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16 ATTORNEYS FOR PLAINTIFF

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA
19 WESTERN DIVISION

20 FEDERAL TRADE COMMISSION,

21 Plaintiff,

22 v.

23 MITCHELL D. GOLD, *et al.*,

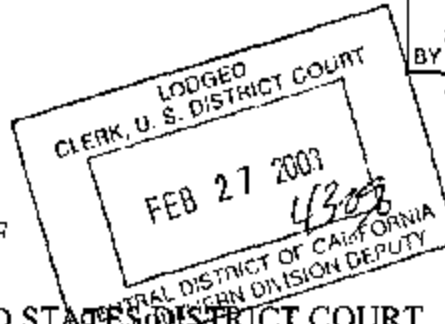
24 Defendants.

25 SA CV 98-968 DOC
26 No. ~~CV-99-2895~~ CBM (RZx)

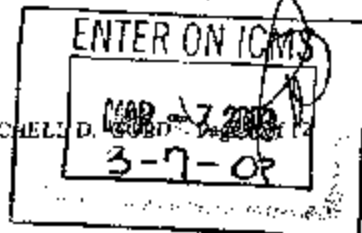
27 STIPULATED ORDER FOR
28 PERMANENT INJUNCTION AS
TO MITCHELL D. GOLD

STIPULATED FINAL ORDER AS TO MITCHELL D. GOLD

FILED
MAR - 6 2003
CLERK, U.S. DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA SOUTHERN DIVISION AT SANTA ANA
BY <i>[Signature]</i> DEPUTY



- Priority
- Send
- Cisd
- Enter
- JS-5/JS-6
- JS-2/JS-3



FEDERAL TRADE COMMISSION
915 Second Ave., Su. 2816
Seattle, Washington 98174
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286

1 Mitchell Gold”), by and through counsel, for the purpose of full and final settlement of
2 the matters alleged in the complaint filed in this case, have consented to entry of this
3 Stipulated Order for Permanent Injunction as to Mitchell D. Gold (“Order”) without a
4 trial or adjudication of any issue of law or fact therein.

5 NOW, THEREFORE, the Commission and defendant Mitchell Gold, having
6 requested the Court to enter this Order, **IT IS HEREBY ORDERED, ADJUDGED**
7 **AND DECREED** as follows:

8
9 **FINDINGS**

10 1. This is an action by the Commission under Section 13(b) of the FTC Act,
11 15 U.S.C. § 53(b). Pursuant to this Section, the Commission has the authority to seek
12 the relief contained herein.

13 2. The Commission’s complaint states a claim upon which relief may be
14 granted against defendant Mitchell Gold under Sections 5(a) and 13(b) of the FTC Act,
15 15 U.S.C. §§ 45(a) and 53(b).

16 3. This Court has jurisdiction of the subject matter of this case and all the
17 parties hereto. Venue in the Central District of California is proper.

18 4. The alleged activities of defendant Mitchell Gold are in or affecting
19 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

20 5. The parties shall each bear their own costs and attorney’s fees incurred in
21 this action and have waived all claims under the Equal Access to Justice Act, 28 U.S.C.
22 § 2412.

23 6. Defendant has waived all rights to seek appellate review or otherwise
24 challenge or contest the validity of this Order.

25 7. This Order does not constitute, and shall not be interpreted to constitute,
26 either an admission by defendant or a finding by the Court that defendant has engaged
27 in any violations of the FTC Act, 15 U.S.C. § 45(a).

28 8. Entry of this Order is in the public interest.

DEFINITIONS

1
2 1. For purposes of this Order the following definitions shall apply:

3 2. "Donation" or "contribution" means money or any item of value provided
4 in response to a solicitation made on behalf, or in the name, of any nonprofit
5 organization, including any payment for advertising or any listing in any magazine,
6 journal or other publication produced by, or on behalf of, or in the name of, any
7 nonprofit organization.

8 3. "Donor" or "consumer" means any person or business solicited for a
9 donation or contribution.

10 4. "Nonprofit organization" means any person that is, or is represented to be,
11 a nonprofit entity or that has, or is represented to have, a charitable purpose,
12 specifically including any entity that purports to benefit, either in whole or in part,
13 purported law enforcement, firefighting, or veterans' organizations, personnel, or
14 programs, or individuals who suffer from an illness or injury or handicap.

15 5. "Material fact" means a fact likely to affect a person's decision as to the
16 amount of, or whether to make, a donation, contribution, or purchase.

17 6. "Person" means a natural person, organization or other legal entity,
18 including a corporation, partnership, proprietorship, association, cooperative,
19 government agency, or any other group or combination acting as an entity.

20 7. "Solicitor" means any person who solicits donations or contributions.

