

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NETWORK SERVICES DEPOT, INC.;
NETWORK MARKETING, LLC, dba
Network Services Marketing;
NETWORK SERVICES DISTRIBUTION,
INC.;
SUNBELT MARKETING, INC.;
CHARLES V. CASTRO;
ELIZABETH L. CASTRO; and
GREGORY HIGH;

Defendants; and

PHYLLIS WATSON,

Relief Defendant.

CV-S-05-0440-LDG-LRL

**[Proposed] FINAL JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

WHEREAS, Plaintiff Federal Trade Commission (“FTC” or “Commission”) commenced this action on April 5, 2005, by filing a complaint for a permanent injunction and other equitable relief in this case pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b (Dkt. #1).

WHEREAS, the Complaint alleges that Defendants, in connection with the marketing and sale of public access Internet terminals, have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Trade Regulation Rule titled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,” formerly codified as 16 C.F.R. Part 436 (2005) (“2005 Franchise Rule”), which rule has been replaced by two separate rules governing franchises and business opportunities as set forth in the Definitions section below.

1 WHEREAS, on April 6, 2005, the Court issued a Temporary Restraining Order in this
2 case (Dkt. #13), which, among other provisions, froze the assets of Defendants and Relief
3 Defendant. On April 14, 2005, the Court granted a Stipulated Preliminary Injunction in this case
4 (Dkt. #35), which, among other provisions, continued the freeze on those assets.

5 WHEREAS, the FTC filed a motion (Dkt. #51, Opposition - Dkt. #56, Reply -
6 Dkt. #62) for an order freezing certain funds transferred by Defendants to their attorneys,
7 arguing among other things, that those funds belong to consumer victims under a constructive
8 trust theory.

9 WHEREAS, on March 24, 2006, the Court entered an order (Dkt. #142), which stated,
10 among other things, that: “[i]f it is ultimately found the transfer of funds (or any portion thereof)
11 to defense counsel should be set aside, or made subject to consumer redress, the FTC may move
12 to that extent to have any depleted funds restored. Defense counsel, presumably, has factored
13 into its fee arrangements the risks of any such result.”

14 WHEREAS, the FTC moved for summary judgment against Defendants for violations of
15 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the 2005 Franchise Rule (Dkt. #78,
16 Response - Dkt. #79, Reply - Dkt. #127).

17 WHEREAS, the FTC’s motion for summary judgment requested that the Court, among
18 other things: (1) find that Defendants Network Services Depot, Inc.; Network Marketing, LLC;
19 Network Services Distribution, Inc.; Sunbelt Marketing, Inc.; Charles V. Castro; Elizabeth
20 Castro, and Gregory High had violated Section 5(a) of the FTC Act and the 2005 Franchise
21 Rule; (2) order injunctive relief and restitution for injured consumers pursuant to § 13(b) and
22 § 19 of the FTC Act, 15 U.S.C. § 53(b) and § 57b; (3) order Defendants Network Services
23 Depot, Inc.; Network Marketing, LLC; Network Services Distribution, Inc.; Sunbelt Marketing,
24 Inc.; Charles V. Castro; and Gregory High to pay restitution to injured consumers; (4) order that
25 the funds in the Castro Children’s Trust (controlled by Relief Defendant Phyllis Watson) be used
26 to pay consumer restitution; and (5) order that certain monies transferred to Defendants’
27 attorneys also be used for consumer restitution.

1 WHEREAS, in support of its motion for summary judgment, the FTC demonstrated that,
2 between mid 2001 and early 2004, consumers paid an aggregate of \$18,867,528 to Defendant
3 Network Services Depot.

4 WHEREAS, on September 29, 2006, the Court entered an order (Dkt. #143), which
5 granted the FTC's motion for summary judgment, with one exception – the Court sought
6 additional briefing on the issue of monies transferred to Defendants' attorneys.

