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CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
BY DEPUTY

FILED
CLERK, U.S. DISTRICT COURT
MAR 31 2003
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 GENERAL SUPPLY CENTERS, INC.,
18 a corporation, and

19 MARK E. GERSHICK, individually and
20 as an officer of GENERAL SUPPLY CENTERS,
INC.

21 Defendants.

22 ^{ov}
CASE NO. 99-12827 MMM
(RZx)

23 STIPULATED
24 PERMANENT
25 INJUNCTION AND
26 SETTLEMENT OF
27 CLAIMS FOR
28 MONETARY RELIEF

ENTERED ON CLERK'S
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24 Plaintiff, the Federal Trade Commission ("FTC" or "Commission")
25 commenced this action by filing a Complaint for permanent
26 injunction and other relief pursuant to Sections 13(b) and 19 of
27 the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b)
28 and 57b, and the Telemarketing and Consumer Fraud and Abuse

STIPULATED PERMANENT INJUNCTION AND MONETARY RELIEF, PAGE 1

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1 Prevention Act, 15 U.S.C. § 6101 *et seq.*, charging Defendants with
2 engaging in unfair or deceptive acts or practices in connection
3 with the sale, offering for sale, or distribution of nondurable
4 office supplies, including photocopier toner, in violation of
5 Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC's
6 Telemarketing Sales Rule, 16 C.F.R. Part 310.

7 The Court granted a temporary restraining order on December 7,
8 1999, including the appointment of Byron M. Moldo as Receiver of
9 the defendant corporation. The parties entered into a stipulated
10 preliminary injunction on December 20, 1999, which *inter alia*
11 continued and made permanent the Receivership. The Receiver
12 remains in possession and control of the Corporate Defendant.

13 The Court by Order dated July 25, 2001, approved the Receiver's
14 determinations on claims, including claims of Defendants'
15 customers totaling \$110,153.39.

16 It thereafter appearing to Plaintiff that funds available from
17 the Receivership estate, together with funds available from the
18 Individual Defendant, would be insufficient to fully redress the
19 customer claims approved by the Court, Plaintiff has made demand
20 upon American Motorists Insurance Company ("Surety"), 7470 N.
21 Figueiroa Street, Los Angeles, CA 90041, for payment of such
22 deficiency from Bond Number 3SM 805 019 00, a bond obtained by
23 Defendants for the purpose of redressing customer claims such as
24 those approved by the Court, pursuant to the State of California
25 Telemarketing Sellers' Act, Cal. Bus. and Prof. Code § 17511.1, *et*
26 *seq.*

27 Now the Commission, defendant Mark E. Gershick, individually and
28 as an officer of General Supply Centers, Inc., Byron Z. Moldo, as

1 Receiver in possession of General Supply Centers, Inc., and the
2 Surety agree to a settlement of this action without trial or
3 adjudication of any issue of law or fact herein and without
4 Defendants admitting liability for any of the violations alleged
5 in the Complaint or for any wrongdoing whatsoever. The
6 Commission, Defendants, Receiver and Surety consent to entry of
7 this Stipulated Final Judgment and Order ("Order") without trial
8 or adjudication of any issue of law or fact herein.

9 Upon the consent of the parties hereto, **IT IS HEREBY ORDERED,**
10 **ADJUDGED AND DECREED** as follows:

11 **FINDINGS**

12 1. This is an action by the Commission instituted under Sections
13 13(b) and 19 of the Federal Trade Commission Act, 15 U.S.C.
14 §§ 53(b), and 57b, and the Telemarketing and Consumer Fraud and
15 Abuse Prevention Act, 15 U.S.C. § 6101 et seq. The Complaint
16 seeks permanent injunctive relief against Defendants in connection
17 with the sale of nondurable office supplies.

18 2. This Court has jurisdiction over the subject matter of this
19 case and over Defendants. Venue in the Central District of
20 California is proper.

21 3. The Complaint states a claim upon which relief may be granted
22 against Defendants under Sections 5(a), 13(b) and 19 of the FTC
23 Act, 15 U.S.C. §§ 53(b) and 57b, and the Commission's
24 Telemarketing Sales Rule, 16 C.F.R. Part 310.

25 4. The Commission has the authority under Sections 13(b) and 19
26 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing
27 and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 et
28 seq., to seek the relief it has requested.

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

4 6. By stipulating and consenting to the entry of this Order,
5 Defendants and American Motorists Insurance Co. do not admit any
6 of the allegations in the Complaint, except those contained in
7 Paragraphs 1 through 5 herein. Likewise, by executing this Order,
8 the FTC does not admit that any defense to the Complaint is valid.

9 7. This action and the relief awarded herein is in addition to,
10 and not in lieu of, other remedies as may be provided by law,
11 including both civil and criminal remedies.

12 8. Defendants and Surety enter into this Order freely and
13 without coercion, and acknowledge that they understand the
14 provisions of this Order and are prepared to abide by its terms.
15 At all times, the Defendants and Surety have been represented by
16 counsel, including the negotiations that led to this Order.

17 9. The parties shall each bear their own costs and attorneys'
18 fees incurred in this action. Defendants have waived all claims
19 under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all
20 rights to seek judicial review, or otherwise to challenge the
21 validity of this stipulated order.

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

23 **ORDER**

24 **Definitions**

25 1. "Assisting others" means knowingly providing any of the
26 following goods or services to another entity: (1) performing
27 customer service functions, including, but not limited to,
28 receiving or responding to consumer complaints; (2) formulating

1 or providing, or arranging for the formulation or provision of,
2 any telephone sales script or any other marketing material;
3 (3) providing names of, or assisting in the generation of,
4 potential customers; or (4) performing marketing services of any
5 kind.