21 8. "Telemarketing" means any plan, program, or campaign that involves
22 attempts to induce consumers to purchase any item, good, service, partnership, interest,
23 trust interest, other beneficial interest, or chance to win a prize, by means of telephone
24 sales presentations, provided that the term "telemarketing" does not include:
25 transactions that are not completed until after a face-to-face contact between the seller
26 or solicitor and the consumers solicited; transactions initiated by a customer's
27 telephone call, when the call is not the result of any solicitation by a seller or
28 telemarketer, and transactions initiated by telephone calls made to any person with

1 | whom the caller has a prior or established business or personal relationship that was not
2 | created by means of "telemarketing" as defined herein. The term includes but is not
3 | limited to, participating in such a plan, program, or campaign, managing others who
4 | participate in such a plan, program, or campaign, operating an enterprise conducting
5 | such a plan, program, or campaign, or otherwise participating as an officer, director,
6 | employee or independent contractor in an enterprise that conducts such a plan, program,
7 | or campaign.

8 | ORDER

9 | **I. PROHIBITION ON FUNDRAISING**

10 | **IT IS THEREFORE ORDERED** that defendant Mitchell Gold is hereby
11 | restrained and enjoined from engaging, participating, or assisting in any manner or in
12 | any capacity whatsoever in the solicitation of contributions from any donor, whether
13 | directly, indirectly, in concert with others, or through any intermediary, business entity,
14 | person or device. Under this prohibition, defendant shall not be employed by, hold any
15 | ownership interest in, direct, control, manage, advise or provide consulting services to,
16 | any sole proprietorship, corporation, partnership, person or other entity that solicits
17 | contributions or is involved in the business of fundraising, including, but not limited to,
18 | a non-profit organization; nor shall defendant receive benefits or payments the amount
19 | of which is based on the amount of contributions solicited by another entity; provided,
20 | however, that this provision shall not prohibit defendant from providing to a non-profit
21 | organization volunteer services for which he receives no compensation of any kind.

22 | **II. PROHIBITION ON TELEMARKETING**

23 | **IT IS FURTHER ORDERED** that defendant Mitchell Gold is hereby restrained
24 | and enjoined from engaging, participating, or assisting in any manner or in any capacity
25 | whatsoever in telemarketing, whether directly, indirectly, in concert with others, or
26 | through any intermediary, business entity, or device.
27 |
28 |

1 based on this stipulated judgment. This stipulation shall be filed to settle the pending
2 adversary proceeding in FTC v. Gold, Adv. Proceeding No. SA 99-01590 (C.D. Cal.
3 Bkrtcy).

4 5 **V. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

6 IT IS FURTHER ORDERED that, within five (5) business days after receipt of
7 this Order as entered by the Court, defendant Mitchell Gold shall submit to the
8 Commission a truthful sworn statement, in the form shown on Appendix A, that shall
9 acknowledge receipt of this Order.

10 11 **VI. COMPLIANCE REPORTING BY DEFENDANT**

12 IT IS FURTHER ORDERED that, in order that compliance with the provisions
13 of this Order may be evaluated:

14 A. For a period of ten (10) years from the date of entry of this Order,
15 defendant shall notify the Commission in writing of the following:

16 1. Any changes in his residence, mailing address, and telephone
17 number, within ten (10) days of the date of such change;

18 2. Any changes in his employment status (including self-employment),
19 within ten (10) days of such change. Such notices shall include the name and address
20 of each business with which defendant is affiliated or employed, a statement of the
21 nature of the business, and a statement of the defendant's duties and responsibilities in
22 connection with the business or employment;

23 3. Any proposed change in the structure of any business entity that is
24 engaged in the advertising, marketing, sale or offering for sale of any consumer good or
25 service, that is owned or controlled by defendant such as creation, incorporation,
26 dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, proposed
27 filing of a bankruptcy petition, or change in the corporate name or address, or any other
28 changes that may affect compliance obligations arising out of this Order, thirty (30)

1 days prior to the effective date of any proposed change; provided, however, that with
2 respect to any proposed change in the corporation about which the defendant learns
3 fewer than thirty (30) days prior to the date such action is to take place, the defendant
4 shall notify the Commission as soon as practicable after learning of such proposed
5 change;

6 B. One hundred eighty (180) days after the date of entry of this Order, the
7 defendant shall provide a written report to the Commission, sworn to under penalty of
8 perjury, setting forth in detail the manner and form in which the defendant has complied
9 and is complying with this Order. This report shall include but not be limited to:

10 1. Defendant's then-current residence address and telephone number;
11 2. Defendant's then-current employment, business address and
12 telephone numbers, a description of the business activities of each such employer, and
13 the defendant's title and responsibilities for each employer or business;

14 C. For the purposes of this Paragraph, "employment" includes the
15 performance of services as an employee, consultant, or independent contractor; and
16 "employers" includes any individual or entity for whom defendant performs services as
17 an employee, consultant, or independent contractor; and

18 D. The reporting provisions of this paragraph shall be suspended during any
19 period of time that defendant Mitchell Gold is incarcerated, provided that within thirty
20 (30) days of his release defendant shall provide the requisite reports.