7 WHEREAS, on September 17, 2007, the Court entered an order (Dkt. #175), which
8 found (1) that a portion of monies transferred to Defendants' attorneys are recoverable under the
9 theory of constructive trust; and (2) that the FTC established by clear and convincing evidence
10 (a) that the fee funds derive from corporate defendants' proceeds, (b) that the acquisition of the
11 funds was wrongful, and (c) that the FTC is entitled to the proceeds for consumer redress; but,
12 (3) that, as an equitable matter, the Court would permit payment of defense counsel's reasonable
13 and documented attorneys fees on matters directly related to this specific litigation up to March
14 24, 2006.

15 WHEREAS, on January 8, 2009, the Court entered an order (Dkt. #228), which: (1) states
16 that it would grant Defendants' attorney, the law firm of Jeffrey S. Benice, reasonable fees for
17 documented services directly related to this case between January 1, 2005, and April 1, 2006, at
18 the rate of \$300 for Mr. Benice and at the rate of one-third what Mr. Benice originally requested
19 for other professional services provided by his firm, as well as costs through the period as
20 requested; and (2) ordered Benice to submit to a revised motion for fees.

21 WHEREAS, on February 4, 2009, Mr. Benice filed a declaration (Dkt. #229) seeking
22 \$194,382 in fees and costs.

23 WHEREAS, the FTC and Mr. Benice entered a stipulation on February 25, 2009 (Dkt.
24 #233), stating the amount of fees and costs to which Mr. Benice is entitled pursuant to the
25 January 7, 2009, order is \$136,700.

26 WHEREAS, on February 13, 2009, the Court entered an order (Dkt. #232), which
27 modified the Stipulated Preliminary Injunction in this case so that Washington Mutual Bank may

1 enforce its remedies against real property owned by Defendant Gregory High, located at 90 Echo
2 Run, Irvine, CA. That order stated that, “if [surplus funds resulting from Washington Mutual’s
3 foreclosure proceedings] are realized after a final order has been entered in this matter, such
4 surplus funds be transferred to the FTC pursuant to the terms of the final order.”

5 WHEREAS, on February 27, 2009, the Federal Trade Commission filed a motion titled,
6 *Motion Pursuant to the Court’s January 7, 2009, Order for Entry of Final Judgment and Order.*

7 **THEREFORE, it is hereby ORDER, ADJUDGED, and DECREED as follows:**

8 **FINDINGS**

- 9 1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all
10 parties.
- 11 2. Venue in this district is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).
- 12 3. The activities of Defendants are in or affecting commerce, as defined in the FTC Act, 15
13 U.S.C. § 44.
- 14 4. The Complaint states a claim upon which relief can be granted against Defendants and
15 Relief Defendant under Sections 5(a), 13(b), and 19 of the Federal Trade Commission
16 Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 57b, and under the 2005 Franchise Rule,
17 16 C.F.R. Part 436 (2005).
- 18 5. This Order incorporates the findings and conclusions set forth in the September 29, 2006,
19 order (Dkt. #143) entered by this Court in this case.
- 20 6. Having reviewed the FTC’s Motion for Summary Judgment, the Court finds that between
21 mid 2001 and early 2004, consumers paid an aggregate of \$18,867,528 to Defendant
22 Network Services Depot.
- 23 7. This Order incorporates the findings and conclusions set forth in the March 24, 2006,
24 order (Dkt. #142), the September 17, 2007, order (Dkt. #175), the January 7, 2009, order
25 (Dkt. #228) (collectively, “Attorney Fees Orders”) entered by this Court in this case as to
26 Defendants and Jeffrey S. Benice.
- 27 8. Having reviewed the February 25, 2009, stipulation between the FTC and Mr. Benice,

1 the Court finds that the law firm of Jeffrey S. Benice is entitled to \$136,700 for
2 reasonable attorney fees and costs directly related to this case between January 1, 2005,
3 and April 1, 2006. Therefore, pursuant to the Attorney Fees Orders, the FTC is entitled,
4 for consumer restitution, to the retainer funds paid to the law firm of Jeffrey S. Benice in
5 excess of \$136,700, which amounts to \$238,300.

