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11

12 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
13

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v .

17 NETWORK SERVICES DEPOT, INC.;
18 NETWORK MARKETING, LLC, dba
Network Services Marketing;
19 NET DEPOT, INC.;
20 NETWORK SERVICES DISTRIBUTION,
INC.;

21 SUNBELT MARKETING, INC.;

22 CHARLES V. CASTRO;
ELIZABETH L. CASTRO; and
GREGORY HIGH;

23 Defendants; and

24 PHYLLIS WATSON,

25 Relief Defendant.
26

CV-S-05-0440-LDG-LRL

**STIPULATED PRELIMINARY
INJUNCTION RE:
DEFENDANTS NETWORK
SERVICES DEPOT, INC.;**
**NETWORK MARKETING,
LLC; NETWORK SERVICES
DISTRIBUTION, INC.;**
SUNBELT MARKETING, INC;
CHARLES V. CASTRO;
ELIZABETH L. CASTRO;
GREGORY HIGH; and
PHYLLIS WATSON

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 SERVED ON
COUNSEL/PARTIES OF RECORD
APR 14 2005
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: [Signature] DEPUTY

27 WHEREAS, Plaintiff Federal Trade Commission ("FTC" or "Commission"),
28 pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.

1 § 53(b), filed a complaint for a permanent injunction and other relief in this matter, and
2 applied for a temporary restraining order with asset freeze, and order to show cause why
3 a preliminary injunction should not issue (“TRO”);

4 WHEREAS, the Court granted a TRO on April 6, 2005, setting a preliminary
5 injunction hearing date of April 14, 2005;

6 WHEREAS, Defendants Network Services Depot, Inc.; Network Marketing,
7 LLC; Network Services Distribution, Inc.; Sunbelt Marketing, Inc. (“Corporate
8 Defendants”); and Defendants Charles V. Castro; Elizabeth L. Castro; Gregory High
9 (“Individual Defendants”); and Relief Defendant Phyllis Watson have received service
10 of the Complaint, Summons, and TRO;

11 NOW, THEREFORE, Plaintiff and Corporate Defendants, the Individual
12 Defendants, and the Relief Defendant hereby stipulate to entry of a preliminary
13 injunction with the following findings of fact and order:

14 **FINDINGS**

15
16 1. This Court has jurisdiction over the subject matter of this case and jurisdiction
17 over the parties, and venue in this district is proper;

18 2. Weighing the equities and considering the Plaintiff’s likelihood of ultimate
19 success, a preliminary injunction with asset freeze and other equitable relief is in the
20 public interest;

21 3. Defendants have not admitted liability as to the charges in the Complaint, and
22 their consent to entry of this preliminary injunction, including the finding that the relief
23 agreed to herein is in the public interest, shall not be interpreted to constitute an
24 admission by any of them that they have engaged in violations of any law or regulations;
25 and

26 4. No security is required of any agency of the United States for issuance of a
27 preliminary injunction. Fed. R. Civ. P. 65(c).

28

1 **ORDER**

2 **DEFINITIONS**

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

4 1. "Advertising" means any written or verbal statement, illustration or depiction that
5 is designed to effect a sale or to create interest in the purchasing of goods or services,
6 whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular,
7 mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public
8 transit card, point of purchase display, packaging, package insert, label, film, slide,
9 radio, television or cable television, audio program transmitted over a telephone system,
10 program-length commercial ("infomercial"), Internet, or in any other medium.

11 2. "Assets" means any legal or equitable interest in, right to, or claim to, any real
12 and personal property, including, but not limited to, chattels, goods, instruments,
13 equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries,
14 inventory, checks, notes, lists of consumer and agent names, accounts, credits,
15 receivables (as those terms are defined in the Uniform Commercial Code), contracts,
16 shares of stock, and all cash, wherever located.

17 3. "Business venture" means any written or oral business arrangement, however
18 denominated, whether or not covered by the Franchise Rule, which consists of the
19 payment of any consideration for:

- 20 a. the right or means to offer, sell, or distribute goods or services (whether or
21 not identified by a trademark, service mark, trade name, advertising, or
22 other commercial symbol); and
23 b. more than nominal assistance to any person or entity in connection with or
24 incident to the establishment, maintenance, or operation of a new business
25 or the entry by an existing business into a new line or type of business.

