

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

\_\_\_\_\_) )  
 FEDERAL TRADE COMMISSION, ) )  
 ) )  
 Plaintiff, ) )  
 ) )  
 v. ) )  
 ) )  
 ESSEX MARKETING GROUP, INC., et al. ) )  
 a New York corporation; ) )  
 ) )  
 \_\_\_\_\_) )

CIV. NO. 02-3415 (TCP)

**(Proposed) STIPULATED FINAL JUDGMENT AND ORDER  
FOR PERMANENT INJUNCTION AND OTHER EQUITABLE  
RELIEF AGAINST DEFENDANT HENRY SANCHEZ**

This matter comes before this Court on Stipulation of Plaintiff Federal Trade Commission (“FTC” or “Commission”) and Defendant Henry Sanchez.

Plaintiff Federal Trade Commission commenced this action by filing its Complaint for a permanent injunction and other relief in this matter on June 12, 2002, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b. The Complaint charged the Defendants with violations of Section 5 of the FTC Act, 15 U.S.C. § 45, and the Federal Trade Commission Trade Regulation Rule entitled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,” formerly codified at 16 C.F.R. Part 436. This Rule has been replaced by separate rules governing franchises and business opportunities, as set forth in the definitions below.

The Commission, by and through its counsel, and Defendant Henry Sanchez, by and through his counsel, have agreed to the entry of this Stipulated Final Judgment and Permanent

Injunction Order (“Order”) by this Court in order to resolve all matters of dispute between them in this action.

THEREFORE, the Commission and the Defendant Henry Sanchez having requested this Court to enter this Order, and finding good cause therefore, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and over all parties herein.
2. Venue in the Eastern District of New York is proper.
3. The Complaint states a claim upon which relief may be granted against the Defendant Sanchez under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, and the Business Opportunity Rule, 16 C.F.R. Part 437.
4. The acts and practices of Defendant Sanchez were in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. The FTC and Defendant Sanchez stipulate and agree to this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the complaint to the date of entry of this Order. Defendant Sanchez does not admit any of the allegations set forth in the Complaint, other than jurisdictional facts.
6. Defendant Sanchez waives all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L.104-121, 110 Stat 847, 863-64 (1996).
7. Entry of this Order is in the public interest.

## ORDER

### DEFINITIONS

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

1. “Assets” means any legal or equitable interest in, right to, claim to, or expectation to receive, any real or personal property, including, but not limited to, chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, lines of credit, all cash, funds, and other things of value, wherever located.
2. “Business Opportunity Rule” means the FTC Trade Regulation Rule titled “Disclosure Requirements and Prohibitions concerning Business Opportunities,” 61 Fed. Reg. 15444 at 15563-15571 (Mar. 30, 2007), codified at 16 C.F.R. Part 437, or as it may be amended.
3. “Business Venture” means any written or oral business arrangement, however denominated, that is covered by the Business Opportunity Rule or the Franchise Rule, or that consists of the payment of any consideration in exchange for:
  - a. the right or means to offer, sell, or distribute goods or services (regardless of whether identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and
  - b. more than nominal assistance, or the promise of more than nominal assistance, to any person or entity (including, but not limited to, referrals to any persons providing or promising location services), in connection with or incident to: (1) the establishment, maintenance, or operation of a new business, or (2) the entry by an existing business into a new line or type of business.

4. "Corporate Defendant" means Manhattan Vending, LLC and its successors and assigns.
5. "Individual Defendant" means Henry Sanchez.
6. "Defendants" means the Individual Defendant and the Corporate Defendant, individually, collectively, or in any combination.
7. "Franchise" is defined as that term is defined in the Franchise Rule at 16 C.F.R. Part 436.1(h), or as the Franchise Rule may be amended.
8. "Franchise Rule" means the FTC Trade Regulation Rule titled "Disclosure Requirements and Prohibitions Concerning Franchising," 61 Fed. Reg.15444 at 15544-15563 (Mar. 30, 2007), codified at 16 C.F.R. Part 436, or as it may be amended.
9. "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.
10. "Plaintiff" means the Federal Trade Commission;
11. "Telemarketing," "telemarketer," "seller," and "material" are defined as those terms are defined in Section 310.2 of the Telemarketing Sales Rule, 16 C.F.R. § 310.2.