6 2. "Consumer" means any person, including any individual,
7 group, unincorporated association, limited or general partnership,
8 corporation or other business entity.

9 3. "Corporate Defendant" means General Supply Centers, Inc.,
10 and its officers, agents, servants, employees, attorneys,
11 affiliates or subsidiaries, successors or assigns, and all persons
12 or entities directly or indirectly under its control, and all
13 other persons or entities in active concert or participation with
14 it who receive actual notice of this Order by personal service or
15 otherwise, and each such person. "Corporate Defendant" includes
16 the Receivership Defendant.

17 4. "Defendants" means the Corporate Defendant and the
18 Individual Defendant.

19 5. "Document" is synonymous in meaning and equal in scope to
20 the usage of the term in Federal Rule of Civil Procedure 34(a),
21 and includes writings, drawings, graphs, charts, photographs,
22 audio and video recordings, computer records, and other data
23 compilations from which information can be obtained and
24 translated, if necessary, through detection devices into
25 reasonably usable form. A draft or non-identical copy is a
26 separate document within the meaning of the term.

27 6. "Individual Defendant" means Mark E. Gershick and his
28 agents, servants, employees, attorneys, and all persons or

1 entities directly or indirectly under his control, and all other
2 persons or entities in active concert or participation with him
3 who receive actual notice of this Order by personal service or
4 otherwise, and each such person.

5 7. "Receivership" and "Receivership Defendant" means Byron Z.
6 Moldo, as permanent Receiver in this matter, and the Receivership
7 estate in this matter.

8 8. "Telemarketing," for purposes of Paragraph I of this Order,
9 means any business activity (which includes, but is not limited
10 to, initiating or receiving telephone calls, managing others who
11 initiate or receive telephone calls, operating an enterprise that
12 initiates or receives telephone calls, owning an enterprise that
13 initiates or receives telephone calls, or otherwise participating
14 as an officer, director, employee or independent contractor in an
15 enterprise that initiates or receives telephone calls), that
16 involves attempts to induce consumers to purchase any item, good,
17 service, partnership interest, trust interest or other beneficial
18 interest, or to enter a contest for a prize, by means of telephone
19 sales presentations, either exclusively or in conjunction with the
20 use of other forms of marketing. *Provided* that the term
21 "telemarketing" shall not include transactions that are not
22 completed until after a face-to-face contact between the seller or
23 solicitor and the consumers solicited.

24 9. "Surety" means American Motorists Insurance Company, a
25 subsidiary of Kemper Insurance Companies.

26 10. The terms "and" and "or" have both conjunctive and
27 disjunctive meanings.

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1 **I. BANS ON TELEMARKETING AND ON SALE OF NONDURABLE OFFICE**
2 **SUPPLIES**

3 **IT IS HEREBY ORDERED** that the Individual Defendant, whether
4 acting directly or through any corporation, limited liability
5 company, subsidiary, division or other device, is hereby
6 permanently restrained and enjoined from:

7 A. Engaging or participating in Telemarketing, or assisting
8 others who are engaging or participating in Telemarketing; or

9 B. Engaging or participating in the advertising, offering for
10 sale, sale or distribution of nondurable office supplies,
11 including photocopier toner, or assisting others who are engaging
12 or participating in the advertising, offering for sale, sale or
13 distribution of nondurable office supplies, including photocopier
14 toner.

15 **II. PROHIBITED BUSINESS ACTIVITIES**

16 **A. IT IS FURTHER ORDERED** that, in connection with the
17 advertising, marketing, promoting, offering for sale or sale of
18 any good or service, Defendants and their agents, servants,
19 employees, attorneys, corporate affiliates or subsidiaries,
20 corporate successors and assigns, and all persons or entities
21 directly or indirectly under their control, and all other persons
22 or entities in active concert or participation with them who
23 receive actual notice of this Order by personal service or
24 otherwise, and each such person, whether acting directly or
25 through any corporation, limited liability company, subsidiary,
26 division or other device, are hereby enjoined, directly or
27 thorough any corporation, limited liability company, subsidiary,
28 division or other device from:

1 1. Misrepresenting, expressly or by implication, that
2 Defendants are, or are associated with, a consumer's regular
3 supplier or provider of the good or service, or are associated
4 with the manufacturer of any product or equipment used by the
5 consumer in conjunction with the good or service;

6 2. Misrepresenting to any consumer, or any consumer's
7 employee or representative, expressly or by implication, that
8 Defendants have previously transacted business with the consumer;

9 3. Making any misrepresentation, expressly or by
10 implication, regarding a consumer's obligation to make payment;

11 4. Making any misrepresentation, expressly or by
12 implication, regarding the price of the product or service; or

13 5. Misrepresenting, expressly or by implication, any other
14 fact material to a consumer's decision to buy or accept a good or
15 service.

