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FILED
 CLERK, U.S. DISTRICT COURT
FEB 12 2001
 CENTRAL DISTRICT OF CALIFORNIA
 BY *[Signature]* DEPUTY

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FEB 14 2001
 CENTRAL DISTRICT OF CALIFORNIA
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Attorneys for Plaintiff
 United States of America

UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

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 19 **UNITED STATES OF AMERICA,**
CENTRAL DISTRICT OF CALIFORNIA,
WESTERN DIVISION
 20 **PLAINTIFF,**
 v.
 21 **GREAT PACIFIC VENDING CORP.,**
 22 **a California corporation; and**
 23 **COLLIE WAINER, individually,**
 24 **and as an officer of the corporation,**
 25 **DEFENDANTS.**

Civil Action No.:
 00-01588 (GAF-AIJx)

**STIPULATED JUDGMENT AND
 ORDER FOR PERMANENT INJUNCTION**

- Docketed
- Copies / NTC Sent
- JS - 5 / JS - 6
- JS - 2 / JS - 3
- CLSD

FEB 14 2001

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1
2 Plaintiff, the United States of America, acting upon notification and authorization to the
3 Attorney General by the Federal Trade Commission ("FTC" or the "Commission"), has
4 commenced this action by filing the Complaint herein, and Defendants have been served with the
5 summons and the complaint. The parties, represented by the attorneys whose names appear
6 hereafter, have agree to settlement of this action without adjudication of any issue of fact or law,
7 and without the Defendants admitting liability for any of the violations alleged in the Complaint.

8 THEREFORE, on the joint motion of the parties, it is hereby ORDERED, ADJUDGED
9 AND DECREED as follows:

10 **FINDINGS**

11 1. This Court has jurisdiction over the subject matter and the parties pursuant to 28
12 U.S.C. §§ 1331, 1337(a), 1345 and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b.

13 2. Venue is proper as to all parties in the Central District of California.

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

16 4. The Complaint states a claim upon which relief may be granted against the
17 Defendants, under Sections 5(a), 5(m)(1)(A), 9, 13(b) and 19 of the Federal Trade Commission
18 Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 49, 53(b), and 57b.

19 5. Defendants have entered into this Stipulated Judgment and Order ("Order") freely
20 and without coercion. Defendants further acknowledge that they have read the provisions of this
21 Order and are prepared to abide by them.

22 6. Plaintiff and Defendants hereby waive all rights to appeal or otherwise challenge
23 or contest the validity of this Order.

24 7. Defendants have agreed that this Order does not entitle Defendants to seek or to
25 obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C.
26 § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and Defendants further

27 **STIPULATED JUDGMENT AND ORDER**

1 waive any rights to attorneys' fees that may arise under said provision of law.

2 8. Entry of this Order is in the public interest.

3 **DEFINITIONS**

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

5 1. "Asset" means any legal or equitable interest in, or right or claim to, any real and
6 personal property, including without limitation, chattels, goods, instruments, equipment, fixtures,
7 general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts,
8 credits, contracts, receivables, shares of stock, and all cash, wherever located.

9 2. "Business Venture" means any written or oral business arrangement, however
10 denominated, whether or not covered by the Franchise Rule, which consists of the payment of
11 any consideration for:

12 a. The right or means to offer, sell, or distribute goods or services (whether
13 or not identified by a trademark, service mark, trade name, advertising, or other
14 commercial symbol); and

15 b. The promise or provision of assistance to any person in connection with:
16 (1) the establishment, maintenance, or operation of a new business; or (2) the entry by an
17 existing business into a new line or type of business, including, but not limited to,
18 referrals to one or more persons providing location services.

19 3. "Defendants" means the Corporate Defendant and Individual Defendant. The
20 "Corporate Defendant" is Great Pacific Vending Corp. ("GPV"), a California corporation. The
21 "Individual Defendant" is Collie Wainer ("Wainer"), individually and as an officer of the
22 Corporate Defendant.

23 4. The "Franchise Rule" or "Rule" means the FTC Trade Regulation Rule entitled
24 "Disclosure Requirements and Prohibitions concerning Franchising and Business Opportunity
25 Ventures," 16 C.F.R. Part 436.

