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15
 16 UNITED STATES DISTRICT COURT
 17 FOR THE CENTRAL DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,)
 19 Plaintiff,)
 20 v.)
 21 GREAT PACIFIC VENDING CORP.,)
 22 a California corporation; and)
 23 COLLIE WAINER, individually,)
 and as an officer of the)
 24 corporation,)
 25 Defendants.)

NO. CV

00-01588

GAF
ALJX

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 27 COMPLAINT FOR CIVIL PENALTIES, CONSUMER REDRESS,
 28 PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

1 Plaintiff, the United States of America, acting upon
2 notification and authorization to the Attorney General by the
3 Federal Trade Commission ("FTC" or "the Commission"), pursuant to
4 Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"),
5 15 U.S.C. § 56(a)(1), for its complaint alleges:

6 1. Plaintiff brings this action under Sections 5(a),
7 5(m)(1)(A), 13(b), 16(a) and 19 of the FTC Act, 15 U.S.C.
8 §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b, to secure civil
9 penalties, consumer redress, a permanent injunction and other
10 equitable relief for defendants' violations of the FTC's Trade
11 Regulation Rule entitled "Disclosure Requirements and
12 Prohibitions Concerning Franchising and Business Opportunity
13 Ventures" (the "Franchise Rule" or the "Rule"), 16 C.F.R.,
14 Part 436, and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

15 **JURISDICTION AND VENUE**

16 2. This Court has subject matter jurisdiction over this
17 action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355,
18 and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a) and 57b. This action
19 arises under 15 U.S.C. § 45(a).

20 3. Venue in the United States District Court for the
21 Central District of California is proper under 28 U.S.C.
22 §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

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DEFENDANTS

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2 4. Defendant Great Pacific Vending Corp. ("GPV"), a
3 California corporation with its principal place of business at
4 731 Ceres Avenue, Los Angeles, California 90021, promotes and
5 sells vending machine business ventures. GPV transacts or has
6 transacted business in the Central District of California.

7 5. Defendant Collie Wainer is the President of GPV. In
8 connection with the matters alleged herein, he transacts or has
9 transacted business in the Central District of California. At
10 all times material to this complaint, acting alone or in concert
11 with others, he has formulated, directed, controlled or
12 participated in the acts and practices of the corporate
13 defendant, including the acts and practices set forth in this
14 complaint.

COMMERCE

15
16 6. At all times relevant to this complaint, the
17 defendants have maintained a substantial course of trade in the
18 offering for sale and sale of vending machine business ventures,
19 in or affecting commerce, as "commerce" is defined in Section 4
20 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

21
22 7. The defendants offer and sell vending machine business
23 ventures to prospective purchasers. The defendants promote
24 their business ventures through classified ads in newspapers.

25 8. In their advertisements, defendants make
26 representations about the earnings potential of their business
27 venture, and urge consumers to call defendants' toll-free
28

1 telephone number to learn more about the opportunity. For
2 example, defendants' classified newspaper advertisements have
3 stated:

4 VENDING Buy on locations.
5 \$89.95 per month. \$2975 down.
6 Big \$\$ profits. ... 415-392-2032

7 9. Consumers who call the defendants' toll-free telephone
8 number are ultimately connected to defendants, or their
9 employees or agents, who make representations about the earnings
10 potential of the business venture and the actual earnings of
11 prior purchasers, without giving prospective purchasers access
12 to the information they need to evaluate the claims. For
13 example, the defendants or their employees or agents have
14 represented that one of their vending machines typically
15 generates a profit of \$300 - \$500 per month.

16 **THE FRANCHISE RULE**

17 10. The business ventures sold by the defendants are
18 franchises, as "franchise" is defined in Section 436.2(a)(1)(ii),
19 (a)(2) and (a)(5) of the Franchise Rule, 16 C.F.R.
20 § 436.2(a)(1)(ii), (a)(2) and (a)(5).

21 11. The Franchise Rule requires a franchisor to provide
22 prospective franchisees with a complete and accurate basic
23 disclosure document containing twenty categories of information,
24 including information about the litigation and bankruptcy
25 history of the franchisor and its principals, the terms and
26 conditions under which the franchise operates, and information
27 identifying existing franchisees. 16 C.F.R. § 436.1(a)(1) -
28 (a)(20). The pre-sale disclosure of this information required

1 by the Rule enables a prospective franchisee to contact prior
2 purchasers and take other steps to assess the potential risks
3 involved in the purchase of the franchise.