26 4. "Corporate defendants" means Network Services Depot, Inc.; Network
27 Marketing, LLC, dba Network Services Marketing; Net Depot, Inc.; Network Services
28 Distribution, Inc.; and Sunbelt Marketing, Inc.

1 5. “Defendants” means corporate defendants and individual defendants.

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

5 7. “Franchise” is defined as that term is defined in Sections 436.2(a) of the
6 Franchise Rule, 16 C.F.R. §§ 436.2(a), and includes “business opportunity ventures” as
7 defined in Sections 436.2(a)(1)(ii) and (2) of the Rule, and discussed in the FTC’s Final
8 Interpretive Guide for the Franchise Rule, 44 Fed. Reg. 49966-68 (August 24, 1979).

9 8. “Individual Defendants” means Charles V. Castro, Elizabeth L. Castro, and
10 Gregory High.

11 9. “Investment opportunity” means anything, tangible or intangible, that is offered,
12 offered for sale, sold, or traded based wholly or in part on representations, either express
13 or implied, about past, present, or future income, profit, residuals, or appreciation.

14 10. “Relief defendant” means Phyllis Watson.

15 11. The terms “and” and “or” in this Order shall be construed conjunctively or
16 disjunctively as necessary, to make the applicable sentence or phrase inclusive rather
17 than exclusive.

18
19 **I.**

20 **PROHIBITED BUSINESS ACTIVITIES**

21 **IT IS HEREBY ORDERED** that defendants and their officers, directors, agents,
22 servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates,
23 successors, assigns, and those persons or entities in active concert or participation with
24 them who receive actual notice of this Order by personal service, facsimile, or
25 otherwise, are hereby enjoined from:

- 26 A. Making, or assisting others in making, expressly or by implication, any
27 false or misleading oral or written statement or representation in
28 connection with the advertising, marketing, promoting, offering for sale,

1 or sale of any business venture, franchise, or investment opportunity,
2 including, but not limited to:

- 3 1. Misrepresenting that purchasers will acquire ownership of such
4 business venture or franchise;
- 5 2. Misrepresenting the income, profit, or sales volume that purchasers
6 of such business venture or franchise are likely to achieve;
- 7 3. Misrepresenting the source of any income or profit sent to
8 purchasers of such business venture or franchise;
- 9 4. Misrepresenting the availability or existence of locations or
10 profitable locations for such business venture or franchise; and
- 11 5. Misrepresenting any other fact material to a consumer's decision to
12 purchase a business venture, franchise, or any investment
13 opportunity; and

14 B. Violating, or assisting others in violating, any provision of the Franchise
15 Rule, 16 C.F.R. Part 436, including, but not limited to:

- 16 1. Failing to provide, no later than ten (10) business days before any
17 consumer signs a purchase agreement or tenders any payment for
18 such franchise or business venture, a complete and accurate basic
19 disclosure statement that discloses all of the categories of
20 information set forth in Section 436.1(a)(1)-(24) of the Franchise
21 Rule;
- 22 2. Failing to have a reasonable basis for any earnings claim at the time
23 such claim is made; and
- 24 3. Failing to provide any prospective purchaser of a franchise or
25 business venture with an earnings claim document or other
26 disclosures required by Section 436.1(b)-(e) of the Franchise Rule,
27 in the manner and within the time specified by the Franchise Rule.
28

1 D. Failing to disclose to the Commission, immediately upon service of this
2 Order, information that fully identifies each asset of any defendant or
3 relief defendant, and each entity holding such asset, including, but not
4 limited to, the entity's name, address, and telephone number, the number
5 of the account, and the name under which the account is held.

6 **Provided, however,** that the sale of 3410 Egerer Place may go forward, provided
7 that (1) an appraisal of the property is provided to the FTC prior to the close of escrow;
8 (2) the purchase price reflects the fair market value of the property; (3) the proceeds of
9 that sale shall be placed in an account identified to the FTC that shall remain frozen; and
10 (4) all documents related to the sale are provided to the FTC within three (3) days of the
11 closing of escrow.

12 **Provided, however,** that the freeze imposed in this Paragraph shall be construed
13 to apply to assets that the individual defendants Charles V. Castro, Elizabeth L. Castro,
14 and Gregory High acquire after April 6, 2005, only if such assets are derived from the
15 sale of business ventures or franchises or from any revenue generated by, or in
16 connection with, a business venture or franchise previously sold by any defendant.