6 9. The paragraphs of this Order shall be read as the necessary requirements for compliance
7 and not as alternatives for compliance, and no paragraph serves to modify another
8 paragraph unless expressly so stated.

9 10. Each party shall bear its own costs and attorneys' fees.

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

11 DEFINITIONS

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

13 A. "Assets" means any legal or equitable interest in, right to, or claim to, any real
14 and personal property, including, but not limited to, chattel, goods, instruments, equipment,
15 fixtures, general intangibles, inventory, checks, notes, leaseholds, effects, contracts, mail or other
16 deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables,
17 funds, and cash, wherever located, whether in the United States or abroad.

18 B. "Business Opportunity Rule" means FTC Trade Regulation Rule titled
19 "Disclosure Requirements and Prohibitions Concerning Business Opportunities," codified at 16
20 C.F.R. Part 437, or as it may be amended.

21 C. "Business Venture" means any written or oral business arrangement, however
22 denominated, that is covered by the Franchise Rule or the Business Opportunity Rule, or that
23 consists of the payment of any consideration in exchange for:

24 a. the right or means to offer, sell, or distribute goods or services (regardless
25 of whether identified by a trademark, service mark, trade name,
26 advertising, or other commercial symbol); and

27 b. more than nominal assistance to any person or entity in connection with or

1 incident to the establishment, maintenance, or operation of a new business
2 or the entry by an existing business into a new line or type of business.

3 D. "Corporate Defendants" means Network Services Depot, Inc.; Network
4 Marketing, LLC; Network Services Distribution, Inc.; Sunbelt Marketing, Inc.; and their
5 successors and assigns.

6 E. "Defendants" means all of the Individual Defendants and the Corporate
7 Defendants, individually, collectively, or in any combination.

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

14 G. "Franchise Rule" means the FTC Trade Regulation Rule titled "Disclosure
15 Requirements and Prohibitions Concerning Franchising," codified at 16 C.F.R. Part 436, or as it
16 may be amended.

17 H. "Individual Defendants" means Charles V. Castro, Elizabeth L. Castro, and
18 Gregory High.

19 I. "Person" means a natural person, organization or other legal entity, including a
20 corporation, partnership, proprietorship, association, or cooperative, or any other group, or
21 combination acting as an entity.

22 J. "Relief Defendant" means Phyllis Watson.

23 **ORDER**

24 **I.**

25 **BAN ON SALE OF FRANCHISES AND BUSINESS VENTURES**

26 **IT IS THEREFORE ORDERED** that the Corporate Defendants and Defendant Charles
27 V. Castro, directly or through any corporation, partnership, subsidiary, division, trade name,

1 device, or other entity, are hereby permanently restrained and enjoined from:

- 2 A. Advertising, marketing, promoting, offering for sale, selling, or assisting any
3 other person in the sale of any Business Venture; or
- 4 B. Receiving any remuneration or other consideration of any kind whatsoever from
5 any person engaged in or assisting in advertising, marketing, promoting, offering
6 for sale, or selling any Business Venture;
- 7 C. Holding any ownership interest, share, or stock in, any person engaged in
8 advertising, marketing, promoting, offering for sale, or selling any Business
9 Venture; or
- 10 D. Serving as an employee, officer, director, trustee, general manager of, or
11 consultant or advisor to, any person engaged in advertising, marketing,
12 promoting, offering for sale, or selling any Business Venture.

13 Nothing in this Order shall be read as an exception to this Section.

14 **II.**

15 **PROHIBITED REPRESENTATIONS**

16 **IT IS FURTHER ORDERED** that, in connection with the advertising, offering for sale,
17 licensing, contracting, sale or other promotion, in or affecting commerce, of any goods or
18 services, Defendants, directly or through any corporation, partnership, subsidiary, division, trade
19 name, device, or other entity, and their officers, agents, servants, employees, and attorneys, and
20 all persons and entities in active concert or participation with them who receive actual notice of
21 this Order, by personal service or otherwise, are hereby enjoined from misrepresenting,
22 expressly or by implication, any material fact, including, but not limited to:

- 23 A. The existence, performance, efficacy, nature, or central characteristic of such
24 good or service;
- 25 B. The income, profit, or sales volume that a purchaser of such good or service is
26 likely to achieve;
- 27 C. The source of any income or profit sent to a purchaser of such good or service; or

- 1 D. The availability or existence of locations or profitable locations for such good or
2 service.

