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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.

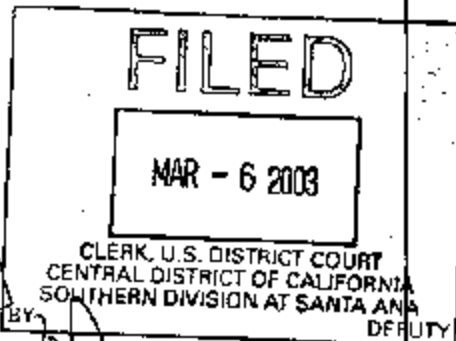
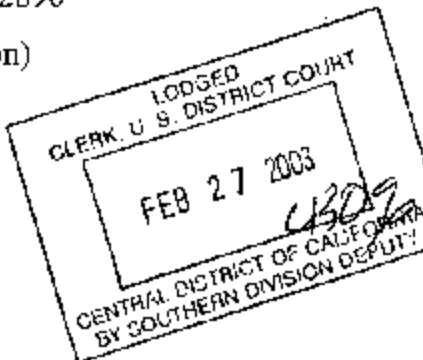
23 MITCHELL D. GOLD, *et al.*,

24 Defendants.

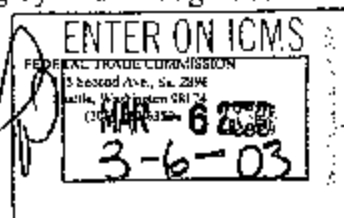
25 SA CV 98-968 DOC
26 No. CV-99-2895-CBM (RZx)

27 STIPULATED ORDER FOR
28 PERMANENT INJUNCTION AS
TO PATRICIA GOLD, HERBERT
GOLD, AND CELIA GOLD

29 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has filed a
30 complaint for a permanent injunction and other relief, pursuant to Section 13(b) of the
31 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging defendants
32 Mitchell David Gold, Patricia Ann Cooley Gold, Herbert Gold, Celia Gold, Jonathan
33 Philip Cohen, Steven John Chinarian, U.S. Marketing, Inc., and North American
34 Charitable Services, Inc., with violations of Section 5 of the FTC Act, 15 U.S.C. § 45,
35 in connection with solicitations of charitable donations by telephone and by mail. The
36 Commission and defendants Patricia Gold, Herbert Gold and Celia Gold (hereinafter
37 "defendants") having been represented by counsel and acting by and through such



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1 counsel, for the purpose of full and final settlement of the matters alleged in the
2 complaint filed in this case, have consented to entry of this Stipulated Order for
3 Permanent Injunction and Other Equitable Relief as to Patricia Gold, Herbert Gold and
4 Celia Gold ("Order") without a trial or adjudication of any issue of law or fact therein.

5 NOW, THEREFORE, the Commission and defendants having requested the
6 Court to enter this Order, **IT IS HEREBY ORDERED, ADJUDGED AND**
7 **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 defendants under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C.
15 §§ 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 defendants are in or affecting commerce, as
19 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. Defendants have 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 defendants or a finding by the Court that defendants have
27 engaged 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. "Material fact" means a fact likely to affect a person's decision as to the
11 amount of, or whether to make, a donation, contribution, or purchase.

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

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 9 **ORDER**

10 **I. PROHIBITION ON FUNDRAISING**

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

24 25 **II. PROHIBITION ON TELEMARKETING**

26 IT IS FURTHER ORDERED that defendants are hereby restrained and enjoined
27 from engaging, participating, or assisting in any manner or in any capacity whatsoever
28

1 in telemarketing, whether directly, indirectly, in concert with others, or through any
2 intermediary, business entity, or device.

3 4 **III. PROHIBITION ON MISREPRESENTATIONS**

5 **IT IS FURTHER ORDERED** that defendants and those persons in active concert
6 or participation with them who receive actual notice of this Order by personal service,
7 facsimile or otherwise, whether acting directly or through any corporation, subsidiary,
8 division or other device, are hereby permanently restrained and enjoined from making,
9 or assisting in making, material misrepresentations in connection with the sale of
10 consumer goods or services.

