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16 ATTORNEYS FOR PLAINTIFF

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

20 FEDERAL TRADE COMMISSION,

21 Plaintiff,

22 v.

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

24 Defendants.

25 No. SACV 98-968-DOC (RZx)

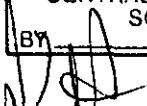
26 STIPULATED ORDER FOR  
27 PERMANENT INJUNCTION AS  
28 TO JONATHAN P. COHEN

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has filed a complaint for a permanent injunction and other relief, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging defendants Mitchell David Gold, Patricia Ann Cooley Gold, Herbert Gold, Celia Gold, Jonathan Philip Cohen, Steven John Chinarian, U.S. Marketing, Inc., and North American Charitable Services, Inc., with violations of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with solicitations of charitable donations by telephone and by mail. The Commission and defendant Jonathan P. Cohen (hereinafter "defendant" or "defendant Cohen"), by and through counsel, for the purpose of full and final settlement of the

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APR 28 2003

CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION  
BY  DEPUTY

LODGED  
CLERK, U. S. DISTRICT COURT

APR 25 2003  
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CENTRAL DISTRICT OF CALIFORNIA  
BY SOUTHERN DIVISION DEPUTY

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1 matters alleged in the complaint filed in this case, have consented to entry of this  
2 Stipulated Order for Permanent Injunction as to Jonathan P. Cohen ("Order") without a  
3 trial or adjudication of any issue of law or fact therein.

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

7  
8 **FINDINGS**

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

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

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

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

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

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

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

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

## 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, journal  
6 or other publication produced by, or on behalf of, or in the name of, any nonprofit  
7 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, specifically  
12 including any entity that purports to benefit, either in whole or in part, purported law  
13 enforcement, firefighting, or veterans’ organizations, personnel, or programs, or  
14 individuals who suffer from an illness or injury.

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: transactions  
25 that are not completed until after a face-to-face contact between the seller or solicitor  
26 and the consumers solicited; transactions initiated by a customer’s telephone call, when  
27 the call is not the result of any solicitation by a seller or telemarketer; and transactions  
28 initiated by telephone calls made to any person with whom the caller has a prior or

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

## 8 ORDER

### 9 I. PROHIBITION ON FUNDRAISING

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

### 23 II. PROHIBITION ON TELEMARKETING

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



1 such other equitable relief, including consumer information remedies, as it determines to  
2 be reasonably related to defendant's practices alleged in the Complaint. Any funds not  
3 used for such equitable relief shall be deposited in the United States Treasury as  
4 disgorgement. Defendant shall have no right to challenge the Commission's choice of  
5 remedies under this Paragraph.

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

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

11 E. Solely for purposes of this Paragraph, defendant waives any right to contest  
12 any of the allegations in the Commission's Complaint.

#### 13 14 **V. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

15 IT IS FURTHER ORDERED that, within five (5) business days after receipt of  
16 this Order as entered by the Court, defendant Cohen shall submit to the Commission a  
17 truthful sworn statement, in the form shown on Appendix A, that shall acknowledge  
18 receipt of this Order.

#### 19 20 **VI. COMPLIANCE REPORTING BY DEFENDANT**

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

23 A. For a period of seven (7) years from the date of entry of this Order,  
24 defendant shall notify the Commission in writing of the following:

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

27 2. Any changes in his employment status (including self-employment),  
28 within ten (10) days of such change. Such notices shall include the name and address of

1 each business with which defendant is affiliated or employed, a statement of the nature  
2 of the business, and a statement of the defendant's duties and responsibilities in  
3 connection with the business or employment;

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

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

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

22 C. For the purposes of this Paragraph, "employment" includes the  
23 performance of services as an employee, consultant, or independent contractor; and  
24 "employers" includes any individual or entity for whom defendant performs services as  
25 an employee, consultant, or independent contractor; and

26 D. The reporting provisions of this paragraph shall be suspended during any  
27 period of time that defendant Cohen is incarcerated, provided that within thirty (30) days  
28 of his release defendant Cohen shall provide the requisite reports.

1  
2 **VII. COMPLIANCE MONITORING**

3 IT IS FURTHER ORDERED that, for the purpose of monitoring and  
4 investigating defendant Cohen's compliance with any provision of this Order:

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

12 B. In addition, the Commission is authorized to monitor defendant Cohen's  
13 compliance with this Order by all other lawful means, including but not limited to the  
14 following:

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

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

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

24 C. Defendant Cohen shall permit representatives of the Commission to  
25 interview any employer, consultant, independent contractor, representative, agent, or  
26 employee who has agreed to such an interview, relating in any way to any conduct  
27 subject to this Order. The person interviewed may have counsel present.  
28



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

#### 4 VIII. MAINTENANCE OF RECORDS

5 IT IS FURTHER ORDERED that defendant, for a period of ten (10) years from  
6 the date of entry of this Order, in connection with any business entity that defendant  
7 directly or indirectly owns or controls that is engaged in the advertising, marketing, sale  
8 or offering for sale of any consumer good or service, is 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,  
12 revenues 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 or  
20 services purchased, to the extent such information is obtained in the ordinary course of  
21 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.  
26  
27  
28

1 **IX. NOTICES**

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

5  
6 Regional Director  
7 Federal Trade Commission  
8 915 Second Avenue, Suite 2896  
9 Seattle, Washington 98174

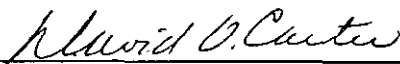
10 **X. RETENTION OF JURISDICTION**

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

16 **XI. ENTRY OF THIS JUDGMENT**

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

19  
20 SO ORDERED, this 28 day of April, 2003.

21  
22  
23 

24 Honorable David O. Carter  
25 United States District Judge  
26  
27  
28

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.

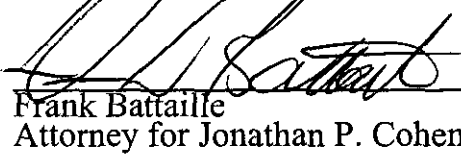
6  
7 **FEDERAL TRADE COMMISSION**

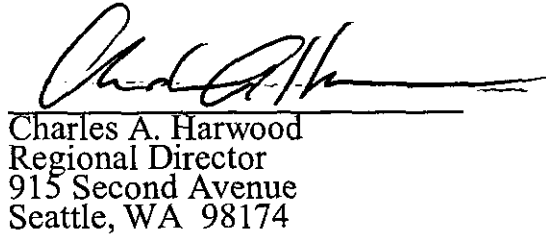
**DEFENDANT**

8  
9   
10 Tracy S. Thorleifson

  
Jonathan P. Cohen

11  
12   
13 Maxine R. Stansell

  
Frank Battaille  
Attorney for Jonathan P. Cohen

14  
15   
16 Charles A. Harwood  
17 Regional Director  
18 915 Second Avenue  
19 Seattle, WA 98174

20  
21 Attorneys for Plaintiff  
22 Federal Trade Commission  
23  
24  
25  
26  
27  
28

APPENDIX A

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MITCHELL D. GOLD, *et al.*,

Defendants.

No. SACV-98-968-DOC (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 David O. Carter 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 \_\_\_\_\_, 2003.

\_\_\_\_\_  
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, Washington 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;

◇ 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: April 24, 2003

Tracy Thorleifson