3 **III.**

4 **MEANS AND INSTRUMENTALITIES**

5 **IT IS FURTHER ORDERED** that, in connection with the advertising, offering for sale,
6 licensing, contracting, sale or other promotion, in or affecting commerce, of any goods or
7 services, Defendants, directly or through any corporation, partnership, subsidiary, division, trade
8 name, device, or other entity, and their officers, agents, servants, employees, and attorneys, and
9 all persons and entities in active concert or participation with them who receive actual notice of
10 this Order, by personal service or otherwise, are hereby enjoined from providing to others the
11 means or instrumentalities with which to make misrepresentations, expressly or by implication,
12 of any material fact, including, but not limited to, providing others with materials that contain
13 false representations concerning:

- 14 A. The existence, performance, efficacy, nature, or central characteristic of such
15 good or service;
16 B. The income, profit, or sales volume that a purchaser of such good or service is
17 likely to achieve;
18 C. The source of any income or profit sent to a purchaser of such good or service; or
19 D. The availability or existence of locations or profitable locations for such good or
20 service.

21 **IV.**

22 **MONETARY RELIEF**

23 **IT IS FURTHER ORDERED** that:

- 24 A. Judgment is hereby entered jointly and severally against the Corporate
25 Defendants, Defendant Charles V. Castro, and Defendant Gregory High in the
26 amount of eighteen million, eight hundred twenty-seven thousand, five hundred
27 twenty-eight dollars (\$18,827,528), as equitable monetary relief to redress

1 consumer injury. This monetary judgment shall become immediately due and
2 payable by Defendants upon entry of this Order, and interest computed at the rate
3 prescribed under 28 U.S.C. § 1961 shall immediately begin to accrue on the
4 unpaid balance.

5 B. Within ten (10) business days of the date of service of this Order, by personal
6 service or otherwise, Relief Defendant shall pay to the FTC as equitable monetary
7 relief to redress consumer injury all funds contained in the account for which the
8 Relief Defendant is listed as the account holder, trustee, or custodian at Fullerton
9 Community Bank with account number ending in 0690, which was frozen
10 pursuant to the Stipulated Preliminary Injunction in this case, and funds that
11 Fullerton Community Bank removed from such frozen account and is holding
12 separately. That amount shall be at least two hundred seventy thousand, nine
13 hundred seventy-five dollars (\$270,975). In the event of default on the payment
14 required to be made by this Subsection, the entire unpaid judgment, together with
15 interest computed under 28 U.S.C. § 1961 -- accrued from the date of default until
16 the date of payment -- shall be immediately due and payable. *Provided, however,*
17 *that this judgment shall be deemed fully satisfied upon completion of Section V.B*
18 *of this Order.*

19 C. All payments required to be made to the Commission under this Order shall be
20 made by electronic funds transfer in accordance with directions provided by the
21 Commission.

22 D. All funds transferred pursuant to this Order shall be deposited into a fund
23 administered by the FTC, or its designated agent, to be used for equitable relief,
24 including, but not limited to, restitution and any attendant expenses for the
25 administration of any monetary fund. If the Commission determines, in its sole
26 discretion, that direct restitution for consumers is wholly or partially
27 impracticable or funds remain after restitution is completed, the Commission may

1 apply any remaining funds for any other equitable relief (including consumer
2 information remedies) that it determines to be reasonably related to Defendants'
3 practices alleged in the Complaint. Any funds not used for this equitable relief
4 shall be deposited into the U.S. Treasury as disgorgement. Defendants and Relief
5 Defendant shall have no right to challenge the FTC's choice of remedies under
6 this Section.