26 5. "Franchise" and "Franchisor" are defined as those terms are defined in Sections

27 **STIPULATED JUDGMENT AND ORDER**

1 436.2(a) and (c) of the Franchise Rule, 16 C.F.R. § 436.2(a) and (c), and include "business
2 opportunity ventures" as defined in Sections 436.2(a)(1)(ii) and (2) of the Rule, and discussed in
3 the FTC's Final Interpretive Guide for the Franchise Rule, 44 Fed. Reg. 49966-68 (August 24,
4 1979). The term "franchise" in this Order shall also encompass any successor definition of
5 "franchise," "business opportunity" and "business opportunity venture" in any future trade
6 regulation rule or rules that may be promulgated by the Commission to modify or supersede the
7 Franchise Rule, in whole or part, from the date any such rule takes effect.

8 6. "Franchise broker" is defined as that term is defined in Section 436.2(j) of the
9 Franchise Rule, 16 C.F.R. § 436.2(j). The term "Franchise broker" in this Order shall also
10 encompass any other entity through which the franchisor sells franchises, including, but not
11 limited to, subfranchisors, master franchisees, or regional franchisees.

12 7. "Person" means a natural person, organization or other legal entity, including a
13 corporation, partnership, proprietorship, association, or cooperative, or any other group or
14 combination acting as an entity.

15 8. "Representatives" means the Defendants' successors, assigns, officers, agents,
16 servants, employees and those persons in active concert or participation with them who receive
17 actual notice of this Order by personal service or otherwise.

18 9. "Telemarketing" means the advertising, offering for sale, or sale of any good or
19 service to any person by means of telephone sales presentations, either exclusively or in
20 conjunction with the use of other advertising.

21 10. "UFOC format" is defined as the Uniform Franchise Offering Circular disclosure
22 format which has been adopted by the North American Securities Administrators' Association
23 and is now accepted by the Commission for use in lieu of the Franchise Rule's disclosure format.

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1 completely with all applicable requirements thereof on and after the effective date of any such
2 rule; and *provided, further*, that Defendants may choose to comply with the disclosure
3 requirements of the Franchise Rule now in effect by fully and completely complying with the
4 disclosure requirements set forth in the UFOC format for so long as the current Rule remains in
5 force.

6 **II. PROHIBITED REPRESENTATIONS**

7 IT IS FURTHER ORDERED that in connection with the advertising, telemarketing,
8 offering for sale, licensing, contracting, sale or other promotion, in or affecting commerce, of any
9 Franchise, Business Venture, or income-generating product or service, the Defendants and their
10 Representatives are hereby permanently restrained and enjoined from making, or assisting in the
11 making of, any statement or representation of material fact that is fraudulent, false, or misleading,
12 whether directly or by implication, orally or in writing, including, but not limited to, any or all of
13 the following:

- 14 A. The income, profit, or sales volume that a purchaser is likely to achieve;
- 15 B. The income, profit or sales volume actually achieved by prior purchasers;
- 16 C. The length of time that it is likely to take a purchaser to recoup the entire purchase
17 price or investment;
- 18 D. The independence or authenticity of any third-party references, including persons
19 represented to be prior purchasers, that are provided to potential purchasers;
- 20 E. The amount of competition within, or a purchaser's territorial rights to, any
21 geographic territory;
- 22 F. The availability or existence of profitable locations in a purchaser's geographic
23 area; and
- 24 G. The terms and conditions of any assurances, refunds or guarantees of profitability
25 that relate to any location service or company to which a defendant refers a purchaser.

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1 computed pursuant to 28 U.S.C. § 1961.

2 3. Before August 31, 2001, Defendants shall make a payment in the amount
3 of \$5,000.000, plus interest from the date of this Decree until the date of payment at a rate
4 computed pursuant to 28 U.S.C. § 1961.
5

6 4. Before January 15, 2002, Defendants shall make a payment in the amount
7 of \$5,000.000, plus interest from the date of this Decree until the date of payment at a rate
8 computed pursuant to 28 U.S.C. § 1961.
9

10 5. Before May 31, 2002, Defendants shall make a payment in the amount of
11 \$5,000.000, plus interest from the date of this Decree until the date of payment at a rate
12 computed pursuant to 28 U.S.C. § 1961.
13