**I. PROHIBITED BUSINESS ACTIVITIES**

**IT IS FURTHER ORDERED** that, in connection with the advertising, marketing, promoting, offering for sale, or sale of any Business Venture or any good or service whatsoever, the Individual Defendant and his officers, agents, employees, and corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from:

A. Making or assisting or facilitating others in making, either expressly or by implication, any false or misleading representation, either orally or in writing, of any material fact, including but not limited to the following:

1. the income, profits, or sales volume likely to be achieved;
2. that any Defendant will deliver or cause to be delivered vending machines or any other vending goods or services within the agreed upon time; and
3. the conditions under which purchasers may cancel their contracts.

B. Violating or assisting others to violate any provisions of the Franchise Rule or Business Opportunity Rule, 16 C.F.R. Parts 436 and 437; including, but not limited to:

1. failing to provide a prospective franchisee or business opportunity purchaser with a complete, accurate, and up-to-date disclosure document as prescribed by the Franchise Rule or the Business Opportunity Rule;
2. failing to provide each prospective franchisee or business opportunity purchaser with complete and accurate documentation for any earnings or financial performance representations, as required by the Franchise Rule or the Business Opportunity Rule;
3. failing to have a reasonable basis for any earnings or financial performance representation at the time such representation is made, as required by the Franchise Rule or the Business Opportunity Rule; or
4. failing to disclose in a clear and conspicuous manner, in immediate conjunction with any earnings or financial performance representation, that material which constitutes a reasonable basis for the earnings or financial performance representation is available to a prospective

franchisee or business opportunity purchaser, as required by the Franchise Rule or the Business Opportunity Rule.

*Provided, however,* that if the Commission promulgates a trade regulation rule or rules that modify or supersede the Business Opportunity Rule or the Franchise Rule, in whole or part, the Individual Defendant shall comply fully and completely with all applicable requirements thereof on and after the effective date of any such rule.

## II. MONETARY JUDGMENT

**IT IS FURTHER ORDERED** that:

A. Judgment in the amount of \$250,000.00 is hereby entered in favor of the Commission, for equitable monetary relief and for paying any attendant expenses of administering any redress fund. No portion of any payments under the Judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment, or forfeiture;

B. Immediately upon entry of this Order, the Individual Defendant's attorney, Malcolm S. Taub shall wire transfer the \$250,000.00 currently held in escrow by Malcolm S. Taub, LLP to the Federal Trade Commission;

C. Any funds paid pursuant to this Section shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, redress of consumer injury and any attendant expenses for the administration of such equitable relief. If the Commission determines, in its sole discretion, that direct redress of consumer injury is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be

deposited to the United States Treasury as disgorgement. The Individual Defendant shall have no right to challenge the Commission's choice of remedies under this Section;

D. The Individual Defendant shall also furnish to the Commission, in accordance with 31 U.S.C. § 7701, his taxpayer identification numbers (Social Security number, employer identification number, or Revenue Canada identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of the Individual Defendant's relationship with the government;

E. The Individual Defendant is further required to provide the Commission with clear, legible and full-size photocopies of all valid driver's licenses he possesses, which will be used for collection, reporting, and compliance purposes, within ten (10) days of the Court's entry of this Order;

F. The Individual Defendant relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. The Individual Defendant shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise; and

G. The Individual Defendant agrees that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case. The Individual Defendant further stipulates and agrees that the facts alleged in the Complaint establish all elements necessary to sustain an action pursuant to, and that this Order shall have collateral estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A).

**III. LIFTING OF ASSET FREEZE**

**IT IS FURTHER ORDERED** that, upon payment of the monetary judgment pursuant to the Section titled "Monetary Judgment," the freeze of the Individual Defendant's assets, as ordered in the Preliminary Injunction Order signed by this Court on March 5, 2003 and entered by this Court on March 10, 2003, shall be dissolved.

**IV. ENFORCEMENT OF CONTRACTS**

**IT IS FURTHER ORDERED** that the Individual Defendant and his officers, agents, employees, and corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from demanding payment on or enforcing or threatening to enforce any contract or agreement for the sale of a Business Venture entered into by Defendants prior to the effective date of this Order.

**V. CUSTOMER LISTS**

**IT IS FURTHER ORDERED** that the Individual Defendant and his officers, agents, employees, and corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are permanently enjoined and restrained 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 customer of the Defendants who paid any money to any Defendant at any time prior to entry of this Order in connection with the advertising, marketing, promoting, offering for sale, or sale of any Business Venture, or assisting others engaged in the

same; *provided, however*, that the Individual Defendant may disclose such identifying information (i) to a law enforcement agency, or (ii) as required or authorized by any law, regulation, or court order.