7 **V.**

8 **TURNOVER OF ASSETS HELD BY THIRD PARTIES**

9 **IT IS FURTHER ORDERED** that to partially satisfy the monetary judgment set forth
10 in the Section titled "Monetary Relief:"

11 A. Any law firm, financial or brokerage institution, escrow agent, title company,
12 commodity trading company, business entity, or person, that holds, controls, or
13 maintains custody of any asset or account of, on behalf of, or for the benefit of,
14 any Corporate Defendant, Defendant Charles V. Castro, or Defendant Gregory
15 High, or has held, controlled, or maintained custody of any account or asset of, on
16 behalf of, or for the benefit of, any such Defendant, shall turn over such asset or
17 all funds in such account to the Commission or its duly authorized agent (as
18 directed by Commission counsel), within ten (10) business days of receiving
19 actual notice of this Order by personal service or otherwise. Those assets or
20 accounts include, but not necessarily limited to:

- 21 1. All frozen funds held at Fullerton Community Bank, including, but not
22 limited to, funds in accounts in the name of, or controlled by, any
23 Defendant, including accounts with account numbers ending in 9150,
24 9169, 1018, 1827, 3179, 0058, 3518, 2905, 0266, and 9753;
- 25 2. All frozen funds held at Union Bank of California, including, but not
26 limited to, funds in the account in the name of, or controlled by, any
27 Defendant, with account number ending in 0230, 7484, and 7674; and

1 3. Three thousand dollars (\$3,000) currently held by in escrow by Goe &
2 Forsythe, LLP.

3 B. Within ten (10) business days of the date of service of this Order, by personal
4 service or otherwise, the Fullerton Community Bank shall transfer to the
5 Commission or its duly authorized agent (as directed by Commission counsel) all
6 funds contained in the account for which the Relief Defendant is listed as the
7 account holder, trustee, or custodian at Fullerton Community Bank with account
8 number ending in 0690, which was frozen pursuant to the Stipulated Preliminary
9 Injunction in this case, and funds that Fullerton Community Bank removed from
10 such frozen account and is holding separately. That amount shall be at least two
11 hundred seventy thousand, nine hundred seventy-five dollars (\$270,975).

12 C. Upon entry of this Order, Defendants and Relief Defendant relinquish all
13 dominion, control, and title to: (1) all funds contained in the accounts frozen
14 pursuant to the Stipulated Preliminary Injunction in this case and funds that a
15 financial institution removed from a frozen account and is holding separately; and
16 (2) all assets subject to claims made by the Commission in this case. Defendants
17 and Relief Defendant shall make no claim to or demand return of the funds,
18 directly or indirectly, through counsel or otherwise.

19 D. Defendants and Relief Defendant shall provide full cooperation to the
20 Commission to ensure that funds and assets held by third parties are turned over
21 to the Commission. Such full cooperation with the Commission shall include, but
22 not be limited to, promptly executing any documents necessary to effectuate any
23 transfer of funds to the Commission or its agents or representatives.

24 E. Jeffrey S. Benice, a Professional Law Corporation, its successors, and/or assigns
25 shall:

26 1. Immediately upon receiving actual notice of this Order by personal service
27 or otherwise, (a) segregate two hundred thirty-eight thousand, three

1 hundred dollars (\$238,300) (“Benice Funds”), (b) designate the Benice
2 Funds as: “Retainer Funds Subject to Consumer Restitution in *FTC v.*
3 *Network Services Depot;*” and (c) transfer the Benice Funds to a trust
4 account maintained by the law firm of Jeffrey S. Benice; and

5 2. Within ten (10) business days of the date of receiving actual notice of this
6 Order by personal service or otherwise, transfer the Benice Funds to the
7 Commission or its duly authorized agent (as directed by Commission
8 counsel) by electronic funds transfer, designating the Benice Funds as
9 “Retainer Funds Subject to Consumer Restitution in *FTC v. Network*
10 *Services Depot.*”