17 **Provided further,** (1) individual defendants Charles V. Castro, Elizabeth L.
18 Castro, and Gregory High, and relief defendant Phyllis Watson may, upon compliance
19 with the financial reporting requirements herein, pay from their individual personal
20 funds, reasonable, usual, ordinary and necessary living expenses, subject to prior
21 approval by the Court; and (2) any defendants and relief defendant may, upon
22 compliance with the financial reporting requirements herein, utilize assets otherwise
23 subject to the freeze to pay reasonable attorney's fees, subject to prior approval by the
24 Court.

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1 **III.**

2 **RETENTION OF ASSETS BY THIRD PARTIES**

3 **IT IS FURTHER ORDERED** that, pending further order of this Court, any
4 bank, savings and loan, financial or brokerage institution, fund, escrow agent, trustee,
5 mail receipt facility, or other person or entity served with a copy of this Order, or who
6 otherwise has actual knowledge of this Order, that has possession, custody, or control of
7 any account, asset, safe deposit box, or document held on behalf of, or relating or
8 belonging to Network Services Depot, Inc.; Network Marketing, LLC, dba Network
9 Services Marketing; Net Depot, Inc.; Network Services Distribution, Inc.; Sunbelt
10 Marketing, Inc.; Charles V. Castro; Elizabeth L. Castro; Gregory High; or Phyllis
11 Watson shall:

- 12 A. Continue to hold and retain within such entity's or person's control, and
13 prohibit the withdrawal, removal, assignment, transfer, pledge,
14 hypothecation, encumbrance, disbursement, dissipation, conversion, sale,
15 liquidation, or other disposal of any funds, documents, property, or other
16 assets held by or under such entity's or person's control:
- 17 1. on behalf of, or for the benefit of, any defendant or relief defendant;
 - 18 2. in any account maintained in the name of, or subject to withdrawal
19 by, any defendant or relief defendant; or
 - 20 3. that are subject to access or use by, or under the signatory power of,
21 any defendant or relief defendant;
- 22 B. Continue to deny access to any safe deposit boxes, unless accompanied by
23 counsel for the Commission, that are:
- 24 1. titled in the name, individually or jointly, of any defendant or relief
25 defendant; or
 - 26 2. subject to access by any defendant or relief defendant;
- 27 C. To the extent not previously provided, provide to counsel for the
28 Commission, within three (3) days after service of this Order, a statement

1 setting forth:

- 2 1. the identification of each account or asset titled in the name of,
3 individually or jointly, or held on behalf of, or for the benefit of,
4 any defendant or relief defendant, whether in whole or in part;
5 2. the balance of each such account, or a description of the nature and
6 value of such asset;
7 3. the identification of any safe deposit box that is either titled in the
8 name of, individually or jointly, or is otherwise subject to access or
9 control by, any defendant or relief defendant, whether in whole or
10 in part; and
11 4. for any account, safe deposit box, or other asset that has been
12 closed or removed within one year from the date of entry of this
13 Order, the date closed or removed and the balance on said date; and

14 D. Upon request by the Commission, promptly provide the Commission with
15 copies of all records or other documentation pertaining to such account,
16 asset, or safe deposit box, including, but not limited to, originals or copies
17 of account applications, account statements, signature cards, checks,
18 drafts, deposit tickets, transfers to and from the accounts, all other debit
19 and credit instruments or slips, currency transaction reports, 1099 forms,
20 and safe deposit box logs.

21 The accounts subject to this Paragraph include assets existing as of April 6, 2005.
22 This Paragraph shall not prohibit transfers or withdrawals in accordance with any
23 provision of this Order, or authorized in writing by counsel for the Commission or by
24 further order of the Court.

