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CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
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11 UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 United States of America,
14 Plaintiff,

15 v.

16 Douglas C. McGlothin, individually, and
d/b/a International Cigar Consortium;

17 Anthony Simeonov, individually and
18 d/b/a International Cigar Consortium,

19 Defendants.

CIV '00 0243 PHX EHC

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

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

24 1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a) and 19
25 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b, to secure civil penalties,
26 consumer redress, a permanent injunction and other equitable relief for defendants' violations
27 of the FTC's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions
28

1 Concerning Franchising and Business Opportunity Ventures" (the "Franchise Rule" or the
2 "Rule"), 16 C.F.R. Part 436, and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

3 **JURISDICTION AND VENUE**

4 2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
5 §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a) and 57b. This
6 action arises under 15 U.S.C. § 45(a).

7 3. Venue in the United States District Court for the District of Arizona is proper
8 under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

9 **DEFENDANTS**

10 4. Defendant Douglas C. McGlothin does business under the Trade Name
11 International Cigar Consortium ("ICC"). Defendant McGlothin allows himself to be represented
12 as President of ICC. ICC engages in the sale of cigar vending business ventures, with its
13 principal place of business at 2918 N 67th Place, Suite 4, Scottsdale, Arizona 85251. In
14 connection with the matters alleged herein, defendant McGlothin transacts or has transacted
15 business in the District of Arizona. At all times material to this complaint, acting alone or in
16 concert with others, he has formulated, directed, controlled or participated in the acts and
17 practices of ICC, including the acts and practices set forth in this complaint.

18 5. Defendant Anthony Simeonov also does business as ICC at 2918 N 67th Place,
19 Suite 4, Scottsdale, Arizona 85251. Defendant Simeonov allows himself to be represented as
20 Vice-President of ICC. In connection with the matters alleged herein, he transacts or has
21 transacted business in the District of Arizona. At all times material to this complaint, acting
22 alone or in concert with others, he has formulated, directed, controlled or participated in the acts
23 and practices of ICC, including the acts and practices set forth in this complaint.

24 **COMMERCE**

25 6. At all times relevant to this complaint, the defendants have maintained a
26 substantial course of trade in the offering for sale and sale of cigar vending business ventures,
27 in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C.
28 § 44.

1 **DEFENDANTS' BUSINESS ACTIVITIES**

2 7. The defendants offer and sell cigar vending business ventures to prospective
3 purchasers. The defendants promote their business ventures through classified ads in
4 newspapers.

5 8. In their advertisements, defendants make representations about the earnings
6 potential of their business venture, and provide consumers with defendants' toll-free telephone
7 number so that consumers will call to learn more about the opportunity. Defendants' classified
8 newspaper advertisements have stated:

9 "CIGAR PLANTATION
10 Needs local dist. No Selling.
11 \$150K pot. Prem. Cigars
12 Min. inv 800-514-9365"

13 9. Consumers who call the defendants' toll-free telephone number are ultimately
14 connected to defendants, or their employees or agents, who make representations about the
15 earnings potential of the business venture and state that purchasers "are making well over six
16 figures," without giving prospective purchasers access to the information they need to evaluate
17 the claims. For example, the defendants or their employees or agents have represented that a
18 purchaser who places 15 of their cigar humidors on location typically generate profits in excess
19 of \$100,000 per year.

20 **THE FRANCHISE RULE**

21 10. The business ventures sold by the defendants are franchises, as "franchise" is
22 defined in Section 436.2(a)(1)(ii), (a)(2) and (a)(5) of the Franchise Rule, 16 C.F.R.
23 § 436.2(a)(1)(ii), (a)(2) and (a)(5).

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

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

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

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

15 **VIOLATIONS OF THE FRANCHISE RULE**

16 **COUNT ONE**

17 14. Paragraphs 1 through 13 are incorporated herein by reference.

18 15. In connection with the offering of franchises, as "franchise" is defined in the Rule,
19 16 C.F.R. § 436.2(a), defendants have failed to provide prospective franchisees with accurate
20 and complete basic disclosure documents within the time period required by the Franchise Rule,
21 thereby violating Section 436.1(a) of the Rule, 16 C.F.R. § 436.1(a), and Section 5 of the FTC
22 Act, 15 U.S.C. § 45.

23 **COUNT TWO**

24 16. Paragraphs 1 through 13 are incorporated herein by reference.

25 17. In connection with the offering of franchises, as "franchise" is defined in the Rule,
26 16 C.F.R. § 436.2(a), defendants or their employees or agents have made earnings claims within
27 the meaning of the Rule, 16 C.F.R. § 436.1(b)-(d), but have failed to provide prospective
28 franchisees with earnings claim documents within the time period required by the Franchise

1 Rule, have failed to have a reasonable basis for such claims at the times they were made, or have
2 failed to disclose the information required by the Rule in immediate conjunction with such
3 claims, thereby violating Sections 436.1(b)-(d) of the Rule, 16 C.F.R. § 436.1(b)-(d), and
4 Section 5 of the FTC Act, 15 U.S.C. § 45.

5 COUNT THREE

6 18. Paragraphs 1 through 13 are incorporated herein by reference.

7 19. In connection with the offering of franchises, as "franchise" is defined in the
8 Rule, 16 C.F.R. § 436.2(a), defendants have made generally disseminated earnings claims
9 within the meaning of the Rule, 16 C.F.R. § 436.1(e), but have failed to disclose information
10 required by the Franchise Rule in immediate conjunction with such claims, including the
11 number and percentage of prior purchasers known by the defendants to have achieved the
12 same or better results, have failed to have a reasonable basis for such claims at the times they
13 were made, or have failed to provide prospective franchisees with earnings claim disclosures
14 at the times required by the Rule whenever such claims are made, thereby violating Section
15 436.1(e) of the Rule, 16 C.F.R. § 436.1(e), and Section 5 of the FTC Act, 15 U.S.C. § 45.

16 CONSUMER INJURY

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

21 THIS COURT'S POWER TO GRANT RELIEF

22 21. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
23 injunctive and other ancillary relief, including consumer redress, disgorgement and
24 restitution, to prevent and remedy any violations of any provision of law enforced by the
25 Federal Trade Commission.

26 22. Section 5(m)(1)(A) of the FTC Act, § 45(m)(1)(A), as modified by Section 4 of
27 the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended,

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5

1 and as implemented by 16 C.F.R. § 1.98(d) (1997), authorizes this Court to award civil
 2 penalties of not more than \$11,000 for each violation of the Franchise Rule occurring after
 3 November 20, 1996. The defendants' violations of the Rule were committed after that date
 4 and with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. §
 5 45(m)(1)(A).

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

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

13 **PRAYER FOR RELIEF**

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

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

19 2. Permanently enjoin the defendants from violating the Franchise Rule and the
 20 FTC Act;

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

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

27
 28

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

DATED: 2-9-2000 ①

OF COUNSEL:

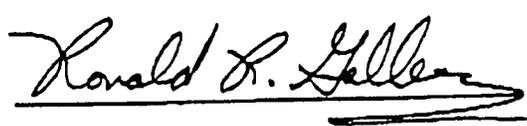
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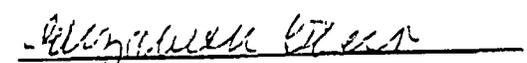
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