11 F. If, after entry of this Order, Washington Mutual Bank, its successors, and/or
12 assigns, realizes any excess proceeds (proceeds in excess of payment of all sums
13 that Washington Mutual Bank secured by a deed of trust) upon exercising any
14 rights it has to enforce remedies against real property owned by Defendant
15 Gregory High, located at 90 Echo Run, Irvine, CA, Washington Mutual Bank, its
16 successors, and/or assigns shall transfer such excess proceeds to the Commission
17 or its duly authorized agent (as directed by Commission counsel) within ten (10)
18 business days of realizing such proceeds.

19 G. All payments required to be made to the Commission or its agents or
20 representatives under this Section shall be used as equitable monetary relief to
21 redress consumer injury in accordance with the Section titled “Monetary Relief”
22 and shall be made by electronic funds transfer in accordance with directions
23 provided by the Commission.

24 **VI.**

25 **LIFTING OF THE ASSET FREEZE**

26 **IT IS FURTHER ORDERED** that the freeze of the assets pursuant to the Stipulated
27 Preliminary Injunction in this case shall be lifted to the extent necessary to transfer assets

1 pursuant to Section V.A-D. Once all such assets required to be transferred under such provisions
2 have been transferred, as evidenced by a letter confirming receipt of same from counsel for the
3 Commission, the freeze of the remaining assets shall be lifted permanently.

4 **VII.**

5 **FORFEITURE ACTION**

6 **IT IS FURTHER ORDERED** that, with respect to any assets seized from Bank of
7 America Accounts in the name of Bikini Vending Corporation by the Federal Bureau of
8 Investigation, including approximately one million, five hundred twenty-four thousand dollars
9 (\$1,524,000), which is or has been the subject of *U.S. v. \$1,524,438.90*, SACV 04-910-AHS-
10 MLG (C.D. Calif.):

- 11 A. Within five (5) business days of the date of entry of this Order, Defendants shall
12 release any and all claims they may have to such assets.
- 13 B. Upon entry of this Order, the Defendants shall relinquish all dominion, control,
14 and title to such assets. Defendants shall make no claim to or demand return of
15 such assets, directly or indirectly, through counsel or otherwise.
- 16 C. Such assets and their proceeds may be transferred by the Office of the United
17 States Marshal, or its designated agent, to the Federal Trade Commission, or its
18 designated agent.
- 19 D. Any such assets transferred to the Commission shall be used as equitable
20 monetary relief to redress consumer injury in accordance with the Section titled
21 “Monetary Relief” and shall partially satisfy the monetary judgment set forth in
22 that section.

23 **VIII.**

24 **CUSTOMER LISTS**

25 **IT IS FURTHER ORDERED** that Defendants, directly or through any corporation,
26 partnership, subsidiary, division, trade name, device, or other entity, and their officers, agents,
27 servants, employees, and attorneys, and all persons and entities in active concert or participation

1 with them who receive actual notice of this Order, by personal service or otherwise, are hereby
2 enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address,
3 telephone number, credit card number, bank account number, email address, or other identifying
4 information of any person who purchased a Business Venture from any Defendant; *provided* that
5 Defendants may disclose such identifying information to a law enforcement agency, including
6 the Federal Trade Commission, or as required by any law, regulation, or court order.

7 **IX.**

8 **COMPLIANCE MONITORING**

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

- 11 A. Within ten (10) days of receipt of written notice from a representative of the
12 Commission, Defendants and Relief Defendant each shall submit additional
13 written reports, which are true and accurate and sworn to under penalty of
14 perjury; produce documents for inspection and copying; appear for deposition;
15 and provide entry during normal business hours to any business location in such
16 Defendant's possession or direct or indirect control to inspect the business
17 operation;
- 18 B. In addition, the Commission is authorized to use all other lawful means, including
19 but not limited to:
- 20 1. obtaining discovery from any person, without further leave of court, using
21 the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
 - 22 2. posing as consumers and suppliers to Defendants, their employees, or any
23 other entity managed or controlled in whole or in part by any Defendant,
24 without the necessity of identification or prior notice; and
- 25 C. Defendants each shall permit representatives of the Commission to interview any
26 employer, consultant, independent contractor, representative, agent,
27 or employee who has agreed to such an interview, relating in any way to any

1 conduct subject to this Order. The person interviewed may have counsel present.