25
26 **IV.**

27 **PRESERVATION OF RECORDS AND OTHER EVIDENCE**

28 **IT IS FURTHER ORDERED** that defendants and relief defendant, and their

1 **IT IS FURTHER ORDERED** that, within three (3) calendar days after service
2 of this Order, unless already provided pursuant to the TRO,

- 3 A. Defendants and relief defendant shall prepare and provide to the
4 Commission complete and accurate individual or corporate financial
5 statements, as applicable, in a form which the Commission has provided,
6 signed under penalty of perjury;
- 7 B. Defendants and relief defendant shall further provide the Commission
8 with a complete and accurate corporate financial statement, in a form
9 provided by the Commission, signed under penalty of perjury, for any
10 corporation or business entity owned or controlled by any defendant or
11 relief defendant and not named in the caption;
- 12 C. Corporate defendants shall provide to the Commission profit-and-loss
13 statements from the date of incorporation or formation through the date of
14 this Order;
- 15 D. Defendants and relief defendant shall further provide the Commission
16 with statements, verified under oath, of all transfers and assignments of
17 assets and property worth \$10,000 or more since January 1, 2004, which
18 shall include the amount or value transferred or assigned, the name and
19 address of the transferee or assignee, the date of the transfer or
20 assignment, and the type and amount of consideration paid to any
21 defendant or relief defendant;
- 22 E. Defendants and relief defendant shall provide the Commission, with
23 respect to defendants and relief defendant, with access to records and
24 documents pertaining to assets of defendant or relief defendant that are
25 held by financial institutions outside the territory of the United States, by
26 signing a document entitled "Consent to Release of Financial Records,"
27 which the Commission has provided;
- 28 F. Defendants and relief defendant shall provide to the Commission profit-

1 and-loss statements from the date of incorporation or formation through
2 the date of this Order for any corporation or business entity that is owned
3 or controlled by any defendant or relief defendant and that is not named in
4 the caption;

5 G. Defendants and relief defendant shall provide the Commission with
6 statements, verified under oath, of all transfers and assignments of assets
7 and property worth \$10,000 or more since January 1, 2004, to or from any
8 corporation or business entity that is owned or controlled by any defendant
9 or relief defendant and that is not named in the caption, which shall
10 include the amount or value transferred or assigned, the name and address
11 of the transferee or assignee, the date of the transfer or assignment, and the
12 type and amount of consideration paid to any defendant or relief
13 defendant; and

14 H. Defendants and relief defendant shall provide the Commission, with
15 respect to any corporation or business entity that is owned or controlled by
16 any defendant or relief defendant and that is not named in the caption,
17 with access to records and documents pertaining to assets of such
18 corporation or business entity that are held by financial institutions outside
19 the territory of the United States, by signing a document entitled "Consent
20 to Release of Financial Records," which the Commission has provided.

21
22 **VI.**

23 **REPATRIATION OF ASSETS**

24 **IT IS FURTHER ORDERED** that within five (5) business days after service of
25 this Order, all defendants and relief defendant shall:

26 A. Repatriate to the United States all funds, documents, or assets, in foreign
27 countries held, jointly or singly, either by, for the benefit of, or under the
28 direct or indirect control of, any defendant or relief defendant;

- 1 B. On the same business day as any repatriation under Subparagraph A
2 above,
3 1. notify the Commission of the name and location of the financial
4 institution or other entity that is the recipient of such funds,
5 documents, or assets; and
6 2. serve this Order on any such financial institution or other entity;
7 C. Provide the Commission with a full accounting of all funds, documents,
8 and assets outside of the territory of the United States held, jointly or
9 singly, either by, for the benefit of, or under the direct or indirect control
10 of, any defendant or relief defendant; and
11 D. Hold and retain all repatriated funds, documents, and assets and prevent
12 any transfer, disposition, or dissipation whatsoever of any such assets or
13 funds.
14

15 **VII.**

16 **NOTIFICATION OF BUSINESS ACTIVITIES**

17 **IT IS FURTHER ORDERED** that individual defendants are hereby restrained
18 and enjoined from creating, operating, or exercising any control over any business
19 entity, including any partnership, limited partnership, joint venture, sole proprietorship,
20 or corporation, without first providing counsel for the Commission with a written
21 statement disclosing the following: (1) the name of the business entity; (2) the address
22 and telephone number of the business entity; (3) the names of the business entity's
23 officers, directors, principals, managers, and employees; and (4) a detailed description
24 of the business entity's intended activities.

25 **IT IS FURTHER ORDERED** that the individual defendants shall notify the
26 Commission at least seven (7) days prior to any affiliation with any new or previously
27 inactive business or employment. Each notice shall include the individual defendant's
28 new business address and a statement of the nature of the new business or employment

1 and of his or her duties and responsibilities in connection with that business or
2 employment.