11 12 **IV. RIGHT TO REOPEN**

13 **A. IT IS FURTHER ORDERED** that, by agreeing to this Order, defendants
14 reaffirm and attest to the truthfulness, accuracy, and completeness of the Financial
15 Disclosure Form and related materials transmitted to the FTC on April 29 and May 6
16 and 7, 2002. Plaintiff's agreement to this Order is expressly premised upon the
17 truthfulness, accuracy, and completeness of defendants' representations regarding their
18 financial condition in the Financial Disclosure Forms referenced above, which contain
19 material information upon which plaintiff relied in negotiating and agreeing to the
20 terms of this Order. If, upon motion by the Commission, this Court finds that any
21 defendant failed to disclose any material asset or source of income, or materially
22 misrepresented the value of any asset or source of income, or made any other material
23 misrepresentation in or omission from the Financial Disclosure Form and related
24 materials, the Court shall enter judgment against that defendant, in favor of the
25 Commission, in the amount of \$10 million, and the entire amount of the judgment shall
26 become immediately due and payable.

27 **B. All funds** paid to the Commission pursuant to this Paragraph shall be
28 deposited into a fund administered by the Commission or its agent to be used for

1 equitable relief, including but not limited to consumer redress and any attendant
2 expenses for the administration of any redress fund. If the Commission determines in
3 its sole discretion that redress to consumers is wholly or partially impracticable or funds
4 remain after redress is completed, the Commission may apply any remaining funds for
5 such other equitable relief, including consumer information remedies, as it determines
6 to be reasonably related to defendant's practices alleged in the Complaint. Any funds
7 not used for such equitable relief shall be deposited in the United States Treasury as
8 disgorgement. Defendants shall have no right to challenge the Commission's choice of
9 remedies under this Paragraph.

10 C. In all other respects this Order shall remain in full force and effect unless
11 otherwise ordered by the Court.

12 D. Proceedings instituted under this Paragraph are in addition to, and not in
13 lieu of, any other civil or criminal remedies as may be provided by law, including any
14 other proceedings the Commission may initiate to enforce this Order.

15 E. Solely for purposes of this Paragraph, the defendants waive any right to
16 contest any of the allegations in the Commission's Complaint.

17 18 **V. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

19 IT IS FURTHER ORDERED that, within five (5) business days after receipt of
20 this Order as entered by the Court, defendants shall each submit to the Commission a
21 truthful sworn statement, in the form shown on Appendix A, that shall acknowledge
22 receipt of this Order.

23 24 **VI. COMPLIANCE REPORTING BY DEFENDANTS**

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

27 A. For a period of five (5) years from the date of entry of this Order, each
28 defendant shall notify the Commission in writing of the following:

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

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

8 3. Any proposed change in the structure of any business that is
9 engaged in the advertising, marketing, sale or offering for sale of any consumer good or
10 service, that is owned or controlled by any defendant such as creation, incorporation,
11 dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, proposed
12 filing of a bankruptcy petition, or change in the corporate name or address, or any other
13 changes that may affect compliance obligations arising out of this Order, thirty (30)
14 days prior to the effective date of any proposed change; provided, however, that with
15 respect to any proposed change in the corporation about which the defendant learns
16 fewer than thirty (30) days prior to the date such action is to take place, the defendant
17 shall notify the Commission as soon as practicable after learning of such proposed
18 change;

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

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

27 C. For the purposes of this Paragraph, "employment" includes the
28 performance of services as an employee, consultant, or independent contractor; and

1 "employers" includes any individual or entity for whom defendants performs services
2 as an employee, consultant, or independent contractor.

4 VII. COMPLIANCE MONITORING

5 IT IS FURTHER ORDERED that, for the purpose of monitoring and
6 investigating defendants' compliance with any provision of this Order:

7 A. Within ten (10) days of receipt of written notice from a representative of
8 the Commission, any defendant shall submit additional written reports, sworn to under
9 penalty of perjury; produce documents; appear for deposition; and/or provide entry
10 during normal business hours to any business location in such defendant's possession
11 or direct or indirect control to inspect the business operation where such business is
12 engaged in the advertising, marketing, sale or offering for sale of any consumer good or
13 service;

14 B. In addition, the Commission is authorized to monitor defendants'
15 compliance with this Order by all other lawful means, including but not limited to the
16 following:

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

19 2. posing as consumers and suppliers to defendants, defendants'
20 employees, or any other entity managed or controlled in whole or in part by any
21 defendant, without the necessity of identification or prior notice;

22 3. obtaining any documentary material, tangible things, or information
23 relevant to unfair or deceptive acts or practices in or affecting commerce (within the
24 meaning of 15 U.S.C. § 45(a)(1)) pursuant to Sections 9 and 20 of the FTC Act, 15
25 U.S.C. §§ 49, 57b-1. Defendants shall permit representatives of the Commission to
26 interview any employer, consultant, independent contractor, representative, agent, or
27 employee who has agreed to such an interview, relating in any way to any conduct
28 subject to this Order. The person interviewed may have counsel present.