2 *Provided however*, that nothing in this Order shall limit the Commission's lawful use of
3 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to
4 obtain any documentary material, tangible things, testimony, or information relevant to unfair or
5 deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. §
6 45(a)(1)).

7 **X.**

8 **COMPLIANCE REPORTING**

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

11 A. For a period of five (5) years from the date of entry of this Order,

12 1. Each Individual Defendant shall notify the Commission of the following:

13 a. Any changes in such Defendant's residence, mailing addresses,
14 and telephone numbers, within ten (10) days of the date of such
15 change;

16 b. Any changes in such Defendant's employment status (including
17 self-employment), and any change in such Defendant's ownership
18 in any business entity, within ten (10) days of the date of such
19 change. Such notice shall include the name and address of each
20 business that such Defendant is affiliated with, employed by,
21 creates or forms, or performs services for; a detailed description of
22 the nature of the business; and a detailed description of such
23 Defendant's duties and responsibilities in connection with the
24 business or employment; and

25 c. Any changes in such Defendant's name or use of any aliases or
26 fictitious names;

27 2. Defendants shall notify the Commission of any changes in structure of any

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

12 B. One hundred eighty (180) days after the date of entry of this Order and annually
13 thereafter for a period of five (5) years, Defendants each shall provide a written
14 report to the FTC, which is true and accurate and sworn to under penalty of
15 perjury, setting forth in detail the manner and form in which they have complied
16 and are complying with this Order. This report shall include, but not be limited
17 to:

18 1. For each Individual Defendant:

- 19 a. such Defendant's then-current residence address, mailing
20 addresses, and telephone numbers;
- 21 b. such Defendant's then-current employment status (including self-
22 employment), including the name, addresses, and telephone
23 numbers of each business that such Defendant is affiliated with,
24 employed by, or performs services for; a detailed description of the
25 nature of the business; and a detailed description of such
26 Defendant's duties and responsibilities in connection with the
27 business or employment; and

1 c. Any other changes required to be reported under Subsection A of
2 this Section.

3 2. For all Defendants:

4 a. A copy of each acknowledgment of receipt of this Order, obtained
5 pursuant to the Section titled "Distribution of Order;" and

6 b. Any other changes required to be reported under Subsection A of
7 this Section.

8 C. Each Defendant shall notify the Commission of the filing of a bankruptcy petition
9 by such Defendant within fifteen (15) days of filing.

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

14 Associate Director for Enforcement
15 Federal Trade Commission
16 600 Pennsylvania Avenue, N.W., Room NJ-2122
17 Washington, D.C. 20580
18 RE: *FTC v. Network Services Depot, Inc., CV-S-05-0440-LDG-LRL.*

19 *Provided that, in lieu of overnight courier, Defendants may send such reports or*
20 *notifications by first-class mail, but only if Defendants contemporaneously send*
21 *an electronic version of such report or notification to the Commission at:*

22 DEBrief@ftc.gov.

23 E. For purposes of the compliance reporting and monitoring required by this Order,
24 the Commission is authorized to communicate directly with each Defendant and
25 Relief Defendant.