21 VII. COMPLIANCE MONITORING

22 IT IS FURTHER ORDERED that, for the purpose of monitoring and
23 investigating defendant Mitchell Gold's compliance with any provision of this Order:

24 A. Within ten (10) days of receipt of written notice from a representative of
25 the Commission, defendant Mitchell Gold shall submit additional written reports,
26 sworn to under penalty of perjury; produce documents; appear for deposition; and/or
27 provide entry during normal business hours to any business location in defendant
28 Mitchell Gold's possession or direct or indirect control to inspect the business

1 operation where such business is engaged in the advertising, marketing, sale or offering
2 for sale of any consumer good or service;

3 B. In addition, the Commission is authorized to monitor defendant Mitchell
4 Gold's compliance with this Order by all other lawful means, including but not limited
5 to the following:

6 1. obtaining discovery from any person, without further leave of court,
7 in the manner otherwise provided by the Federal Rules of Civil Procedure;

8 2. posing as consumers and suppliers to defendant Mitchell Gold,
9 defendant's employees, or any other entity managed or controlled in whole or in part by
10 defendant Mitchell Gold, without the necessity of identification or prior notice;

11 3. obtaining any documentary material, tangible things, or information
12 relevant to unfair or deceptive acts or practices in or affecting commerce (within the
13 meaning of 15 U.S.C. § 45(a)(1)) pursuant to Sections 9 and 20 of the FTC Act, 15
14 U.S.C. §§ 49, 57b-1.

15 C. Defendant Mitchell Gold shall permit representatives of the Commission
16 to interview any employer, consultant, independent contractor, representative, agent, or
17 employee who has agreed to such an interview, relating in any way to any conduct
18 subject to this Order. The person interviewed may have counsel present.

19 D. For purposes only of the compliance reporting required by this Paragraph,
20 the Commission is authorized to communicate directly with defendant Mitchell Gold.

21 VIII. MAINTENANCE OF RECORDS

22
23 IT IS FURTHER ORDERED that defendant, for a period of twelve (12) years
24 from the date of entry of this Order, in connection with any business entity that
25 defendant directly or indirectly owns or controls that is engaged in the advertising,
26 marketing, sale or offering for sale of any consumer good or service, is hereby
27 permanently restrained and enjoined from failing to create, and from failing to retain for
28

1 a period of three (3) years following the date of such creation unless otherwise
2 specified:

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

5 B. Personnel records accurately reflecting the name, address, and telephone
6 number of each person employed in any capacity by such business, including acting as
7 an independent contractor, that person's job title or position, the date upon which the
8 employee commenced work, and the date and reason for the employee's termination, if
9 applicable;

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

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

16 E. Copies of all sales scripts, training materials, advertisements, or other
17 marketing materials.

18
19 **IX. NOTICES**

20 **IT IS FURTHER ORDERED** that for purposes of this Order, defendant shall,
21 unless otherwise directed by the Commission's authorized representatives, mail all
22 written notifications to the Commission to:

23
24 **Regional Director**
25 **Federal Trade Commission**
26 **915 Second Avenue, Suite 2896**
27 **Seattle, Washington 98174**
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X. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of enabling either of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith or for the punishment of violations thereof.

XI. ENTRY OF THIS JUDGMENT

IT IS FURTHER ORDERED that, as there is no just reason for delay, the Clerk of the Court is hereby directed to enter this Order.

SO ORDERED, this 6 day of March, 2003.

David O. Carter
Honorable ~~David O. Carter~~
United States District Judge

1 The parties hereby consent to the terms and conditions set forth above and
2 consent to entry of this Order without further notice to the parties. Defendant stipulates
3 and acknowledges that he has consented to entry of this Order freely and without
4 coercion, that he understands the provisions of the Order, and is prepared to abide by its
5 terms.

6
7 **FEDERAL TRADE COMMISSION**

DEFENDANT

8
9 
10 Tracy S. Thorleifson


11 Mitchell D. Gold

12 
13 Maxine R. Stansell


14 S. Daniel Harbottle
15 Attorney for Mitchell D. Gold

16 
17 Charles A. Harwood
18 Regional Director
19 915 Second Avenue
20 Seattle, WA 98174

AS TO FORM

21
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28
Attorneys for Plaintiff
Federal Trade Commission

APPENDIX A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MITCHELL D. GOLD, *et al.*,

Defendants.

No. CV-99-2895-CBM (RZx)

AFFIDAVIT OF DEFENDANT

I, _____, being duly sworn, hereby state and affirm as follows:

1. My name is _____, My current residence address is

_____, I am a citizen of the United States

and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in FTC v. Mitchell D. Gold, et al. (United States District Court for the Central District of California).

3. On _____ [date], I received a copy of the Order for Permanent Injunction, which was signed by the Honorable Consuelo B. Marshall and entered by the Court on

_____ [date of entry of Order]. A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____ [date], at _____ [city and state].

{Signature/Full name of defendant}

Subscribed and sworn to before me this _____ day of _____, 2002.

Notary Public

My Commission Expires:
