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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	00-Civ-1131 (AKH)
v.	)	
	)	
MARKETING AND VENDING CONCEPTS, L.L.C.,	)	
a New York corporation,	)	
MICHAEL CAVALLO,	)	
individually and as an officer of	)	
MARKETING AND VENDING CONCEPTS, L.L.C.,	)	
and MITCHELL JACOBY,	)	
individually and as an officer of	)	
MARKETING AND VENDING CONCEPTS, L.L.C,	)	
	)	
Defendants.	)	

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**STIPULATED JUDGMENT AND  
ORDER FOR PERMANENT INJUNCTION**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), commenced this action by filing its Complaint for permanent injunction and other relief pursuant to Sections 5, 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45, 53(b), and

57b, charging that the Defendants engaged in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the Commission’s Trade Regulation Rule entitled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures” (“Franchise Rule”), 16 C.F.R. Part 436, in connection with the sale of vending machine business opportunities. The Commission and these Defendants, as hereinafter defined, hereby stipulate to the entry of this Stipulated Judgment and Order for Permanent Injunction (“Order”) to resolve all matters of dispute between them in this action.

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

**FINDINGS**

1. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331 and 1337(a), and 15 U.S.C. §§ 53(b) and 57b.
2. Venue is proper as to all parties in the Southern District of New York.
3. The activities of the Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against the Defendants, under Sections 5(a)(1), 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 57b.
5. Defendants have entered into this Order freely and without coercion. Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them.

6. Plaintiff and Defendants, by and through their counsel, have agreed that the entry of this Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Order.

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

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

9. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

10. Entry of this Order is in the public interest.

### **DEFINITIONS**

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

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

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

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

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

3. “Defendants” means the Corporate Defendant(s) and the Individual Defendant.

The “Corporate Defendants” are Marketing & Vending Concepts, L.L.C. and its affiliate, North Star Vending Sales Co., L.L.C., both New York corporations. The “Individual Defendant” is Michael Cavallo, individually and as an officer of the Corporate Defendants.

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

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

6. “Person” means a natural person, organization or other legal entity, including a corporation, partnership, proprietorship, association, or cooperative, or any other group or combination acting as an entity.

7. “Telemarketing” means the advertising, offering for sale, or sale of any good or service to any person by means of telephone sales presentations, either exclusively or in conjunction with the use of other advertising.

8. “UFOC format” is defined as the Uniform Franchise Offering Circular disclosure format which has been adopted by the North American Securities Administrators’ Association and is now accepted by the Commission for use in lieu of the Franchise Rule’s disclosure format.

## **ORDER**

### **I. PROHIBITED REPRESENTATIONS**

IT IS FURTHER ORDERED that, in connection with the advertising, telemarketing, offering for sale, licensing, contracting, sale or other promotion, in or affecting commerce, of any Business Venture, or income-generating product or service, the Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from making, or assisting in the making of, any statement or representation of material fact that is false or misleading, whether directly or by implication, orally or in writing, including, but not limited to, any or all of the following:

A. Any false or misleading representation:

1. that consumers who purchase the Business Venture can reasonably expect to earn a specified level of sales or income, such as \$18,604.80 per year from candy vending through a 19 machine package; and
  2. about the success that any locating companies identified or recommended by Defendants have had in placing Business Venture purchasers' vending machines in profitable locations; and
- B. Any false or misleading representation about:
1. The income, profit, or sales volume that a purchaser is likely to achieve;
  2. The income, profit or sales volume actually achieved by prior purchasers;
  3. The length of time that it is likely to take a purchaser to recoup the entire purchase price or investment;
  4. The independence or authenticity of any third-party references, including persons represented to be prior purchasers, that are provided to potential purchasers;
  5. The amount of competition within, or a purchaser's territorial rights to, any geographic territory;
  6. The availability or existence of profitable locations in a purchaser's geographic area;
  7. The assistance that will be provided purchasers, including, but not limited to, providing profitable locations or clients;

8. The terms and conditions of any assurances, refunds or guarantees of profitability that relate to any location service or company to which a defendant refers a purchaser.

## **II. COMPLIANCE WITH FRANCHISE RULE**

IT IS FURTHER ORDERED that, in connection with the advertising, telemarketing, offering for sale, licensing, contracting, sale or other promotion, in or affecting commerce, of a franchise, the Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby permanently restrained and enjoined from violating, or assisting others to violate, any provision of the Franchise Rule as promulgated, or as it may hereinafter be amended, including, but not limited to:

A. Failing to provide any prospective franchisee with a complete and accurate basic disclosure document containing all the information in the form required by Sections 436.1(a)(1)-(24) of the Franchise Rule, in the manner and within the time frame prescribed by the Rule;

B. Failing to provide any prospective franchisee with an earnings claim document as required by Sections 436.1(b)-(e) of the Franchise Rule, in the manner and within the time frame prescribed by the Rule;

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

D. Making any earnings claim or projection without having a reasonable basis for the claim or projection at the time such claim or projection is made, as required by Sections 436.1(b)-(e) of the Franchise Rule; and

E. Engaging in any other act or practice prohibited by the Franchise Rule, 16 C.F.R. Part 436, or failing to fulfill any obligation imposed by the Rule.

*Provided, however,* that if the Commission promulgates a trade regulation rule or rules that modify or supersede the Franchise Rule, in whole or part, Defendants shall comply fully and completely with all applicable requirements thereof on and after the effective date of any such rule; and *provided, further,* that Defendants may choose to comply with the disclosure requirements of the Franchise Rule now in effect by fully and completely complying with the disclosure requirements set forth in the UFOC format for so long as the current Rule remains in force.

### **III. PERFORMANCE BOND REQUIREMENT**

IT IS FURTHER ORDERED that Defendant Cavallo, whether directly, in concert with others, or through any business entity or other device, is hereby permanently restrained and enjoined from engaging or participating in the advertising, promotion, offering for sale or sale of any Business Venture, or income generating product or service, or assisting others engaged in these activities, unless at least two weeks prior to such activities, he obtains a performance bond in the principal sum of at least ONE MILLION DOLLARS (\$1,000,000.00).

A. The performance bond required by this Paragraph shall be conditioned upon Defendant Cavallo's compliance with Section 5 of the FTC Act, 15 U.S.C. § 45 and the injunctive provisions in Paragraphs I and II of this Order. The bond shall be deemed continuous



and remain in full force and effect so long as the bonded defendant continues to engage or participate in the business of advertising, promotion, offering for sale or sale of any Business Venture, or income-generating product or service, whether directly or indirectly, in concert with others, or through any business entity or other device, and for at least three years thereafter. The bond shall cite this Order as the subject matter of the bond, and shall provide surety thereunder against financial loss resulting from whole or partial failure of performance due, in whole or in part, to any violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the FTC Franchise Rule, 16 C.F.R. Part 436, or the injunctive provisions of this Order;

B. The performance bond required by this Paragraph shall be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each of the states in which the defendant is doing business and that holds a Federal Certificate of Authority as Acceptable Surety On Federal Bond and Reinsuring. The performance bond shall be executed in favor of both: (1) the Federal Trade Commission for the benefit of any person injured as a result of any false or misleading representation made while engaged in the advertising, promotion, offering for sale or sale of any Business Venture, or income-generating product or service; and (2) any consumer so injured;

C. The performance bond required by this Paragraph is in addition to, and not in lieu of, any other bond required by any applicable federal, state, or local law;

D. At least ten (10) days prior to the commencement of any activity for which a performance bond is required under this Paragraph, the defendant shall provide a copy of the bond to the Commission at the address specified in Paragraph X;

E. The Defendant shall not disclose the existence of any performance bond required by this Paragraph to any consumer, or other purchaser or prospective purchaser of any Business Venture, or income-generating product or service, that is advertised, promoted, offered for sale, or sold, without also disclosing clearly and conspicuously, at the same time, "THIS BOND IS REQUIRED BY ORDER OF THE U.S. DISTRICT COURT IN SETTLEMENT OF CHARGES OF FALSE AND MISLEADING REPRESENTATIONS IN THE PROMOTION AND SALE OF VENDING MACHINE BUSINESS OPPORTUNITIES."

F. The Commission may execute against the performance bond if it demonstrates to the Court by a preponderance of the evidence that, after the effective date of this Order, any bonded defendant, individually or through any other person or entity, made a false or misleading material representation, directly or by implication, in the course of engaging in the advertising, promotion, offering for sale or sale of any Business Venture, or income-generating product or service, or assisting others engaged in these activities, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, or in violation of the FTC Franchise Rule, 16 C.F.R. Part 436, or the injunctive provisions of this Order;

#### **IV. MONETARY JUDGMENT AND REDRESS**

IT IS FURTHER ORDERED that judgment in the amount of FORTY-FOUR THOUSAND TWO HUNDRED AND SIXTY-SEVEN DOLLARS, (\$44,267) is hereby entered against the Defendants, jointly and severally, which shall be paid as follows:

A. Defendants shall pay the sum of \$33,567 to the Commission by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord

with directions provided by the Commission and the remainder shall be paid from funds frozen by the Temporary Restraining Order and held by third parties.

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

C. The Commission's agreement to this Order, requiring that the Defendants be liable for less than the full amount of consumer injury, is expressly premised upon the truthfulness, accuracy and completeness of their respective financial statements, namely that of Marketing & Vending L.L.C., dated November 13, 2000, and Michael Cavallo, dated November 13, 2000, and related documents that were submitted to the Commission. Such financial statements and supporting documents contain material information upon which the Commission relied in negotiating and agreeing to this Order. If, upon motion by the Commission, this Court finds that Defendants has failed to disclose any material asset or materially misstated the value of any asset in the financial statements and related documents described above, or has made any other material misstatement or omission in the financial statements and related documents described above, the Court shall enter judgment in the amount of ONE MILLION FOUR

HUNDRED THOUSAND DOLLARS, (\$1,400,000) against such Defendant. For the purposes of this Paragraph, the Defendants waive any right to contest any of the allegations in the Amended Complaint filed in this action.

D. In the event that any Defendant defaults in making the payment required by this Paragraph, the amount of One Million Four Hundred Thousand Dollars (\$1,400,000), less the sum of payments made pursuant to Subsection A of this Paragraph shall become immediately due and payable by such Defendant, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance.

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

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

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

H. Defendants agree that the facts as alleged in the Amended Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy proceeding.

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

#### **V. TRANSFER OF CUSTOMER LISTS**

IT IS FURTHER ORDERED that the Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant at any time prior to entry of this Order, in connection with the advertising, promotion, telemarketing, offering for sale or sale of any Business Venture, or income-generating product or service; *provided, however*, that Defendants may disclose such identifying information to a law enforcement agency, or as required by any law, regulation (including the limited disclosures required by the Franchise Rule) or court order.

## **VI. LIFTING OF ASSET FREEZE**

IT IS FURTHER ORDERED that the freeze of the assets of the Defendants instituted pursuant to the *ExParte* Temporary Restraining Order and Asset Freeze, etc., entered by this Court on February 15, 2000, shall be lifted to the extent necessary for said Defendants to make the payments to the Commission of the funds required by Paragraph IV of the Order, and upon compliance with that Paragraph by those Defendants, shall be lifted permanently.

## **VII. ASSETS HELD BY THIRD PARTIES**

**IT IS FURTHER ORDERED** that any financial or brokerage institution, business entity, or person, that holds, controls, or maintains custody of any account or asset of the Defendants, or has held, controlled, or maintained custody of any account or asset of the Defendants at any time since June 1, 1997, shall transfer all such assets to the Plaintiff by electronic fund transfer in accordance with the instructions provided by the Plaintiff Federal Trade Commission to effectuate such transfer, within ten (10) business days of receiving a copy of this Order.

## **VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

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

## **IX. 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, Defendants shall:

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

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

#### **X. COMPLIANCE REPORTING BY DEFENDANTS**

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

A. For a period of five (5) years after the date of entry of this Order, Defendant Michael Cavallo shall notify the Commission in writing of the following:

1. Any changes in his residence, mailing address and telephone number, within ten (10) days of the date of such change;
2. Any changes in his employment status (including self-employment), within ten (10) days of such change. Such notice shall include the name and address of

each business that Defendant Cavallo is affiliated with or employed by, a statement of the nature of the business, and a statement of Defendant Cavallo's duties and responsibilities in connection with the business or employment;

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

B. One hundred eighty (180) days after the date of entry of this Order, Defendant Cavallo shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include but not be limited to:

1. Defendant Cavallo's then current residence address, mailing address and telephone numbers;



2. Defendant Cavallo's then current employer and business addresses and telephone numbers, a description of the business activities of each such employer or business, and Defendant Cavallo's title and responsibilities for each such employer or business;

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

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

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

D. For the purposes of this Order, Defendants shall, unless otherwise directed by a representative of the Commission, identify all written notifications to the FTC as provided in reference to *FTC v. Marketing & Vending Corp. (00-Civ.-1131 (AKH))*, FTC File Number X0023081)

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Northeast Region  
Federal Trade Commission  
One Bowling Green, Suite 318  
New York, New York 10004

E. For the purposes of this Paragraph, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" includes any individual or entity for whom Defendant Cavallo performs services as an employee, consultant, or independent contractor; and

F. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendants.

