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6
7 ATTORNEYS FOR PLAINTIFF

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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 FEDERAL TRADE COMMISSION,

12 Plaintiff,

13 v.

14 WEST COAST ADVERTISING &
15 MARKETING, INC.; MIKE S. THOMAS; and
MARK A. CHRISTIANSEN,

16 Defendants.

Civ. No. 03-CV-00980-LAB-JMA

17
18 STIPULATED PERMANENT
19 INJUNCTION AND FINAL
20 ORDER

21 Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”), filed a complaint
22 for permanent injunction and other relief, including restitution to consumers, pursuant to Section
23 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging
24 defendants West Coast Advertising & Marketing, Inc., Mike S. Thomas, and Mark A.
25 Christiansen with violating Section 5 of the FTC Act. Defendants and the Commission, have
26 agreed to entry of this Stipulated Permanent Injunction by this Court in order to resolve all
27 matters in dispute between them in this action. Defendants have consented to the entry of this
28 Order without trial or adjudication of any issue of law or fact herein, and this Order shall not
constitute an admission of liability by defendants nor constitute evidence of liability against
defendants in any matter relating to the facts alleged in the Commission’s Complaint. **NOW,**

1 **THEREFORE**, these defendants and the Commission having requested the Court to enter this
2 Order, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

3 **FINDINGS**

4 A This Court has jurisdiction of the subject matter of this case and of the parties
5 consenting hereto.

6 B. Venue is proper as to all parties in the Southern District of California.

7 C. The activities of defendants are in or affecting commerce, as defined in Section 4
8 of the FTC Act, 15 U.S.C. § 44.

9 D. The complaint states a claim upon which relief may be granted against defendants
10 under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

11 E. Defendants have waived all rights to seek judicial review or otherwise challenge
12 or contest the validity of this Order, and further waive and release any claim defendants may
13 have against the Commission, its employees, and agents, including any rights that may arise
14 under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat.
15 847, 863-64 (1996).

16 F. The parties shall each bear their own costs and attorneys' fees incurred in this
17 action.

18 **DEFINITIONS**

19 For purposes of this Order, unless otherwise indicated, the following definitions shall
20 apply:

21 A. "Defendants" shall mean West Coast Advertising & Marketing, Inc., Mike S.
22 Thomas and Mark A. Christiansen.

23 B. "Donation" or "contribution" means money or item of value provided in response
24 to a solicitation made on behalf, or in the name, of any nonprofit organization.

25 C. "Donor" or "consumer" means any person or business solicited for a donation or
26 contribution.

27 D. "Solicitor" means any person who solicits donations or contributions.
28

1 E. “Nonprofit organization” or “nonprofit” means any person that is, or is
2 represented to be, a nonprofit entity or that has, or is represented to have, a charitable purpose,
3 specifically including any entity that purports to benefit children, police or veterans.

4 F. “Person” means natural person, organization, or other legal entity, including a
5 corporation, partnership, proprietorship, association, cooperative, government agency, or any
6 other group or combination acting as an entity.

7 G. “Material fact” means a fact likely to affect a person’s decision as to the amount
8 of, or whether to make, a donation or contribution.

9 **ORDER**

10 **I. CONDUCT PROHIBITIONS**

11 **IT IS THEREFORE ORDERED** that defendants, their officers, agents, servants,
12 employees, and those persons in active concert or participation with them who receive actual
13 notice of this Order by personal service or otherwise, in connection with soliciting contributions,
14 are hereby permanently restrained and enjoined from:

15 A. Making, or assisting others in making, expressly or by implication, orally or in
16 writing, any statement or representation of material fact that is false or misleading, including but
17 not limited to false or misleading statements that:

- 18 1. any nonprofit for which defendants are fundraising has any connection to,
19 or is otherwise affiliated with, a law enforcement agency or other public
20 agency;
- 21 2. donors’ contributions to any nonprofit for which defendants are
22 fundraising will directly benefit individuals or groups in the donors’ state
23 or local area, or will otherwise be spent in the donors’ state or local area;
24 and
- 25 3. donors’ contributions to any nonprofit for which defendants are
26 fundraising, or any portion or amount of donors’ contributions solicited by
27 defendants for any nonprofit, will be used for any general or specific
28 charitable purposes.