26 XI.

27 RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry
of this Order, Defendants, in connection with any business where any Defendant is the majority

1 owner of the business or directly or indirectly manages or controls the business, and their agents,
2 employees, officers, corporations, and those persons in active concert or participation with them
3 who receive actual notice of this Order by personal service or otherwise, are hereby restrained
4 and enjoined from failing to create and retain the following records:

- 5 A. Accounting records that reflect the cost of goods or services sold, revenues
6 generated, and the disbursement of such revenues;
- 7 B. Personnel records accurately reflecting: the name, address, and telephone number
8 of each person employed in any capacity by such business, including as an
9 independent contractor; that person's job title or position; the date upon which the
10 person commenced work; and the date and reason for the person's termination, if
11 applicable;
- 12 C. Customer files containing the names, addresses, phone numbers, dollar amounts
13 paid, quantity of items or services purchased, and description of items or services
14 purchased, to the extent such information is obtained in the ordinary course of
15 business;
- 16 D. Complaints and refund requests (whether received directly, indirectly, or through
17 any third party) and any responses to those complaints or requests;
- 18 E. Copies of all sales scripts, training materials, advertisements, or other marketing
19 materials; and
- 20 F. All records and documents necessary to demonstrate full compliance with each
21 provision of this Order, including but not limited to, copies of acknowledgments
22 of receipt of this Order required by the Sections titled "Distribution of Order" and
23 "Acknowledgment of Receipt of Order" and all reports submitted to the FTC
24 pursuant to the Section titled "Compliance Reporting."

25 **XII.**

26 **DISTRIBUTION OF ORDER**

27 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry

1 of this Order, Defendants shall deliver copies of the Order as directed below:

2 A. **Corporate Defendant:** Each Corporate Defendant must deliver a copy of this
3 Order to (1) all of its principals, officers, directors, and managers; (2) all of its
4 employees, agents, and representatives who engage in conduct related to the
5 subject matter of the Order; and (3) any business entity resulting from any change
6 in structure set forth in Subsection A.2 of the Section titled “Compliance
7 Reporting.” For current personnel, delivery shall be within five (5) days of
8 service of this Order upon such Defendant. For new personnel, delivery shall
9 occur prior to them assuming their responsibilities. For any business entity
10 resulting from any change in structure set forth in Subsection A.2 of the Section
11 titled “Compliance Reporting,” delivery shall be at least ten (10) days prior to the
12 change in structure.

13 B. **Individual Defendant as Control Person:** For any business that an Individual
14 Defendant controls, directly or indirectly, or in which such Defendant has a
15 majority ownership interest, such Defendant must deliver a copy of this Order to
16 (1) all principals, officers, directors, and managers of that business; (2) all
17 employees, agents, and representatives of that business who engage in conduct
18 related to the subject matter of the Order; and (3) any business entity resulting
19 from any change in structure set forth in Subsection A.2 of the Section titled
20 “Compliance Reporting.” For current personnel, delivery shall be within five (5)
21 days of service of this Order upon such Defendant. For new personnel, delivery
22 shall occur prior to them assuming their responsibilities. For any business entity
23 resulting from any change in structure set forth in Subsection A.2 of the Section
24 titled “Compliance Reporting,” delivery shall be at least ten (10) days prior to the
25 change in structure.

26 C. **Individual Defendant as employee or non-control person:** For any business
27 where an Individual Defendant is not a controlling person of a business but

1 otherwise engages in conduct related to the subject matter of this Order, such
2 Defendant must deliver a copy of this Order to all principals and managers of
3 such business before engaging in such conduct.

4 D. Defendants must secure a signed and dated statement acknowledging receipt of
5 the Order, within thirty (30) days of delivery, from all persons receiving a copy of
6 the Order pursuant to this Section.

7 **XIII.**

8 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

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

12 **XIV.**

13 **SEVERABILITY**

14 **IT IS FURTHER ORDERED** that the provisions of this Order are separate and
15 severable from one another. If any provision is stayed or determined to be invalid, the remaining
16 provisions shall remain in full force and effect.

17 **XV.**

18 **RETENTION OF JURISDICTION**

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

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22 **IT IS SO ORDERED**, this 5 day of MAR, 2009

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24
25 Dated: 5 MAR 2009

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LLOYD D. GEORGE
U.S. DISTRICT COURT JUDGE

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Respectfully submitted,

/s/ Lisa D. Rosenthal

DATED: 2/27/09

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