16 **B. IT IS FURTHER ORDERED** that Defendants and their agents,
17 servants, employees, attorneys, corporate affiliates or
18 subsidiaries, corporate successors and assigns, and all persons or
19 entities directly or indirectly under their control, and all other
20 persons or entities in active concert or participation with them
21 who receive actual notice of this Order by personal service or
22 otherwise, and each such person, whether acting directly or
23 through any corporation, limited liability company, subsidiary,
24 division or other device, are hereby permanently restrained and
25 enjoined from:

26 1. Violating Section 310.3(b) of the Telemarketing Sales
27 Rule, 16 C.F.R. § 310.3(b), by providing substantial assistance or
28 support to any seller or telemarketer when that person knows or

1 consciously avoids knowing that the seller or telemarketer is
2 engaged in any act or practice that violates Section 310.3(a),
3 310.3(c), or Section 310.4, of the Telemarketing Sales Rule, 16
4 C.F.R §§ 310.3(a), 310.3(c) or 310.4; or

5 2. Violating Section 310.3(c) of the Telemarketing Sales
6 Rule, 16 C.F.R. § 310.3(c), by engaging or participating in credit
7 card laundering as set forth in that section; or

8 3. Violating or assisting others in violating any other
9 provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310.

10 A copy of the Telemarketing Sales Rule is appended to this Order
11 as Attachment A and is incorporated herein as if fully rewritten.
12 In the event that the Telemarketing Sales Rule is amended by the
13 Commission in a manner which would create a new or different
14 standard applicable to Defendants' obligations under this Order,
15 Defendants' compliance with the Telemarketing Sales Rule as so
16 amended shall not be deemed a violation of this Order. **Provided,**
17 **however,** that nothing in this Section II shall be construed to
18 nullify the prohibitions set forth in Section I, above.

19 **III. PROHIBITION AGAINST DISTRIBUTION OF CUSTOMER LISTS**

20 **IT IS FURTHER ORDERED** that the Defendants and the Receiver, and
21 their agents, servants, employees, attorneys, and all persons or
22 entities directly or indirectly under their control, and all other
23 persons or entities in active concert or participation with them
24 who receive actual notice of this Order by personal service or
25 otherwise, and each such person, whether acting directly or
26 through any corporation, limited liability company, subsidiary,
27 division or other device, are permanently restrained and enjoined
28 from selling, renting, leasing, transferring or otherwise

1 disclosing the name, address, telephone number, credit card
2 number, bank account number or other identifying information of
3 any person who paid any money to Defendants doing business as
4 General Supply Centers, Inc., at any time, in connection with the
5 offering for sale or sale of any good or service; **provided,**
6 **however,** that the Defendants or the Receiver may disclose such
7 identifying information to a law enforcement agency or as required
8 by any law, regulation or court order, and shall disclose such
9 identifying information to the Commission pursuant to this Order.

10 **IV. PROHIBITION ON TRANSFERRING BUSINESS INFORMATION**

11 **IT IS FURTHER ORDERED** that the Defendants and the Receiver, and
12 their agents, servants, employees, attorneys, corporate affiliates
13 or subsidiaries, corporate successors and assigns, and all persons
14 or entities directly or indirectly under their control, and all
15 other persons or entities in active concert or participation with
16 them who receive actual notice of this Order by personal service
17 or otherwise, and each such person, whether acting directly or
18 through any corporation, limited liability company, subsidiary,
19 division or other device, are hereby restrained and enjoined from
20 transferring or in any other way providing to any person (other
21 than a federal, state or local law enforcement agency or pursuant
22 to a court order), directly or indirectly, any books, records,
23 tapes, disks, accounting data, manuals, electronically stored
24 data, banking records, invoices, telephone records, ledgers,
25 payroll records, or other documents of any kind, including
26 information stored in computer-maintained form, in the possession,
27 custody or control of Defendants, or any trade secrets or
28 knowledge, whether recorded or otherwise, that are in any way

1 related to General Supply Centers, Inc., or any business
2 Defendants have owned or controlled individually or jointly that
3 has sold any nondurable office supplies.

4 **V. PROHIBITION ON COLLECTION OF ACCOUNTS RECEIVABLE**

5 **IT IS FURTHER ORDERED** that Defendants, the Receiver and the
6 Surety, and their agents, servants, employees, attorneys,
7 corporate affiliates or subsidiaries, corporate successors and
8 assigns, and all persons or entities directly or indirectly under
9 their control, and all other persons or entities in active concert
10 or participation with them who receive actual notice of this Order
11 by personal service or otherwise, and each such person, whether
12 acting directly or through any corporation, limited liability
13 company, subsidiary, division or other device, are hereby
14 restrained and enjoined from collecting or attempting to collect
15 on accounts arising from the shipment of nondurable office
16 supplies shipped by the Corporate Defendant after January 1, 1997,
17 to the date of this Stipulated Order.

18 **VI. MONETARY RELIEF**

19 A. The Individual Defendant in this matter, Mark E. Gershick, is
20 individually liable for the payment of monetary relief in the
21 amount of **Forty-One Thousand Five Hundred and Thirty Dollars**
22 **(\$41,530.00)** as monetary redress to customers of Defendants;

23 B. The Surety identified in, and a signatory to, this Order is
24 liable for the payment of monetary relief in the amount of **Thirty**
25 **Thousand Dollars (\$30,000.00)** as monetary redress to customers of
26 Defendants;

27 C. The Receiver shall allocate from the Receivership Estate in
28 this matter the amount of **Thirty-Eight Thousand Six Hundred and**

1 **Twenty-Four Dollars (\$38,624.00)** as monetary redress to customers
2 of Defendants;

3 D. The Individual Defendant and the Surety shall pay their
4 respective amounts prior to or concurrently with their execution
5 of this Stipulated Order, by cashier's or certified check made
6 payable to "Byron Z. Moldo, Receiver For General Supply Centers,
7 Inc." Said payments shall be sent to: Byron Z. Moldo, Receiver,
8 1925 Century Park East, 16th Floor, Los Angeles, CA 90067-2717;