1 B. Failing to disclose the company's name and status as commercial fundraisers
2 before soliciting a donation from any consumer;

3 C. Failing to disclose, if asked by any donor, the percentage or regularly distributed
4 amount of donations that is or will be paid to any nonprofit on whose behalf defendants seek
5 contributions;

6 D. Failing to disclose clearly and conspicuously on each receipt or invoice that any
7 defendant or any affiliated fundraiser sends to any consumer, in dark ink against a light
8 background, in print at least as large as any other text on the page, but not larger than twelve (12)
9 points and no smaller than eight (8) points, that:

- 10 1. the solicitation was made by a paid fundraiser; and
- 11 2. the donor's contribution is not tax deductible, if that is the case.

12 II. SUBSTANTIATION

13 **IT IS FURTHER ORDERED** that defendants, their officers, agents, servants,
14 employees, and those persons in active concert or participation with them who receive actual
15 notice of this Order by personal service or otherwise, in connection with soliciting contributions,
16 are hereby permanently restrained and enjoined from failing to ascertain and document, before
17 entering into any agreement to solicit for any nonprofit, and again every year until defendants
18 stop soliciting for the nonprofit:

19 A. That the nonprofit is registered, if it is required to be registered, and that it
20 operates consistently with its stated purpose;

21 B. That all initial, rebuttal, and other scripts, brochures, and other solicitation
22 materials used by defendants for the nonprofit, do not misrepresent:

- 23 1. the identity of the solicitor;
- 24 2. the programs or services funded by the solicited contributions;
- 25 3. the geographic area or areas within which those programs or services are
26 provided; or
- 27 4. the portion of donations or contributions that will be, or has previously
28 been, applied to the charitable purpose;

1 C. That the nonprofit has provided the programs or services described in the
2 solicitation scripts and in other solicitation materials used by defendants during the most recent
3 fiscal or calendar year, *provided that*, if such programs or services will be or have been provided
4 for the first time during the current calendar or fiscal year, the substantiation shall be sufficient if
5 it identifies or describes the program's intended beneficiaries and intended local communities
6 and includes the organization's written plan and itemized budget for delivering these benefits
7 during the current calendar or fiscal year. For purposes of this provision, "substantiation" means
8 copies of thank you letters, canceled checks, or other evidence showing that the nonprofit
9 undertakes the programs described in the solicitation materials used by defendants; and

10 D. That more than an incidental amount of the contributions received by the
11 nonprofit are spent on the programs or services described in the solicitation scripts and in other
12 solicitation materials used by defendants during the most recent fiscal or calendar year, including
13 a financial statement of the nonprofit for each year and accounting period during the past two
14 calendar or fiscal years (or for the period of the organization's operation, if less than two years)
15 or, if the organization has filed a Form 990 or other tax return with the Internal Revenue Service
16 at any time during the past three calendar or fiscal years, copies of each Form 990 or other tax
17 return filed by or on behalf of the organization during that time.

18 III. TRAINING, MONITORING, AND VERIFICATION

19 **IT IS FURTHER ORDERED** that defendants, their officers, agents, servants,
20 employees, and those persons in active concert or participation with them who receive actual
21 notice of this Order by personal service or otherwise, in connection with soliciting contributions,
22 are hereby permanently restrained and enjoined from:

23 A. Failing to provide initial and rebuttal scripts approved by the nonprofit, to each
24 solicitor who will solicit for the nonprofit, prior to soliciting donations for that nonprofit;

25 B. Failing to take steps sufficient to train and monitor each of its solicitors so that the
26 solicitor follows the authorized scripts and complies with the requirements of Section I of this
27 Order. Such steps shall include, but not be limited to, daily random monitoring of solicitation
28 calls made by each solicitor. Those employees conducting the monitoring shall maintain a log

1 listing the solicitors and calls monitored and noting any material misrepresentations or
2 omissions;

3 C. Failing to take corrective action with respect to any sales person whom
4 defendants determine is not complying with this Order, which may include training, disciplining,
5 and/or terminating such sales person;

6 D. Failing to print a toll-free number for either the defendants or the relevant
7 nonprofit on every invoice or receipt provided to donors by defendants; and

8 E. Failing to investigate promptly and fully any complaint or inquiry received about
9 a solicitation made by one of defendants' solicitors and to create and maintain a written record of
10 the investigation and any results.