14 6. Payments made pursuant to paragraphs (2) - (5), above, shall be made by
15 certified or cashier's check, made payable to the Federal Trade Commission, and sent to Ken
16 Maddox, Office of Consumer Litigation, P.O. Box 386, Washington, DC 20044. A cover letter
17 accompanying these checks shall include the title of this litigation and a reference to DJ # 102-
18 3019.
19

20 7. Payments made pursuant to paragraphs (2) - (5), above, shall be secured by
21 a UCC filed security interest in all assets of Great Pacific Vending Corp. Defendants shall file
22 all of the necessary documents to secure this interest within a week of signing this decree. The
23 security interest shall terminate upon completion of the above-described payment and a
24 representative of the Commission or the Plaintiff shall provide Defendants with a security
25 interest termination statement.
26
27

28 **STIPULATED JUDGMENT AND ORDER**

1 B. All funds paid pursuant to this Paragraph shall be deposited into a fund
2 administered by the Commission or its agent to be used for equitable relief, including but not
3 limited to consumer redress and any attendant expenses for the administration of any redress
4 fund. If the Commission determines, in its sole discretion, that redress to purchasers is wholly or
5 partially impracticable, any funds not so used shall be paid to the United States Treasury as
6 disgorgement or shall be used to educate consumers affected by the practices in the Plaintiff's
7 complaint in this action. Defendants shall have no right to contest the manner of distribution
8 chosen by the Commission. The Commission, in its sole discretion, may use a designated agent
9 to administer consumer redress.
10

11
12 C. Defendants shall cooperate fully with the Commission and its agents in all
13 attempts to collect the amount due pursuant to this Paragraph if any of the Defendants fails to pay
14 the full amount due at the time specified herein. In such an event, Defendants agree to provide
15 the Commission with their federal and state tax returns for the preceding two years, and to
16 complete new financial disclosure forms fully and accurately within ten (10) business days of
17 receiving a request from the Commission to do so. Defendants further authorize the
18 Commission to verify all information provided on their financial disclosure forms with all
19 appropriate third parties, including but not limited to financial institutions.
20
21

22
23 D. In the event of default on the payment required to be made by this Paragraph, the
24 entire unpaid amount of the monetary judgment, together with interest computed under 28 U.S.C.
25 § 1961 -- accrued from the date of default until the date of payment -- shall be immediately due
26 and payable. Defendants agree that the facts as alleged in the Complaint filed in this action shall
27

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1 be taken as true in any subsequent litigation filed by Plaintiff or the Commission to enforce their
2 rights pursuant to this Order only, including but not limited to a nondischargeability complaint in
3 any subsequent bankruptcy proceeding.
4

5 E. In accordance with 31 U.S.C. § 7701, the Defendants are hereby required, unless
6 they have done so already, to furnish to the Commission their respective taxpayer identifying
7 numbers (social security numbers or employer identification numbers) which shall be used for
8 purposes of collecting and reporting on any delinquent amount arising out of the Defendants'
9 relationship with the government.
10

11 F. The Individual Defendants are further required, unless they have done so already,
12 to provide the Commission with clear, legible and full-size photocopies of all valid driver's
13 licenses they possess, which will be used for collection, reporting and compliance purposes.
14

15 G. Proceedings instituted under this Paragraph are in addition to, and not in lieu of,
16 any other civil or criminal remedies that may be provided by law, including any other
17 proceedings the Plaintiff or Commission may initiate to enforce this Order.
18

19 H. Within thirty (30) days of entry of this Order, the Defendants shall notify each
20 credit bureau to which either Defendant previously reported any non-payment by any of
21 Defendants' customers or franchisees (with the intent or result that a negative item was placed on
22 the customer's or franchisee's credit report) that such negative item should be removed from the
23 customer's or client's credit report.
24

25 I. If Defendants have not already done so, within thirty (30) days of entry of this Order
26 Defendants shall notify in writing, in a letter approved by attorney for Plaintiff, each of
27

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1 Defendants' customers or franchisees who are currently obligated by contract to make monthly
2 payments, or who are making monthly payments, in order to pay for vending machines purchased
3 from GPV, that the customers may choose to terminate their contracts with GPV (and WFT
4 Financing Co, Inc., and Gateway Imperial Financing, Inc.). In this notification, Defendants shall
5 inform their customers and franchisees of the following terms of termination:
6