1 C. For purposes only of the compliance reporting required by this Paragraph,
2 the Commission is authorized to communicate directly with defendants.
3

4 VIII. MAINTENANCE OF RECORDS

5 IT IS FURTHER ORDERED that defendants, for a period of eight (8) years from
6 the date of entry of this Order, in connection with any business entity that defendants
7 directly or indirectly own or control that is engaged in the advertising, marketing, sale
8 or offering for sale of any consumer good or service, are hereby permanently restrained
9 and enjoined from failing to create, and from failing to retain for a period of three (3)
10 years following the date of such creation unless otherwise specified:

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

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

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

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

24 E. Copies of all sales scripts, training materials, advertisements, or other
25 marketing materials.
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IX. NOTICES

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

Regional Director
Federal Trade Commission
915 Second Avenue, Suite 2896
Seattle, Washington 98174

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, 2002.



HONORABLE ~~DAVID Q. 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. Defendants stipulate
3 and acknowledge that they have consented to entry of this Order freely and without
4 coercion, that they understand the provisions of the Order, and are prepared to abide by
5 its terms.

6
7 **FEDERAL TRADE COMMISSION**

DEFENDANTS

8
9 _____
10 Tracy S. Thorleifson

11 *Patricia A. Cooley Gold*
12 _____
13 Patricia A. Cooley Gold

14 _____
15 Maxine R. Stansell

16 _____
17 Herbert Gold

18 _____
19 Charles A. Harwood
20 Regional Director
21 915 Second Avenue
22 Seattle, WA 98174

23 _____
24 Celia Gold

25 _____
26 Attorneys for Plaintiff
27 Federal Trade Commission

28 *San Harbottle*

S. Daniel Harbottle
Attorney for Defendants

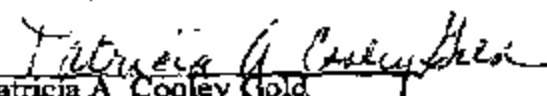
AS TO FORUM

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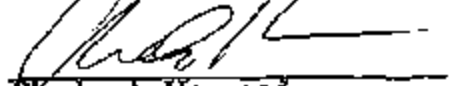
DEFENDANTS

8 
 9 Tracy S. Thorsen


 Patricia A. Cooley Gold

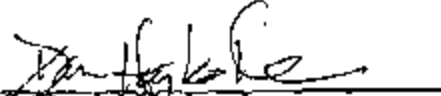
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 12 Maxine R. Stansell


 Herbert Gold

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 14 Charles A. Harwood
 15 Regional Director
 16 915 Second Avenue
 17 Seattle, WA 98174


 Celia Gold

17 Attorneys for Plaintiff
 Federal Trade Commission


 S. Daniel Harbottle
 Attorney for Defendants
 AS TO FORM

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:

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be served on all defendants by providing a true and correct copy thereof on the date set forth below by first-class mail, deposited with the United States Postal Service at Seattle, to:

◇ S. Daniel Harbottle, Rutan and Tucker, LLP (counsel for North American Charitable Services, U.S. Marketing, Mitchell Gold, Herbert Gold, and Celia Gold), 714-546-9035, 611 Anton Blvd., Suite 1400, Costa Mesa, CA 92626; Washington:

◇ Frank Battaile, Battaile & Hargrave, LLP (counsel for Jonathan P. Cohen), 949-719-1326, 110 Newport Center Dr., Suite 200, Newport Beach, CA 92660;

◇ Robert C. Moest (counsel for North American Charitable Services, U.S. Marketing, Mitchell Gold, Herbert Gold, and Celia Gold), 310-915-9897, 2530 Wilshire Blvd., 2d Floor, Santa Monica, CA 90403; and

◇ Ben Pesta (counsel for Steven Chinarian), 310-203-2150, 1801 Avenue of the Stars, Ste. 900, Los Angeles, CA 90067.

Date: February 26, 2003

