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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,

2:05-cv-0440-LDG-LRL

Plaintiff,

v.

**ME17LL0000 Tf0.0600 T6i**

NETWORK SERVICES DEPOT, et al.,

Defendants.

Network Services Distribution, Inc, Sunbelt Marketing, Inc (collectively, the “corporate defendants”), Charles Castro (“Castro”), Elizabeth Castro (“Ms. Castro”), and Gregory High (the “individual defendants”), and Phils Watson (the “relief defendant”) for violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Franchise Rule, 16 C.F.R. § 436 (#78, response #79, objections to declarations #81-#116, reply #127). The FTC requests injunctive relief and restitution for injured consumers pursuant to § 13(b) and §19(a)(1) of the FTC Act, 15 U.S.C. § 53(b) and § 57(b). The FTC also requests that the corporate defendants, Castro and High be ordered to pay consumer redress, and that funds held in the Castro Children’s Trust (controlled by relief defendant Watson) and certain monies transferred to defendants’ attorneys be so used.

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no

1 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter  
2 of law.” Fed.R.Civ.P. 56 ©. The moving party bears the initial burden of demonstrating the  
3 absence of a genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256  
4 (1986). Whether a fact is material is determined by looking to the governing substantive law; if

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1 verdict in favor of the nonmoving party in light of the substantive law. Anderson, 477 U.S. at 249-  
2 52. The determination requires application of the standard that courts apply in motions for  
3 judgments as a matter of law. Id. at 251.

4 A. FTC's showing

5 The FTC presents evidence that Castro is the president and owner of each corporate  
6 defendant, including NSD. Castro has admitted that he controlled the corporate defendants  
7 and was active in their business affairs. Ms. Castro is an owner and officer of NSD and  
8 Network Marketing. She has admitted that she controlled the corporate defendants and was  
9 active in the business affairs of the companies. The FTC presents evidence that High was  
10 active in, and had the ability to control, the affairs of the corporate defendants. The FTC has  
11 also presented evidence that the corporate defendants comprise a common enterprise, and are  
12 each liable for NSD's violations.

13 The FTC's evidence shows that, from 2001 through the beginning of 2004, NSD  
14 marketed and sold kiosk business opportunities to consumers, including free-standing kiosks,  
15 called "internet kiosks" or "internet access terminals," which house a computer and a  
16 mechanism to accept payment. The internet kiosks are designed to allow the public to access  
17 the internet, for a fee, from locations such as hotels, restaurants, casinos, and stores.

18 In late 2001, Castro, on behalf of NSD, entered into a working relationship with Ed  
19 Bevilacqua and his former internet kiosk companies, including Bikini Vending Corp.  
20 ("BVC"). BVC agreed to purchase, find locations for, install, and manage internet kiosks,  
21 and NSD agreed to promote, offer and sell the business opportunities to the public. NSD  
22 offered the business opportunities to the public at prices ranging from \$4,400 to \$7,000. A  
23 consumer purchasing the kiosk business from NSD with BVC as their management company  
24 purportedly received ownership of an internet kiosk bearing a trademark of BVC or another of  
25 Bevilacqua's kiosk companies.  
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1           According to the FTC's evidence, NSD represented to agents and purchasers that the  
2 internet kiosks would generate substantial revenues; specifically identifying a fixed minimum  
3 monthly payment amounting to an annual return of approximately 12 percent. The FTC's  
4 evidence further indicates that NSD's promotional material suggested that the purchasers  
5 would earn far more than one percent per month minimum. NSD represented that well-placed  
6 kiosks could generate \$1,000 per month, and certain presentations represented that kiosks  
7 would generate \$600 per month at a minimum. NSD and its agents also offered consumers a  
8 financial guarantee or bond that purportedly protected their investment against default,  
9 bankruptcy and fraud. One other aspect of the business was for BVC to buy back the kiosks  
10 after a number of years, and then sell the company to a third party. This plan included  
11 compensation to the agents upon selling the business, and therefore created a strong incentive  
12 for agents to write business for NSD.

13           The FTC submits evidence that, contrary to NSD's representations, consumers never  
14 received from BVC more than the minimum monthly payments, and that those payments were  
15 received only because of the infusion of money from new investors, not because of the  
16 successful operation of the particular kiosk. FTC also submits evidence indicating that the  
17 financial guarantee aspect of the program was insubstantial because the head of the company  
18 backing the bonds was indicted and fled the country. The FTC also shows that, contrary to its  
19 representations, NSD had not located and installed the kiosks. Indeed, FTC presents evidence  
20 that NSD, or BVC, did not even have the right to install kiosks in most of the locations  
21 designated on NSD's agreements with purchasers. Finally, the FTC demonstrates that,  
22 contrary to NSD's representation, consumers did not acquire ownership of operating internet  
23 kiosks. The evidence submitted by the FTC indicates that out of the thousands of kiosks  
24 purchased by consumers by early 2004, BVC had only located 300 units, and fewer than 160  
25 kiosks had operational connections to the internet.

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1           The FTC has also presented evidence that under the working arrangement between  
2 NSD and BVC, the two companies did not intrude upon each other's areas of responsibility,  
3 jointly creating a form of "Chinese Wall" between the companies. The FTC maintains that  
4 defendants did nothing to verify that consumers had actually acquired ownership of an  
5 operating kiosk, or that kiosks had even been located as promised.

6           By early 2004, more than 450 consumers had purchased thousands of kiosk business  
7 opportunities from NSD. The FTC has presented consumer affidavits that the above  
8 misrepresentations were central to the consumer's decision to purchase t

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1           The FTC has met its initial burden on summary judgment of demonstrating the  
2 absence of a genuine issue of material fact as to its claims against defendants and its  
3 entitlement to injunctive relief and consumer restitution.