## **VI. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Individual Defendant shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in Individual Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69; and
2. posing as consumers and suppliers to the Individual Defendant, his employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice; and

C. The Individual Defendant shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee

who has agreed to such an interview, relating in any way to any conduct subject to this Order.

The person interviewed may have counsel present.

*Provided however*, that 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, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C.

§ 45(a)(1)).

## VII. COMPLIANCE REPORTING

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

- A. For a period of three (3) years from the date of entry of this Order:
  1. The Individual Defendant shall notify the Commission of the following:
    - a. Any changes in the Individual Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
    - b. Any changes in the Individual Defendant's employment status (including self-employment), and any change in the Individual Defendant's ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that the Individual Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed

description of the Individual Defendant's duties and responsibilities in connection with the business or employment; and

c. Any changes in the Individual Defendant's name or use of any aliases or fictitious names;

2. The Individual Defendant shall notify the Commission of any changes in structure of the Corporate Defendant or any business entity that any Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the business entity about which the Individual Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of three (3) years, the Individual Defendant shall provide a written report to the FTC, which is true and accurate and 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. the Individual Defendant's then-current residence address, mailing addresses, and telephone numbers;
2. the Individual Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that the Individual Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of the Individual Defendant's duties and responsibilities in connection with the business or employment;
3. Any other changes required to be reported under Subsection A of this Section; and
4. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order."

C. The Individual Defendant shall notify the Commission of the filing of a bankruptcy petition by the Individual Defendant or the Corporate Defendant within fifteen (15) days of filing.

D. For the purposes of this Order, the Individual Defendant shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Room NJ-2122  
Washington, D.C. 20580  
Re: FTC v. Essex Marketing, et al. Civil Action No. 02-3415

**Provided** that, in lieu of overnight courier, the Individual Defendant may send such reports or notifications by first-class mail, but only if the Individual Defendant

contemporaneously sends an electronic version of such report or notification to the Commission at: [DEBrief@ftc.gov](mailto:DEBrief@ftc.gov).

E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with the Individual Defendant. *Provided however*, nothing in this provision shall limit the Commission's authority to pose as a consumer or supplier pursuant to Subsection B.2 of the Section titled "Compliance Monitoring."

#### **VIII. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of this Order, the Individual Defendant, in connection with any business where the Individual Defendant is the majority owner, or directly or indirectly manages or controls the business, and his agents, employees, officers, corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, is hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel 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;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, Franchise or Business Opportunity Disclosure Documents, Earnings Claim Disclosure Documents, advertisements, or other marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

#### **IX. DISTRIBUTION OF ORDER**

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, the Individual Defendant shall deliver copies of the Order as directed below:

A. **Individual Defendant as Control Person:** For any business that the Individual Defendant controls, directly or indirectly, or in which the Individual Defendant has a majority ownership interest, the Individual Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change

in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

**B. Individual Defendant as employee or non-control person:** For any business where the Individual Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, the Individual Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

**C.** The Individual Defendant must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

**X. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**IT IS FURTHER ORDERED** that the Individual Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

**XI. RETENTION OF JURISDICTION**

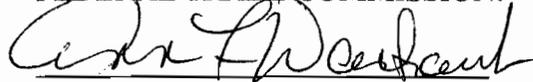
**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

STIPULATED AND AGREED TO BY:

**PLAINTIFF:**

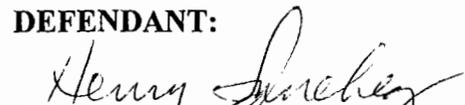
WILLIAM BLUMENTHAL  
GENERAL COUNSEL

LEONARD L. GORDON  
REGIONAL DIRECTOR  
NORTHEAST REGION  
FEDERAL TRADE COMMISSION:

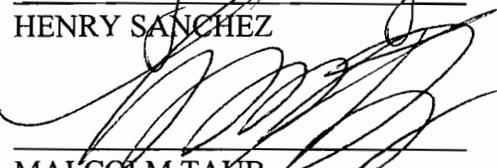
  
ANN F. WEINTRAUB

DATED: 12/17/08

**DEFENDANT:**

  
HENRY SANCHEZ

DATED: 10/20/08

  
MALCOLM TAUB  
ATTORNEY FOR DEFENDANT  
HENRY SANCHEZ

DATED: 10/20/08

SO ORDERED, this 23 day of December, 2008, at 11 .m.

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THOMAS C. PLATT  
UNITED STATES DISTRICT COURT JUDGE