9 E. By signing this Order, the individual defendant and the
10 Surety relinquish all dominion, control and title to their
11 respective monies transferred to the Receiver, and respectively
12 agree that all legal and equitable title to said monies is vested
13 in the Commission, for use according to the terms of this Order.
14 In the event that this Order is not approved by the Commission all
15 monies shall be returned to said defendants and receivership
16 estate (including any accrued interest actually earned, minus
17 expenses);

18 F. The Surety further agrees to hold the Receiver and the
19 Receivership Estate in this matter, and the Commission as
20 plaintiff in this matter, harmless from and against any and all
21 claims made by Marathon National Bank arising out of said bank's
22 turning over to the Receiver the sum of \$38,091.21 held by said
23 bank in the name of General Supply Centers, Inc. The Surety shall
24 defend and hold harmless the Receiver, the Receivership Estate and
25 any of its employees, officials and agents, and the Commission,
26 from liability in an amount not to exceed \$38,091.21 that arises
27 out of any claims, suits, actions, arbitration proceedings, or
28 administrative proceedings initiated by the aforementioned bank.

1 The defense of any such legal actions shall be tendered by the
2 Receiver and the Commission to the Surety for handling. The
3 Receiver, the Receivership Estate and the Commission agree to
4 fully cooperate in such defense and to comply with such reasonable
5 requests by the Surety for documents, participation and other
6 cooperation, to the extent permitted by law. *Provided however,*
7 that this hold harmless agreement has no effect on the pre-
8 existing indemnity obligation of General Supply Centers, Inc. to
9 the Surety.

10 G. Any and all funds paid or allocated pursuant to Paragraphs A
11 through C of Section VI shall be used by the Commission, the
12 Receiver and their agents for equitable relief, including but not
13 limited to the payment of customer claims pursuant to the Court's
14 order in this matter dated July 25, 2001, approving claims
15 of Defendants' customers totaling \$110,153.39. In the event that
16 such direct redress to consumers is wholly or partially
17 impracticable, or funds remain after redress is completed, the
18 Commission may apply any remaining funds for such equitable relief
19 (including consumer information remedies) as it determines to be
20 reasonably related to the Defendants' practices as alleged in the
21 Complaint. Any funds not used for such equitable relief shall be
22 deposited to the Treasury of the United States as disgorgement.
23 Defendants and Surety shall have no right to challenge the
24 Commission's choice of remedies under this Paragraph. The
25 Commission designates the Receiver in this matter as its agent for
26 administering consumer redress. The Receiver may co-mingle the
27 funds provided by defendant Mark E. Gershick and the Surety with
28 other the funds in his possession which have been allocated for

1 consumer redress pursuant to this Section. The expenses of
2 distribution and administration of the redress fund shall be paid
3 from the Receiver's general fund for estate administration, and
4 not from the monetary payments and allocations for equitable
5 relief, including consumer redress, described in this Section. The
6 Commission, the Defendants and the Surety acknowledge and agree
7 that this stipulated judgment for equitable monetary relief is
8 solely remedial in nature and is not a fine, penalty, punitive
9 assessment, or forfeiture;

10 H. Defendant Mark E. Gershick is hereby required, in accordance
11 with 31 U.S.C. § 7701, to furnish to the Commission his taxpayer
12 identifying number (social security number or employer
13 identification number), which shall be used for purposes of
14 collecting and reporting on any delinquent amount arising out of
15 his relationship with the government; and

16 I. Defendant Mark E. Gershick agrees that the facts as alleged
17 in the Complaint filed in this action shall be taken as true in
18 any subsequent litigation filed by the Commission to enforce its
19 rights pursuant to this order, including but not limited to a
20 nondischargeability complaint in any bankruptcy proceeding.

21 **VII. RECEIVERSHIP: POWERS, DUTIES, COMPENSATION AND BOND**

22 A. **IT IS FURTHER ORDERED** that the Receivership imposed in the
23 Stipulated Preliminary Injunction entered in this proceeding shall
24 be continued until such time as the Receiver has taken the
25 necessary steps to wind down the business of the Corporate
26 Defendant and the Receivership Defendant. Such necessary steps
27 shall include: affirming or canceling contracts; paying,
28 rejecting, compromising, setting off, or otherwise resolving

1 claims against the Corporate and Receivership Defendants
2 (including payment of customer claims pursuant to this order);
3 liquidating the Corporate and Receivership Defendants' assets;
4 dissolving the Corporate Defendant and the Receivership Defendant;
5 and taking such other steps as may be necessary to terminate the
6 Receivership efficiently. The Receiver is directed to provide a
7 report to the Court which details the steps taken to dissolve the
8 Receivership estate. The report shall include an inventory of the
9 Receivership estate and an accounting of the Receivership estate's
10 finances. Upon completion of the requirements of this Paragraph,
11 the Receiver shall move that this Court order termination of this
12 Receivership. At such time, the Receiver shall make a final
13 request for payment of compensation for the performance of duties
14 pursuant to the Preliminary Injunction entered in this proceeding
15 and the cost of actual out-of-pocket expenses incurred. Once the
16 Receiver has been compensated in an amount approved by the Court,
17 the Receiver shall transfer all remaining funds of the
18 Receivership Defendant to the Commission, for deposit to the
19 Treasurer of the United States as disgorgement. The Receiver shall
20 promptly return all other records of the Receivership defendant in
21 his possession relating to its financial operation to the
22 Individual Defendant so that he may prepare and file all necessary
23 income tax returns.