7 1. The customer may exercise this option by sending GPV a letter stating his
8 or her desire to terminate the contract(s), with a copy sent to Allison Harnisch, U.S. Department
9 of Justice, P.O. Box 386, Washington, D.C. 20044, and by returning the vending machine(s) and
10 related location(s) to GPV. GPV will reimburse the customer for half of the costs the customer
11 incurred in shipping the vending machine to the Company, up to a maximum reimbursement of
12 \$125 if shipped entirely within California and \$250 if shipped from anywhere outside of
13 California.
14
15

16 2. Upon GPV's receipt of the consumer's letter and the return of the vending
17 machine(s) and location(s) to GPV, the Company shall immediately release the customer from
18 his or her obligation to continue making payments to GPV, WFT Financing Co. and Gateway
19 Imperial Financing Inc.
20

21 3. The customer may exercise this option any time within 60 days of
22 receiving the written notification described in this Paragraph.
23

24 4. If GPV does not in good faith send the written notification to a customer's
25 last known address by December 1, 2000, and that customer thereafter chooses to exercise the
26 termination described in this Paragraph, Defendants shall refund to that customer all monies the
27

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1 customer paid to GPV, WFT Financing Co, Inc., and Gateway Imperial Financing, Inc., for the
2 machines that are being returned, from November 1, 2000 until the date the customer terminates
3 the contract.
4

5 5. The provisions in this paragraph are in addition to, and not in lieu of, any
6 other right the consumer may have under existing laws.

7 J. Defendants are enjoined from enforcing any judgment they obtained prior to entry
8 of this Order against any customer or franchisee related to payment of amounts due to
9 Defendants in connection with the sale of any franchise or business opportunity, if the vending
10 machine which was subject to the action was or is returned.
11

12 V. ACCURACY OF FINANCIAL INFORMATION

13
14 IT IS FURTHER ORDERED that Plaintiff's and the Commission's agreement to and the
15 Court's approval of this Order is expressly premised upon the truthfulness, accuracy, and
16 completeness of all of the Financial Statements and information provided by each of the
17 Defendants and their counsel to the Plaintiff; namely, both Defendants' federal and state tax
18 returns from 1996-1999; Professional Locating Services, Inc.'s ("PLS") 1999 tax returns; all of
19 the Defendants' bank statements; GPV's balance sheets and financial disclosure documents from
20 1996-1999; Defendant Collie Wainer's Form OBD-500 ("Financial Statement of Debtor"), dated
21 June 5, 2000; and GPV's Form OBD-500C ("Financial Statement of Corporate Debtor"), dated
22 June 5, 2000.
23
24

25 If, upon motion by the Plaintiff, this Court finds that the Financial Statements contained
26 an untrue statement of a material fact or omitted to state a material fact required to make the
27

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1 statement not misleading with respect to the existence of asset(s) in which Wainer and/or GPV
2 had an interest at the time of this Agreement, and in the event such nondisclosure or
3 misrepresentation changes the estimated net worth of Wainer and/or GPV set forth on the
4 *Financial Statements by one hundred thousand dollars (\$100,000.00) or more, the United States*
5 may at its option: (1) rescind this Agreement and file suit or reinstate its suit upon the underlying
6 claims set out in the Complaint; or (2) let the Agreement stand and collect the full Settlement
7 Amount plus one hundred percent (100%) of the value of the previously undisclosed net worth of
8 Wainer and/or GPV, to the extent of the misrepresented amount.

11 Furthermore, if upon motion by the Plaintiff, this Court finds that any of the Defendants'
12 financial statements failed to disclose any Asset the value of which exceeds \$2,500, or materially
13 misrepresented the value of any Asset, or made any other material misrepresentations in or
14 omissions of Assets, the Plaintiff may request that this Order be reopened for the purpose of
15 requiring additional restitution or civil penalties from each Defendant who made such a
16 misrepresentation or omission.

19 *Provided however*, that in all other respects this Order shall remain in full force and effect
20 unless otherwise ordered by this Court; and *provided further*, that proceedings instituted under
21 this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies available
22 by law. Solely for the purposes of reopening or enforcing this Paragraph, Defendants waive any
23 right to contest any of the allegations set forth in the Complaint filed in this matter.

25 **VI. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

26 IT IS FURTHER ORDERED that within five (5) business days of receipt of this Order as

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1 entered by the Court, Defendants shall submit to the Plaintiff and the Commission a truthful
2 sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order.