#### **XI. MONITORING COMPLIANCE OF SALES PERSONNEL**

IT IS FURTHER ORDERED that, in connection with any business that any Defendant directly or indirectly manages, controls or has a majority ownership interest in, that is engaged in the sale or distribution of any vending machine Business Venture, or income-generating product or service, or assisting others engaged in these activities, Defendants and successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

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

1. Listening to the oral representations made by persons engaged in sales or other customer service functions;
2. Establishing a procedure for receiving and responding to consumer complaints; and
3. Ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;

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

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

*Provided, however,* that this Paragraph X does not authorize or require a Defendant to take any action that violates any federal, state, or local law.

## **XII. RECORD-KEEPING PROVISIONS**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, in connection with any business that any Defendant directly or indirectly manages, controls or has a majority ownership interest in, that is engaged in the sale or distribution of any vending machine Business Venture, or income-generating product or service, or assisting others engaged in these activities, Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from failing to create and maintain for a period of three (3) years following the date of their creation, unless otherwise specified:

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

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

businesses subject to this requirement shall retain such records during the employment of any person, and for a period of two (2) years after the date of their termination;

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

D. Records that reflect, for every written or oral consumer complaint or refund request received by any of the Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether directly or indirectly or through any third party: (1) the consumer's name, address, telephone number; (2) the dollar amount paid by the consumer; (3) the written complaint or refund request, if any; (4) the basis of the complaint or refund request, including the name of any salesperson complained of; (5) the nature and result of any investigation conducted concerning the complaint or refund request; (6) each response and the date of the response to the complaint or refund request; (7) any final resolution of the complaint or refund request, and the date of the resolution; and (8) in the event of a denial of a refund request, the reason for the denial; and

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

### **XIII. ACCESS TO BUSINESS PREMISES**

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

A. Access during normal business hours to any office or facility storing documents of any business that any of the Defendants directly or indirectly manages, controls, or has a majority ownership interest in, that is engaged in the sale or distribution of any vending machine Business Venture, or income-generating product or service, or assisting others engaged in such activities. In providing such access, Defendants shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit representatives of the Commission to remove such documents for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

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

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

#### **XIV. AUTHORITY TO MONITOR COMPLIANCE**

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

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

B. The Commission is authorized to use representatives posing as consumers or suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

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

#### **XV. FEES AND COSTS**

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

#### **XVI. RETENTION OF JURISDICTION**

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

#### **XVII. COMPLETE SETTLEMENT**

The parties 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 Oder shall constitute a full, complete and final settlement of this action.

FOR THE PLAINTIFF:

FEDERAL TRADE COMMISSION  
Northeast Region  
One Bowling Green, Suite 318  
New York, New York 10004

FOR THE DEFENDANTS:

MARKETING AND VENDING  
CONCEPTS, L.L.C  
32 Nassau Street, Suite \_\_\_\_  
New York, New York 10038

\_\_\_\_\_  
CAROLE A. PAYNTER (CP4091)  
Attorney

BY: \_\_\_\_\_  
Michael Cavallo, President

\_\_\_\_\_  
Michael Cavallo, individually

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2001.

Dated: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE



APPENDIX A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	)	
FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. _____
	)	
MARKETING AND VENDING CONCEPTS,	)	<b>AFFIDAVIT OF RECEIPT</b>
L.L.C.,	)	<b>OF ORDER</b>
a New York corporation,	)	
MICHAEL CAVALLO,	)	
individually and as an officer of	)	
MARKETING AND VENDING CONCEPTS,	)	
L.L.C.,	)	
and MITCHELL JACOBY,	)	
individually and as an officer of	)	
MARKETING AND VENDING CONCEPTS,	)	
L.L.C,	)	
	)	
Defendants.	)	
_____	)	

MICHAEL CAVALLO, being duly sworn, hereby states and affirms as follows:

1. My name is \_\_\_\_\_. My current residence address is

\_\_\_\_\_. I am a citizen of the United

States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

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

3. On \_\_\_\_\_, I received a copy of the Stipulated Judgment and Order for Permanent Injunction, which was signed by the Honorable \_\_\_\_\_ and entered by the Court on \_\_\_\_\_. A true and correct copy of the Order I received is appended to this Affidavit.

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

\_\_\_\_\_  
MICHAEL CAVALLO

Executed on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ [city and state].

State of \_\_\_\_\_  
County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
\_\_\_\_\_