24 B. **IT IS FURTHER ORDERED** that the Receiver, and any counsel whom
25 the Receiver may select, are entitled to reasonable compensation
26 for the performance of duties pursuant to this Order, from the
27 assets now held by or in the possession or control of or which may
28 be received by General Supply Centers, Inc. in the amount or

1 amounts commensurate with their duties and obligations in the
2 circumstances, plus actual out-of-pocket expenses incurred by him
3 or them, in the performance and accomplishment of the Receiver's
4 duties, subject to Court approval.

5 C. **IT IS FURTHER ORDERED** that the Receiver, and all attorneys
6 and accountants hired by the Receiver to the extent herein
7 authorized, may apply by noticed motion for interim compensation
8 from the Receivership estate for the services rendered.

9 D. **IT IS FURTHER ORDERED** that the bond filed by the Receiver
10 with the Clerk of the Court pursuant to this Court's order of
11 December 7, 1999, in the amount of \$25,000, shall be continued for
12 the duration of the Receivership, conditioned that the Receiver
13 will well and truly perform the duties of his offices and duly
14 account for all monies and properties which may come into his
15 hands and abide by and perform all things which he shall be
16 directed to do.

17 **VIII. RECEIVERSHIP PROPERTY: ACQUISITION, MANAGEMENT AND**
18 **ACCOUNTING**

19 A. **IT IS FURTHER ORDERED** that the Individual Defendant, and any
20 other person or entity served with a copy of this Order, shall
21 forthwith or within such time permitted by the Receiver in
22 writing, deliver over to said Receiver:

- 23 1. possession and custody of all funds, assets, property
24 owned beneficially or otherwise, and all other assets
25 wherever situated, of General Supply Centers, Inc.;
- 26 2. possession and custody of all books and records of
27 accounts, all financial and accounting records, balance
28 sheets, income statements, bank records (including

1 monthly statements, cancelled checks, records of wire
2 transfers, and check registers), all client lists, title
3 documents and other papers of General Supply Centers,
4 Inc.;

5 3. possession and custody of all funds and other assets
6 belonging to members of the public now held by or on
7 behalf of General Supply Centers, Inc.;

8 4. all keys, combinations to locks, cards, codes and/or
9 passwords required to open or gain access to any of the
10 property or effects, and all monies in any bank
11 deposited to the credit, of the Corporate Defendant,
12 wherever situated.

13 **B. IT IS FURTHER ORDERED** that the Individual Defendant
14 forever waives, releases, discharges, and disclaims all right,
15 title, and interest in (1) all assets transferred to the
16 Receivership estate pursuant to this Order; and (2) all assets now
17 in the possession of or subject to the control of the Receiver.
18 None of the assets described in this subparagraph shall be
19 returned to the Individual Defendant, his successors, heirs, or
20 assigns, except as otherwise provided in this Order.

21 **C. IT IS FURTHER ORDERED** that in the event any person or entity
22 shall fail to deliver any property of the Corporate Defendant or
23 the Individual Defendant (as specified above) or any keys, deeds,
24 cards, codes or passwords, or other incidents of ownership of such
25 property, to the Receiver immediately, or within the time
26 specified by the Receiver in writing, the Receiver may file with
27 the Clerk of this Court an Affidavit of Non-Compliance respecting
28 the subject properties and, upon the filing of such affidavit, the

1 Clerk shall forthwith issue, without further process or demand,
2 such Writs of Possession or Sequestration or other equitable writs
3 as the Plaintiff or the Receiver may request respecting said
4 properties. Such writs shall authorize and direct either the
5 United States Marshal (pursuant to Local Rule 5.4), or any sheriff
6 or deputy sheriff of any county within the State of California
7 (pursuant to Federal Rule of Civil Procedure 4(c)(1)), to seize
8 such property or the keys, deeds, and other incidents of ownership
9 of such property and to deliver same to the Receiver.

10 D. **IT IS FURTHER ORDERED** that the Receiver, if he has not
11 already done so, is directed to open (an) interest-bearing bank
12 account(s) in Los Angeles County, as the designated depository or
13 depositories for the funds of General Supply Centers, Inc. All
14 funds coming into the hands of the Receiver shall be deposited
15 therein, and said funds shall be used by the Receiver to
16 accomplish the purposes of the Receivership as set forth herein,
17 or pursuant to any further order of the Court.

18 E. **IT IS FURTHER ORDERED** that the Defendants and their
19 respective officers, agents, servants, attorneys, employees,
20 independent contractors, and all persons or entities directly or
21 indirectly under the control, of any of them, or under common
22 control with them or any of them, and all persons or entities in
23 active concert or participation with them or any of them, are
24 enjoined and restrained from interfering in any way with the
25 functions of the Receiver and they, and each of them are ordered
26 and directed to assist and participate with the Receiver in
27 accomplishing the purposes of the Receivership, including: (a) to
28 see that all assets, contracts, contract rights, and all

1 receivables, and the rights thereto, are turned over to the
2 Receiver; and (b) to see that all persons who owe money to General
3 Supply Centers, Inc. are advised that all monies shall be paid to
4 the Receiver. Defendant Gershick, whether acting himself or by or
5 through others, is enjoined from excusing debts to General Supply
6 Centers, Inc., from taking, using or diverting the assets of
7 General Supply Centers, Inc., or from otherwise impairing or
8 disposing of the assets of General Supply Centers, Inc., whether
9 real, personal or mixed, and whether directly or indirectly, or in
10 any other fashion whatsoever.

11 F. **IT IS FURTHER ORDERED** that the Receiver may apply to this
12 Court for such further process against any person or entity as may
13 be required to compel the immediate delivery of all assets,
14 financial records, books, accounts, documents and other property
15 of General Supply Centers, Inc., which are hereby ordered to be
16 delivered to the Receiver.

17 G. **IT IS FURTHER ORDERED** that semi-annually the Receiver shall
18 continue to serve and file with the Court a report showing, (a)
19 the receipts and expenditures of the Receivership; and (b) all
20 acts and transactions performed in the Receivership.

21 H. **IT IS FURTHER ORDERED** that the Receiver shall keep a true and
22 accurate account of any and all receipts and expenditures which he
23 shall make as Receiver.

24 I. **IT IS FURTHER ORDERED** that the Receiver is hereby authorized
25 to expend reasonable sums from the assets of General Supply
26 Centers, Inc. to move and store any equipment, furniture, records,
27 files or other physical property of General Supply Centers, Inc.
28 which come into his possession.

1 IX. REDRESS TO DEFENDANTS' CUSTOMERS AND PAYMENT OF CREDITORS'
2 CLAIMS BY RECEIVER

3 A. IT IS FURTHER ORDERED that all of the Defendants' assets
4 presently in the Receiver's possession, and all assets transferred
5 to the Receiver pursuant to this Order, shall be used for
6 distribution to creditors of the Corporate Defendant and payment
7 of Receivership administrative expenses. The Receiver shall
8 submit to the Court for consideration, on notice to and after
9 consultation with Plaintiff Federal Trade Commission, a claims
10 procedure to distribute the Receivership assets (the "distribution
11 plan"). The distribution plan shall to the extent practicable
12 provide for, among other things: (1) payment in full of priority
13 claims against the Receivership estate as set forth in the
14 Receiver's determinations on claims in this matter approved by the
15 Court by order dated July 25, 2001, including but not limited to
16 wage and tax claims having priority by law, and of the Receiver's
17 fees and other expenses as approved by the Court; (2) payment in
18 full of customers' claims against the Receivership estate as set
19 forth in the Receiver's determinations on claims in this matter
20 approved by the Court by order dated July 25, 2001; (3) *pro rata*
21 payment of other claims against the Receivership estate as set
22 forth in the Receiver's determinations on claims in this matter
23 approved by the Court by order dated July 25, 2001, including but
24 not limited to payment to the Corporate Defendant's trade
25 creditors pursuant to contract and/or for provision of goods or
26 services, and to non-priority wage claimants, who have made claim
27 for payment pursuant to the Receiver's Claims Procedure; **provided**
28 **however**, that claims of the Individual Defendant pursuant to the

1 Receiver's Claims Procedure shall not be paid from the
2 Receivership estate. **Provided further**, that payments to customers
3 as provided for above, shall be supplemented up to the full amount
4 of each consumer's claim as previously approved by the Court by
5 order dated July 25, 2001, from the funds contributed to the
6 Receivership estate by the Individual Defendant and the Surety,
7 and allocated by the Receiver for such purpose pursuant to Section
8 VI of this Order. **Provided further**, that the administrative costs
9 of distribution pursuant to this paragraph shall be paid from the
10 administrative expenses of the Receivership estate. **Provided**
11 **further**, that Plaintiff Federal Trade Commission may propose to
12 this Court alternative terms for the distribution plan in the
13 event the Receiver and the Plaintiff do not agree after
14 consultation.

15 B. **IT IS FURTHER ORDERED** that any funds that are not distributed
16 to priority claimants, distributed to customers in the form of
17 redress, distributed to trade creditors or non-priority wage
18 claimants, or used to pay administrative costs associated with
19 Receivership estate shall be paid over to the United States
20 Treasury as an equitable disgorgement remedy. **Provided further**,
21 that if the Receivership assets are insufficient to justify a
22 distribution plan for customer redress, the Federal Trade
23 Commission or the Receiver may request Court approval to pay some
24 or all of the available monies to the United States Treasury as an
25 equitable disgorgement remedy. **Provided further**, that none of the
26 assets turned over to the Receiver pursuant to this Order shall be
27 returned to the Defendants, except as otherwise provided in this
28 Order.

1 C. **IT IS FURTHER ORDERED** that customers and other creditors
2 shall be required to release and discharge the settling
3 Receivership Defendant from all claims that arise from the
4 business of General Supply Centers, Inc. as a condition of
5 receiving payment from the Receivership estate.

6 D. **IT IS FURTHER ORDERED** that Defendants or Surety shall have no
7 right to object to any aspect of the distribution plan(s)
8 submitted by the Receiver and/or the Plaintiff Federal Trade
9 Commission pursuant to this Order. *Provided further*, that
10 Defendants or Surety also shall have no right to object to the
11 disposition of the assets transferred to the Receiver pursuant to
12 Paragraph VI of this Order.

13 E. **IT IS FURTHER ORDERED** that Defendants shall provide full and
14 complete cooperation to the Receiver and the Commission and its
15 agents in collecting information relevant to the preparation of
16 the distribution plan described in this Order.

17 **X. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

18 **IT IS FURTHER ORDERED** that, within five (5) business days after
19 entry of this Order, the Individual Defendant shall submit to the
20 Commission a truthful sworn and notarized statement, in the form
21 shown on Appendix 1.

22 **XI. LIFT OF ASSET FREEZE**

23 **IT IS FURTHER ORDERED** that the freeze of Defendants's assets,
24 imposed in the Stipulated Preliminary Injunction entered in this
25 proceeding, shall be lifted upon the entry of this Order and
26 Defendants' properly transferring assets in compliance with this
27 Order.