3
4 **VII. DISTRIBUTION OF ORDER BY DEFENDANTS**

5 IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of
6 this Order, Defendants shall:

7 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of
8 receipt of same from, each officer and director, each individual serving in a management
9 capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales
10 personnel, whether designated as employees, consultants, independent contractors or otherwise,
11 within five (5) business days after receipt of this Order, and thereafter immediately upon
12 employing any such person, for any business that Defendants directly or indirectly manage,
13 control, or have a majority ownership interest in, that is engaged in the sale or distribution of any
14 Franchise, Business Venture, or income-generating product or service, or assisting others
15 engaged in these activities; and

16 B. Maintain for a period of three (3) years after creation, and upon reasonable notice
17 make available to representatives of Plaintiff or the Commission, the original signed and dated
18 acknowledgments of receipt of copies of this Order, as required in Subsection A of this
19 Paragraph.
20
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24 **VIII. COMPLIANCE REPORTING BY DEFENDANTS**

25 IT IS FURTHER ORDERED that, in order that compliance with the provisions of this
26 Order may be monitored:
27

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1 A. For a period of three (3) years after the date of entry of this Order, the Defendants
2 shall notify the FTC in writing of the following:

3
4 1. Any changes in the residence, mailing addresses and telephone numbers of
5 an Individual Defendant, within ten (10) days of the date of such change;

6 2. Any changes in the employment status (including self-employment) of any
7 Individual Defendant, within ten (10) days of such change. Such notice shall include the
8 name and address of each business that the Individual Defendant is affiliated with or
9 employed by, a statement of the nature of the business, and a statement of the Individual
10 Defendant's duties and responsibilities in connection with the business or employment;

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

2 B. One hundred eighty (180) days after the date of entry of this Order, Defendants
3 shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail
4 the manner and form in which Defendants have complied and are complying with this Order.
5

6 This report shall include but not be limited to:

7 1. The Individual Defendant's then current residence address, mailing
8 addresses and telephone numbers;
9

10 2. The Individual Defendant's then current employment and business
11 addresses and telephone numbers, a description of the business activities of each such
12 employer or business, and the Individual Defendant's title and responsibilities for each
13 such employer or business;
14

15 3. A copy of each acknowledgment of receipt of this Order obtained by the
16 Corporate or Individual Defendant pursuant to Paragraph VII; and
17

18 4. A statement describing the manner in which the corporate or Individual
19 Defendant has complied and is complying with Paragraphs I, II, III, IV, VI and VII of this
20 Order;
21

22 C. Upon written request by a representative of Plaintiff or the Commission,
23 Defendants shall submit additional written reports (under oath, if requested) and produce
24 documents on fifteen (15) days' notice with respect to any conduct that is subject to this Order;

25 D. For the purposes of this Order, Defendants shall, unless otherwise directed by a
26 representative of the Commission, identify all written notifications to the FTC as being provided
27

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1 in reference to FTC Matter No.0023048, Civil No. 00-01588 (GAF-AIJx), in the Central District
2 of California by Defendant Collie Wainer and mail them to:

3
4 Associate Director for Marketing Practices
5 Federal Trade Commission
6 600 Pennsylvania Ave. N.W. - Room 238
7 Washington, DC 20580 .

8 E. For the purposes of this Order, Defendants shall, unless otherwise directed by a
9 representative of Plaintiff, identify all written notifications to Plaintiff as provided in reference to
10 DJ# 102-3019, and mail them to:

11 Director, Office of Consumer Litigation
12 U.S. Department of Justice - Civil Division
13 P.O. Box 386,
14 Washington, D.C. 20044

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

19 G. For purposes of the compliance reporting required by this Paragraph VIII, Plaintiff
20 and the Commission are authorized to communicate directly with Defendants, unless a Defendant
21 requests that such communications be directed to a specific attorney.
22

23 **IX. MONITORING COMPLIANCE OF SALES PERSONNEL**

24 IT IS FURTHER ORDERED that, in connection with any business that any Defendant
25 directly or indirectly manages, controls or has a majority ownership interest in, that is engaged in
26 the sale or distribution of any Franchise, Business Venture, or income-generating product or
27

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1 service, or assisting others engaged in these activities, Defendants and their Representatives are
2 hereby permanently restrained and enjoined from:

3
4 A. Failing to take reasonable steps sufficient to monitor and ensure that all
5 employees and independent contractors engaged in sales or other customer service functions
6 comply with Paragraphs I and II of this Order. Such steps shall include adequate monitoring of
7 sales presentations or other calls with customers, and shall also include, at a minimum, the
8 following:
9

10 1. Listening to a representative sample of the oral representations made by
11 persons engaged in sales or other customer service functions, except representations made
12 at location other than defendants' premises relating solely to installation and setup of
13 vending equipment.
14

15 2. Establishing a procedure for receiving and responding to consumer
16 complaints; and
17

18 3. Ascertaining the number and nature of consumer complaints regarding
19 transactions in which each employee or independent contractor is involved;
20

21 B. Failing promptly to investigate fully any consumer complaint received by any
22 business to which this Paragraph applies; and

23 C. Failing to take corrective action with respect to any sales person whom any
24 Defendant or Representative determines is not complying with this Order, which may include
25 training, disciplining, and/or terminating such sales person;
26

27 *Provided, however,* that this Paragraph IX does not authorize or require a Defendant to take any

28 **STIPULATED JUDGMENT AND ORDER**

1 action that violates any federal, state, or local law.

2 **X. RECORD-KEEPING PROVISIONS**

3
4 IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of
5 this Order, in connection with any business that any Defendant directly or indirectly manages,
6 controls or has a majority ownership interest in, that is engaged in the sale or distribution of any
7 Franchise, Business Venture, or income-generating product or service, or assisting others
8 engaged in these activities, Defendants and their Representatives are hereby restrained and
9 enjoined from failing to create and maintain for a period of three (3) years following the date of
10 their creation, unless otherwise specified:
11

12 A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect
13 the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
14

15 B. Records containing the name, address, telephone number and social security
16 number of each person employed by any Defendant in any capacity, including as an independent
17 contractor, that person's job title or position, the date upon which the person commenced work,
18 and the date and reason for the person's termination, if applicable; *provided, however*, that the
19 businesses subject to this requirement shall retain such records during the employment of any
20 person, and for a period of two (2) years after the date of their termination;
21
22

23 C. Records containing the name, address, telephone number, quantity of goods or
24 services purchased, and a description of the goods or services purchased, for all consumers to
25 whom the business has sold, invoiced or shipped any Franchise, Business Venture or income-
26 generating product or service;
27

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1 D. Records that reflect, for every written or oral consumer complaint or refund
2 request received by any of the Defendants or their Representatives, whether directly or indirectly
3 or through any third party: (1) the customer's name, address, telephone number; (2) the dollar
4 amount paid by the consumer; (3) the written complaint or refund request, if any; (4) the basis of
5 the complaint or refund request, including the name of any salesperson complained about; (5) the
6 nature and result of any investigation conducted concerning the complaint or refund request; (6)
7 each response and the date of the response to the complaint or refund request; and (7) any final
8 resolution of the complaint or refund request, and the date of the resolution; and (8) in the event
9 of a denial of a refund request, the reason for the denial; and
10
11

12 E. Copies of all sales scripts, training materials, advertisements, or other marketing
13 materials utilized, which shall be retained for three (3) years after the last date of their
14 dissemination or use.
15

16 **XI. ACCESS TO BUSINESS PREMISES**

17
18 IT IS FURTHER ORDERED that for a period of three (3) years from the date of entry of
19 this Order, for the purposes of determining or securing compliance with its provisions, the
20 Defendants and their Representatives shall grant to representatives of Plaintiff and the
21 Commission, within five (5) business days of receipt of written notice from Plaintiff or the
22 Commission:
23

24 A. Access during normal business hours to any office or facility storing documents of
25 any business that any of the Defendants directly or indirectly manages, controls, or has a majority
26 ownership interest in, that is engaged in the sale or distribution of any Franchise, Business
27

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1 Venture, or income-generating product or service, or assisting others engaged in such activities.
2 In providing such access, Defendants shall permit representatives of Plaintiff or the Commission
3 to inspect and copy all documents relevant to any matter contained in this Order; and shall permit
4 representatives of Plaintiff or the Commission to remove such documents for a period not to
5 exceed three (3) business days so that the documents may be inspected, inventoried, and copied;
6
7 and

8
9 B. The opportunity to interview, without restraint or interference, officers, directors,
10 employees, contractors, and agents, including all personnel involved in responding to consumer
11 complaints or inquiries and all sales personnel, whether designated as employees, consultants,
12 independent contractors or otherwise, of any business to which Subsection A of this Paragraph
13 applies, regarding compliance with the provisions of this Order. Any person interviewed may
14 have counsel present.
15

16 *Provided, however,* that upon application of the Plaintiff or the Commission for good cause
17 shown, the Court may enter an *ex parte* order granting immediate access to Defendants' business
18 premises for the purposes of inspecting and copying all documents relevant to any matter
19 contained in this Order.
20

21 XII. AUTHORITY TO MONITOR COMPLIANCE

22
23 IT IS FURTHER ORDERED that the Plaintiff and the Commission are authorized to
24 monitor Defendants' compliance with this Order by all lawful means, including but not limited to
25 the following:

26
27 A. Plaintiff and the Commission are authorized, without further leave of Court, to

28 **STIPULATED JUDGMENT AND ORDER**

1 obtain discovery from any person (including a Defendant) in the manner provided by Chapter V
2 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory
3 process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating
4 Defendants' compliance with any provision of this Order.
5

6 B. Plaintiff and the Commission are authorized to use representatives posing as
7 consumers or suppliers to Defendants, Defendants' employees, or any other entity managed or
8 controlled in whole or in part by any Defendant, without the necessity of identification or prior
9 notice; and
10

11 C. Nothing in this Order shall limit the Commission's lawful use of compulsory
12 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. § 49 and 57b-1, to investigate
13 whether Defendants have violated any provision herein or Section 5 of the FTC Act, 15 U.S.C.
14 § 45, or any applicable rule or regulation promulgated and enforced by the Commission,
15 including the Franchise Rule, 16 C.F.R. § 436.
16
17

18 XIII. FEES AND COSTS

19 IT IS FURTHER ORDERED that each party to this Order hereby agrees to bear its own
20 costs and attorneys' fees incurred in connection with this action.
21

22 XIV. RETENTION OF JURISDICTION

23 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the
24 purpose of enabling the parties to apply to the Court at any time for such further orders and
25 directives as may be necessary or appropriate for the interpretation or modification of this Order,
26 for the enforcement of compliance therewith, or for the punishment of violations thereof.
27

28 **STIPULATED JUDGMENT AND ORDER**

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STIPULATED JUDGMENT AND ORDER

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XV. COMPLETE SETTLEMENT

The parties, by their respective counsel, hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of this action.

FOR THE PLAINTIFF:



ALLISON HARNISCH, Esq.
Trial Attorney
Office of Consumer Litigation
U.S. Department of Justice

FOR THE DEFENDANTS:



WILLIAM ROTNBARD, Esq.
Attorney for the Defendants


COLLIE WAINER
Individually

COLLIE WAINER
President, Great Pacific Vending Corp.

SO ORDERED this 13th day of February, 2000.


GARY ALLEN FEES
UNITED STATES DISTRICT JUDGE

STIPULATED JUDGMENT AND ORDER

1 COLLIE WAINER, individually,)
2 and as an officer of the corporation,)
3)
4 DEFENDANTS.)

5 **AFFIDAVIT OF RECEIPT OF ORDER**

6
7
8 Collie Wainer, being duly sworn, hereby states and affirms as follows:

9 1. My name is Collie Wainer. My current residence address is

10 _____ . I am a citizen of the United
11 States and am over the age of eighteen. I have personal knowledge of the facts set forth in this
12 Affidavit.

13
14 2. I am a Defendant in the above captioned case.

15 3. On _____, I received a copy of the Stipulated Order For Permanent
16 Injunction and Civil Penalties, which was signed by the Honorable Gary Allen Feess and entered
17 by the Court on _____, 2000. A true and correct copy of the Order I received is
18 appended to this Affidavit.
19

20
21
22 I declare under penalty of perjury under the laws of the United States that the foregoing
23 is true and correct.

24
25 _____
26 Collie Wainer

27
28 **STIPULATED JUDGMENT AND ORDER**

1 Executed on _____, 2000, at _____, Los Angeles, California.

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State of California
County of Los Angeles

Subscribed and sworn to before me this ____ day of _____, 2000.

Notary Public
My Commission Expires:

28 **STIPULATED JUDGMENT AND ORDER**