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4 **VIII.**

5 **STAY OF ACTIONS**

6 **IT IS FURTHER ORDERED** that, except by leave of this Court and except for
7 any federal, state, or local law enforcement or regulatory authority action against
8 defendants and relief defendant, defendants, relief defendant, and all other persons
9 seeking to establish or enforce any claim, right, or interest for, against, on behalf of, or
10 in the name of, any defendant or relief defendant, be, and hereby are, stayed from:

- 11 A. Commencing, prosecuting, continuing, or enforcing any suit or
12 proceeding, except that such actions may be filed to toll any applicable
13 statute of limitations;
- 14 B. Accelerating the due date of any obligation or claimed obligation;
15 enforcing any lien upon, or taking, attempting to take, or retaining
16 possession of any asset; attempting to foreclose, forfeit, alter, or terminate
17 any interest in any asset, whether such acts are part of a judicial
18 proceeding or otherwise; and
- 19 C. Using self-help or executing or issuing any process to impound, take
20 possession of, interfere with, create, or enforce a lien upon any asset
21 owned by or in the possession of any defendant or relief defendant.

22 **Provided, however,** that this Paragraph does not stay any suit pending in a state
23 court, upon motion and a finding by the Court that the moving party will suffer
24 substantial injury if it is not permitted to proceed, and does not stay service of process
25 by any defendant in any other matter.

26
27 **IX.**

28 **EXPEDITED DISCOVERY**

1 active concert or participation with any defendant or relief defendant.

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3 **XIV.**

4 **SERVICE UPON THE COMMISSION**

5 **IT IS FURTHER ORDERED**, with regard to any correspondence, pleadings, or
6 notifications related to this Order, that service on the Commission shall be performed by
7 either (A) overnight delivery or (B) facsimile and first class mail delivery to:

8 LISA D. ROSENTHAL
9 Federal Trade Commission
10 901 Market Street, Suite 570
11 San Francisco, CA 94103
12 Phone (415) 848-5100/Fax (415) 848-5184

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14 **XV.**

15 **EXPIRATION OF THIS ORDER**

16 **IT IS FURTHER ORDERED** that this Preliminary Injunction shall remain in
17 full force and effect as to each defendant and relief defendant until such time as a final
18 order is entered against and served on such defendant or relief defendant or the matter is
19 dismissed as to such defendant or relief defendant.

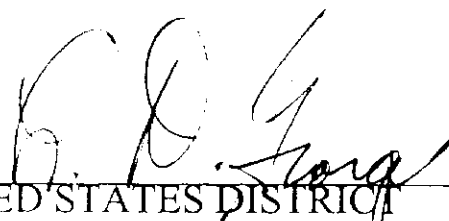
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21 **XVI.**

22 **RETENTION OF JURISDICTION**

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

25 **IT IS SO ORDERED:**

26 DATED: 14 April 2005

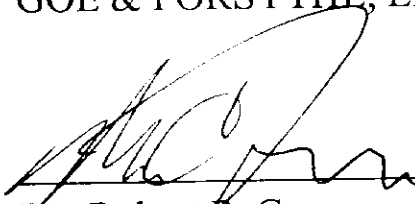
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28 UNITED STATES DISTRICT
COURT JUDGE

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**APPROVED AS TO FORM AND
CONTENT:**

Date: 4-14-05

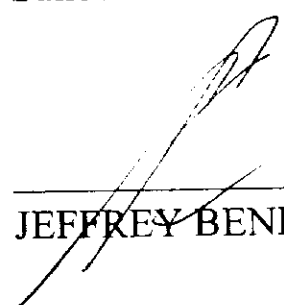
GOE & FORSYTHE, LLP



By: Robert P. Goe
Marc Forsythe

Attorneys for Defendants Network Services
Depot, Inc.; Network Marketing, LLC;
Network Services Distribution, Inc.; and
Sunbelt Marketing, Inc.

Date: 4/14/05



JEFFREY BENICE

Attorney for Defendant Charles V. Castro,
Elizabeth L. Castro, Gregory High, and
Phyllis Watson, Network Services Depot,
Inc.; Network Marketing, LLC; Network
Services Distribution, Inc.; and Sunbelt
Marketing, Inc.