORITY TO MONITOR COMPLIANCE**

15 **XIV.**

16 IT IS FURTHER ORDERED that the Commission is authorized
17 to monitor Defendants' compliance with this Order by all
18 lawful means, including, but not limited to, the following:

19 A. The Commission is authorized, without further leave
20 of Court, to obtain discovery from any person (including a
21 Defendant) in the manner provided by Chapter V of the
22 Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37,
23 including the use of compulsory process pursuant to Fed. R.
24 Civ. P. 45, for the purpose of monitoring and investigating
25 Defendants' compliance with any provision of this Order;

26 B. Nothing in this Order shall limit the Commission's
27 ability to use representatives posing as prospective
28 franchise or business venture purchasers to Defendants,

1 Defendants' employees, or any other entity managed or
2 controlled in whole or in part by any Defendant, without the
3 necessity of identification or prior notice; and

4 C. Nothing in this Order shall limit the Commission's
5 lawful use of compulsory process, pursuant to Sections 9 and
6 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate
7 whether Defendants have violated any provision herein or
8 Section 5 of the FTC Act, 15 U.S.C. § 45, or any applicable
9 rule or regulation promulgated and enforced by the
10 Commission, including the Franchise Rule, 16 C.F.R. § 436.

11 **FEES AND COSTS**

12 **XV.**

13 IT IS FURTHER ORDERED that each party to this Order
14 hereby agrees to bear its own costs and attorneys' fees
15 incurred in connection with this action.

16 **RETENTION OF JURISDICTION**

17 **XVI.**

18 IT IS FURTHER ORDERED that this Court shall retain
19 jurisdiction of this matter for the purpose of enabling the
20 parties to apply to the Court at any time for such further
21 orders and directives as may be necessary or appropriate for
22 the interpretation or modification of this Order, for the
23 enforcement of compliance therewith, or for the punishment
24 of violations thereof.

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1 **COMPLETE SETTLEMENT**

2 **XVIII.**

3 The parties hereby consent to entry of the foregoing
4 Order which shall constitute a final order in this matter.
5 The parties further stipulate and agree that the entry of
6 the foregoing Order shall constitute a full, complete and
7 final settlement of this action.

8 Signed and Stipulated By:

9
10 _____
11 ELIZABETH M. GRANT
12 MARC M. GROMAN
Attorneys for Plaintiff
Federal Trade Commission

_____ CAR WASH GUYS INT'L., INC.
By Lance Winslow, III,
President and Sole
Shareholder

13
14 _____
15 WASH GUY.COM, INC.
16 By Lance Winslow, III,
17 President and Sole
18 Shareholder

19 _____
20 LANCE WINSLOW, III

21 _____
22 MICHELLE PORTNEY

23 _____
24 JEFFREY K. COMPTON
25 Zelle, Hofmann, Voelbel &
26 Gette
27 Attorney for All Defendants

28 SO ORDERED this _____ day of _____, 2000.

THE HONORABLE AUDREY COLLINS
UNITED STATES DISTRICT COURT JUDGE