4 12. The Franchise Rule additionally requires: (1) that
5 the franchisor have a reasonable basis for any oral, written, or
6 visual earnings or profit representations ("earnings claims") it
7 makes to a prospective franchisee, 16 C.F.R. § 436.1(b)(2),
8 (c)(2) and (e)(1); (2) that the franchisor provide to
9 prospective franchisees an earnings claim document containing
10 information substantiating any earnings claims it makes, 16
11 C.F.R. § 436.1(b)-(e); and (3) that the franchisor, in immediate
12 conjunction with any generally disseminated earnings claim,
13 disclose additional information including the number and
14 percentage of prior purchasers known by the franchisor to have
15 achieved the same or better results, 16 C.F.R. § 436.1(e)(3)-
16 (4).

17 13. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C.
18 § 57a(d)(3), and 16 C.F.R. § 436.1, violations of the Franchise
19 Rule constitute unfair or deceptive acts or practices in or
20 affecting commerce, in violation of Section 5(a) of the FTC Act,
21 15 U.S.C. § 45(a).

22 **VIOLATIONS OF THE FRANCHISE RULE**

23 **COUNT ONE**

24 14. Paragraphs 1 through 13 are incorporated herein by
25 reference.

26 15. In connection with the offering of franchises, as
27 "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a),

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1 defendants have failed to provide prospective franchisees with
 2 accurate and complete basic disclosure documents within the time
 3 period required by the Franchise Rule, thereby violating Section
 4 436.1(a) of the Rule, 16 C.F.R. § 436.1(a), and Section 5 of the
 5 FTC Act, 15 U.S.C. § 45.

COUNT TWO

6
 7 16. Paragraphs 1 through 13 are incorporated herein by
 8 reference.

9 17. In connection with the offering of franchises, as
 10 "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a),
 11 defendants or their employees or agents have made earnings
 12 claims within the meaning of the Rule, 16 C.F.R. § 436.1(b)-(d),
 13 but have failed to provide prospective franchisees with earnings
 14 claim documents within the time period required by the Franchise
 15 Rule, have failed to have a reasonable basis for such claims at
 16 the times they were made, or have failed to disclose the
 17 information required by the Rule in immediate conjunction with
 18 such claims, thereby violating Sections 436.1(b)-(d) of the
 19 Rule, 16 C.F.R. § 436.1(b)-(d), and Section 5 of the FTC Act, 15
 20 U.S.C. § 45.

CONSUMER INJURY

21
 22 18. Consumers in the United States have suffered and will
 23 suffer substantial monetary loss as a result of defendants'
 24 violations of the Franchise Rule and the FTC Act. Absent
 25 injunctive relief by this Court, defendants are likely to
 26 continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

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2 19. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
3 empowers this Court to grant injunctive and other ancillary
4 relief, including consumer redress, disgorgement and
5 restitution, to prevent and remedy any violations of any
6 provision of law enforced by the Federal Trade Commission.

7 20. Section 5(m)(1)(A) of the FTC Act, § 45(m)(1)(A), as
8 modified by Section 4 of the Federal Civil Penalties Inflation
9 Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as
10 implemented by 16 C.F.R. § 1.98(d) (1997), authorizes this Court
11 to award civil penalties of not more than \$11,000 for each
12 violation of the Franchise Rule occurring after November 20,
13 1996. The defendants' violations of the Rule were committed
14 after that date and with the knowledge required by Section
15 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

16 21. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes
17 this Court to grant such relief as the Court finds necessary to
18 redress injury to consumers or other persons resulting from
19 defendants' violations of the Franchise Rule, including the
20 rescission and reformation of contracts, and the refund of
21 money.

22 22. This Court, in the exercise of its equitable
23 jurisdiction, may award ancillary relief to remedy injury caused
24 by the defendants' violations of the Franchise Rule and the FTC
25 Act.

PRAYER FOR RELIEF

1
2 WHEREFORE, plaintiff requests that this Court, as
3 authorized by Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the FTC
4 Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b) and 57b, and
5 pursuant to its own equitable powers:

6 1. Enter judgment against the defendants and in favor of
7 the plaintiff for each violation alleged in this complaint;

8 2. Permanently enjoin the defendants from violating the
9 Franchise Rule and the FTC Act;

10 3. Award plaintiff monetary civil penalties from each
11 defendant for every violation of the Franchise Rule;

12 4. Award such relief as the Court finds necessary to
13 redress injury to consumers resulting from the defendants'
14 violations of the Franchise Rule and the FTC Act, including but
15 not limited to, rescission of contracts, the refund of monies
16 paid, and the disgorgement of ill-gotten gains; and

17 5. Award plaintiff the costs of bringing this action, as
18 well as such other and additional relief as the Court may
19 determine to be just and proper.

20
21 DATED: February 3, 2000

22 OF COUNSEL:
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26 Federal Trade Commission
27 Washington, D.C. 20580

28 CRAIG TREGILLUS
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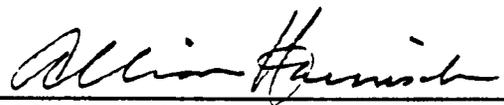
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