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XII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, the Individual Defendant, in connection with any and every business entity of which he is a majority owner, or which he otherwise manages or controls, is hereby restrained and enjoined from failing to create, and to retain, in a location under his control, for a period of three (3) years following the date of such 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 accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, 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. The businesses subject to this Paragraph shall retain such records for any terminated employee for a period of three (3) years following the date of termination;

C. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, for all consumers to whom such business has sold, invoiced or shipped any goods or services, or from whom such business accepted money or other items of value;

D. Records that reflect, for every consumer complaint or refund request, whether received directly or indirectly or through any

1 third party:

- 2 1. the consumer's name, address, telephone number and the
3 dollar amount paid by the consumer;
- 4 2. the written complaint or refund request, if any, and the
5 date of the complaint or refund request;
- 6 3. the basis of the complaint, including the name of any
7 salesperson complained against, and the nature and
8 result of any investigation conducted concerning any
9 complaint;
- 10 4. each response and the date of the response;
- 11 5. any final resolution and the date of the resolution; and
- 12 6. in the event of a denial of a refund request, the
13 reason for the denial; and

14 E. Copies of all sales scripts, training materials,
15 advertisements, or other marketing materials utilized; provided
16 that copies of all sales scripts, training materials,
17 advertisements, or other marketing materials utilized shall be
18 retained for three (3) years after the last date of dissemination
19 of any such materials.

20 XIII. COMPLIANCE REPORTING

21 **IT IS FURTHER ORDERED** that, in order that compliance with the
22 provisions of this Order may be monitored, for a period of five
23 (5) years commencing with the date of entry of this Order,
24 Defendant Michael E. Gershick shall notify the Commission of the
25 following:

- 26 A. Any change of residence, mailing address or telephone number
27 within ten (10) days of the date of such change;
- 28 B. Any change in employment status—including self-employment

1 within ten (10) business days of such change; such notice shall
2 include the name and address of each business with which such
3 Defendant is affiliated or employed, a statement of the nature of
4 the business, and a statement of Defendants's duties and
5 responsibilities in connection with the business; and

6 C. Any proposed change in the structure of any business entity
7 owned or controlled by such Defendant, such as creation,
8 incorporation, dissolution, assignment, sale, creation or
9 dissolution of subsidiaries, or any other changes that may affect
10 compliance obligations arising out of this Order within thirty
11 (30) days prior to the effective date of any proposed change;
12 **provided, however,** that with respect to any proposed change in
13 structure of such business about which Defendant learns less than
14 thirty (30) days prior to the date such action is to take place,
15 he shall notify the Commission as soon as practicable after
16 learning of such proposed change.

17 **XIV. ACCESS TO BUSINESS PREMISES**

18 **IT IS FURTHER ORDERED** that, for a period of five (5) years from
19 the date of entry of this Order, for the purpose of further
20 determining compliance with this Order, Defendant Gershick shall
21 permit representatives of the Commission, within three (3)
22 business days of receipt of written notice from the Commission:

23 A. Access during normal business hours to any office, or
24 facility storing documents, of any business where Defendant
25 Gershick is the majority owner of the business or directly or
26 indirectly manages or controls the business. In providing such
27 access, Defendant Gershick shall permit representatives of the
28 Commission to inspect and copy all documents relevant to any

1 matter contained in this Order; and shall permit Commission
2 representatives to remove documents relevant to any matter
3 contained in this Order for a period not to exceed five (5)
4 business days so that the documents may be inspected, inventoried,
5 and copied; and

6 B. To interview the officers, directors, and employees,
7 including all personnel involved in responding to consumer
8 complaints or inquiries, and all sales personnel, whether
9 designated as employees, consultants, independent contractors or
10 otherwise, of any business to which Paragraph A of this Section
11 applies, concerning matters relating to compliance with the terms
12 of this Order. The person interviewed may have counsel present.
13 *Provided* that, upon application of the Commission and for good
14 cause shown, the Court may enter an *ex parte* order granting
15 immediate access to all premises at which Defendant Moreno
16 conducts business or stores documents, for the purposes of
17 inspecting and copying all documents relevant to any matter
18 contained in this Order.

19 **XV. FTC'S AUTHORITY TO MONITOR COMPLIANCE**

20 **IT IS FURTHER ORDERED** that the Commission is authorized to
21 monitor Defendant's compliance with this Order by all lawful
22 means—including, but not limited to, the following:

23 A. The Commission is authorized—without further leave of this
24 Court, but on notice to counsel for Defendants as required by the
25 Federal Rules of Civil Procedure—to obtain discovery from any
26 person in the manner provided by Chapter V of the Federal Rules of
27 Civil Procedure, Fed. R. Civ. P. 26-37, including the use of
28 compulsory process pursuant to Federal R. Civ. P. 45, for the

1 purpose of investigating compliance with any provision of this
2 Order;

3 B. The Commission is authorized without the necessity of prior
4 notice to use representatives posing as consumers to Defendants,
5 his employees, or any other entity managed or controlled in whole
6 or in part by Defendant;

7 C. Nothing in this Order shall limit the Commission's lawful use
8 of compulsory process, pursuant to Sections 9 and 20 of the FTC
9 Act, 15 U.S.C. §§ 49, 57b-1, for the purpose of investigation
10 compliance with this Order or Section 5 of the FTC Act, 15 U.S.C.
11 § 45.