4       B.     Defendants' showing

5           Defendants address their burden of raising a genuine issue of material fact by basically  
6 claiming that they are the victims of a fraudulent scheme perpetrated by BVC and Bevilacqua.  
7 According to defendants, BVC and Bevilacqua falsely represented that they were properly  
8 installing internet kiosks on behalf of the kiosk purchasers all the time that they were  
9 receiving from NSD millions of dollars in purchasers' monies. Defendants argue, for  
10 instance, that in March 2004 Bevilacqua sent an email to Castro representing that 3,940  
11 internet kiosks purchased from NSD had been manufactured and installed by BVC in various  
12 locations throughout the United States when, in fact, only 270 had been installed. Defendants  
13 assert that BVC and Bevilacqua intentionally concealed the scheme from NSD and Castro in  
14 order to continue receiving the payments from NSD, which defendants claim totaled  
15 approximately \$10.5 million. In light of the fraud being perpetrated by Bevilacqua and BVC,  
16 defendants argue that the FTC cannot prove that the individual defendants knew or were  
17 recklessly indifferent to the validity of the representations. Defendants further maintain that  
18 Castro did not become aware of BVC and Bevilacqua's scheme until early March 2004, and  
19 that once he did, he immediately notified the FBI and began cooperating with the authorities.  
20 Defendant also notes that in March 2004, NSD returned and refunded approximately \$5  
21 million (an amount disputed by the FTC) to NSD kiosk purchasers.

22           Defendants also argue that BVC, not NSD, had the responsibility to locate and install  
23 the kiosks. Defendants deny that they made any false claims related to earnings, and that they  
24 were acting in accordance with a researched business model and its projections.

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1 C. Procedural and Evidentiary Considerations

2 In many instances, defendants rely upon the declarations of Castro and High that are  
3 contradicted by their own prior testimony, discovery responses, business records and the  
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Despite Castro's deposition testimony and the documentary evidence that establishes that

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1           In addition, Castro also testified that the estimates that Bevilacqua gave for installing  
2 machines (20,000 over eighteen months, or even thirty months) “made [Castro] want to  
3 choke.” Castro was therefore not only aware of such exaggerations, but indifferently accepted  
4 Bevilacqua’s words and excuses even though he knew Bevilacqua to stretch the truth. For  
5 instance, Bevilacqua claimed to have relationships with various large corporate entities for the  
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1 kiosks. The facts put Castro and High, as sophisticated businessmen in the field, on notice of  
2 installation and other problems, and they recklessly disregarded those warnings.

3 Defendants argue that Bevilacqua falsely represented on March 15, 2004, that 3,940  
4 kiosks had been installed. However, it is not the face value of this representation, but  
5 defendants' acceptance of it, given the prior history of concerns and complaints, and  
6 defendants' lack of due diligence

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<sup>2</sup>As the FTC points out, even reliance on the business model that defendants claim would have provided warnings about the relative success of kiosk. The Summit Research reports indicated that for kiosks to be profitable, they must be accessible to people with time to spend, and function correctly for each client. The report warned to expect owners to receive lower

1 Castro places much emphasis on his cooperation with the authorities. Of course, once  
2 it became apparent that BVC's house of cards was collapsing, it would have served any of  
3 defendants' self-interest to distance themselves from BVC. Castro's cooperation and  
4 unsubstantiated claims about the amount of refunds that he provided to consumer victims  
5 simply does not assuage his prior actions and responsibilities.

6 The court further finds that defendants have failed to adequately contest that customers  
7 paid millions of dollars to purchase the business opportunities, or that the corporate  
8 defendants formed a common enterprise. Regarding the FTC's showing of High's  
9 participation in NSD and BVC, defendants have failed to raise an issue of fact that High so  
10 participated, and that circumstances put him on notice that serious performance problems  
11 existed at BVC.

12 Regarding the Castro Children's Trust, Castro admits that the \$270,000 remaining  
13 derives from NSD. Also, bank records indicate that the majority of this money is traceable to  
14 the corporate defendants, which have been found to form a common enterprise. Defendants  
15 do not contest the allegations relating to these specific monies; therefore, they will be subject  
16 to the court's judgment based on the theory of constructive trust on behalf of the children of the  
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1 judgment in this regard on their assertion that they engaged in n

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25 <sup>3</sup>Substantively, the FTC has shown that the venture satisfies the criteria for a traditional  
26 services franchise, with BVC as the franchisor and NSD as the franchise broker.



1 THE COURT FURTHER ORDERS that the Federal Trade Commission's motion for  
2 summary judgment (#78) is GRANTED, as set forth above.

3 THE COURT FURTHER ORDERS that within sixty days from the date of the filing of  
4 this order, the Federal Trade Commission shall file a supplemental brief on the limited issue of  
5 whether, or to what extent, the funds transferred to the attorneys in this action should be  
6 recovered in light of the issues resolved by this order. Responsive and reply briefs shall be  
7 filed according to local rules. Following the court's ruling on that issue, the Federal Trade  
8 Commission is DIRECTED to file a proposed permanent injunction and order.

9 THE COURT FURTHER ORDERS that defendants' motion for summary judgment  
10 (#69) is DENIED.

11 THE COURT FURTHER ORDERS that the defendants' motions for judicial notice  
12 (#72 and #134) are DENIED.

13 THE COURT FURTHER ORDERS that the Federal Trade Commission's motions to  
14 strike (#77, #121 and #129) and motion to amend motion to strike (#133) are DENIED as  
15 moot.

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17 DATED this \_\_\_\_\_ day of September, 2006.

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Lloyd D. George  
United States District Judge

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