12 **XVI. ORDER DISTRIBUTION**

13 **IT IS FURTHER ORDERED** that, for a period of five (5) years from
14 the date of entry of this Order, the Individual Defendant shall:

15 A. Immediately provide a copy of this Order to, and obtain a
16 signed and dated acknowledgment of receipt of the same, from each
17 officer, director and managing agent in any company or other
18 business entity directly or indirectly owned, operated or
19 controlled by said Defendant; and

20 B. Maintain, and upon reasonable notice make available to the
21 FTC's representatives, the original and dated acknowledgments of
22 the receipts required by this Paragraph of this Order.

23 **XVII. NOTICES**

24 **IT IS FURTHER ORDERED** that for purposes of this Order,
25 Defendants shall; unless otherwise directed by the Commission's

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1 authorized representatives, mail all written notifications to the
2 Commission to:

3 REGIONAL DIRECTOR
4 Federal Trade Commission
5 Western Region-San Francisco
6 901 Market Street, Suite 570
7 San Francisco, CA 94103
8 Re: FTC v. General Supply Centers, Inc., et al.

7 **XVIII. WAIVER OF CLAIMS**

8 Defendants waive all claims under the Equal Access to Justice
9 Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121,
10 110 Stat. 847, 863-64 (1996), and all rights to seek appellate
11 review or otherwise challenge or contest the validity of this
12 Order, or the temporary or preliminary orders entered in this
13 proceeding, and further waive and release any claim they may have
14 against the FTC, the Receiver, or their employees, agents, or
15 representatives.

16 **XIX. INDEPENDENCE OF OBLIGATIONS**

17 **IT IS FURTHER ORDERED** that the expiration of any requirements
18 imposed by this Order shall not affect any other obligation
19 arising under this Order.

20 **XX. COSTS AND ATTORNEYS FEES**

21 **IT IS FURTHER ORDERED** that each party to this Order bear its own
22 costs and attorneys fees incurred in connection with this action.

23 **XXI. CONTINUED JURISDICTION**

24 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction
25 of this matter for all purposes.

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XXII. ENTRY BY CLERK

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order.

IT IS SO ORDERED.

Dated: 4-16-03, 2002

Margaret M. Morrow
MARGARET M. MORROW
United States District Judge

SO STIPULATED:

Dated: March 25, 2002

FEDERAL TRADE COMMISSION

Gerald E. Wright
BY: GERALD E. WRIGHT
Attorney for Plaintiff

Dated: 10-22, 2002

Mark E. Gershick
MARK E. GERSHICK, individually

APPROVED AS TO FORM AND CONTENT:

Dated: 11/7, 2002

Alan B. Pick
ALAN B. PICK
Pick & Boydston, LLP
Attorney for Defendant Mark E. Gershick, individually

Dated: 11/1, 2002

GENERAL SUPPLY CENTERS, INC.,

Byron Z. Moldo
BY: BYRON Z. MOLDO
Receiver for General Supply Centers, Inc.

I, Mark E. Gershick, do not object to entry of this order with respect to General Supply Centers, Inc.

Mark E. Gershick
MARK E. GERSHICK, individually
~~and as an officer of General Supply Centers, Inc.~~

1 Dated: Nov. 15, 2002

AMERICAN MOTORISTS INSURANCE
COMPANY,

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3 BY: Susan D. Neff
4 SUSAN D. NEFF
5 Senior Surety Counsel
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1 [APPENDIX 1]

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3
4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE CENTRAL DISTRICT OF CALIFORNIA
6 WESTERN DIVISION
7

8	FEDERAL TRADE COMMISSION,)	Case No. CV-99-12827 MMM (RZx)
9	Plaintiff,)	
10	v.)	DEFENDANT MICHAEL E. GERSHICK'S
11	GENERAL SUPPLY CENTERS, INC.)	AFFIDAVIT RE ACKNOWLEDGMENT OF
12	a corporation, and)	SERVICE OF STIPULATED FINAL
13	MARK E. GERSHICK,)	JUDGMENT AND ORDER
14	individually and as an)	
15	officer of General Supply)	
16	Centers, Inc.)	
	Defendants.)	

17 I, Mark E. Gershick, hereby declare as follows:

18 1. I am a Defendant in the action FTC v. General Supply Centers,
19 Inc., et al. (United States District Court, Central District of
20 California, CV-99-12827 MMM (RZx). My current residence address
21 is _____ . I am a citizen of
22 the United States and over the age of eighteen. I have personal
23 knowledge of the facts set forth in this Affidavit.

24 2. I agreed to entry of a Stipulated Final Judgment and Order
25 ("Stipulated Order") against me to settle the charges in the
26 Commission's Complaint. I read the provisions of the Stipulated
27 Order, including Attachment A (the Telemarketing Sales Rule, 16
28

1 [APPENDIX 1]

2 C.F.R. Part 310) before signing it. I understand all the
3 provisions of the Stipulated Order. By signing the Stipulated
4 Order I agreed to be bound by those provisions.

5 3. On _____, 20____, I received a copy of the
6 Stipulated Order which was signed by a United States District Judge
7 and entered by the Court on _____, 20____. A true
8 and correct copy of the Stipulated Order that I received, including
9 Attachment A (the Telemarketing Sales Rule), is appended to this
10 affidavit. The Stipulated Order, including Attachment A (the
11 Telemarketing Sales Rule), was _____ pages in length. I reviewed
12 the document and confirmed it was the document I had previously
13 signed.

14 I declare under penalty of perjury under the laws of the United
15 States that the foregoing is true and correct. Executed on
16 _____, 200____, at _____, California.

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19 _____
MARK E. GERSHICK

20 State of _____, City of _____

21 Subscribed and sworn to before me

22 this _____ day of _____, 200____.

23
24 _____
25 Notary Public
My Commission Expires:
26 _____
27
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