11 **IV. MONETARY RELIEF**

12 **IT IS FURTHER ORDERED** that:

13 A. Defendants are jointly and severally liable to the Commission for monetary
14 equitable relief in the amount of \$800,863. Provided, however, that this judgment shall be
15 suspended upon defendants' paying in lieu of judgment \$90,000 within ten (10) days of the date
16 of entry of this Order.

17 B. All funds paid pursuant to this Section shall be deposited into a fund administered
18 by the Commission or its designated agent to be used for equitable relief, including, but not
19 limited to, consumer redress and any attendant expenses for the administration of any redress
20 fund. In the event that direct redress for consumers is wholly or partially impracticable or funds
21 remain after redress is completed, the Commission may apply any remaining funds for such
22 other equitable relief (including consumer information remedies) as it determines to be
23 reasonably related to the defendants' practices alleged in the Complaint. Any funds not used for
24 such equitable relief shall be deposited into the U.S. Treasury as disgorgement. Defendants shall
25 have no right to challenge the Commission's choice of remedies under this Section;

26 C. In the event of any default in the payment set forth in Section IV.A of this Order,
27 which has not been cured within thirty (30) days, the amount of \$800,863, less the sum of any
28 payments made pursuant to Section IV.A, shall become immediately due and payable by

1 defendants, and any interest computed pursuant to 28 U.S.C. § 1961, as amended, shall
2 immediately begin to accrue on the unpaid balance;

3 D. The Commission and defendants acknowledge and agree that no portion of this
4 judgment for equitable monetary relief shall be deemed a fine, penalty, punitive assessment, or
5 forfeiture; and

6 E. For the purposes of any subsequent proceedings to enforce payments required by
7 this Section or Section V of this Order including, but not limited to, a non-dischargeability
8 complaint filed in a bankruptcy proceeding, defendants waive any right to contest any allegations
9 in the Commission's complaint.

10 **V. RIGHT TO REOPEN**

11 IT IS FURTHER ORDERED that, by agreeing to this Order, defendants reaffirm and
12 attest to the truthfulness, accuracy, and completeness of the financial statements received by the
13 Commission on September 8, 2003, and the letter and financial documents received by the
14 Commission on October 9, 2003 (designated collectively as the "Financial Statements").
15 Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and
16 completeness of defendants' financial condition as represented in the Financial Statements
17 referenced above, which contain material information upon which plaintiff relied in negotiating
18 and agreeing to the terms of this Order. If, upon motion by plaintiff, this Court finds that any
19 defendant failed to disclose any material asset, or materially misrepresented the value of any
20 asset, or made any other material misrepresentation in or omission from the Financial
21 Statements, the Court shall enter a judgment against such defendant in favor of the Commission
22 in the amount of \$745,863, and the entire amount shall become immediately due and payable.
23 *Provided however*, that in all other respects, this Order shall remain in full force and effect
24 unless otherwise ordered by this Court; *provided further* that proceedings instituted under this
25 Section are in addition to, and not in lieu of, any other civil or criminal remedies as may be
26 provided by law, including any other proceedings plaintiff may initiate to enforce this Order.

1 **VI. RECORD KEEPING**

2 IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of
3 this Order, defendants, in connection with any business where (1) any defendant is the majority
4 owner of the business or directly or indirectly controls the business and (2) the business is
5 engaged in conduct that is the subject of this Order, are hereby permanently restrained and
6 enjoined from failing to create and retain for a period of three (3) years from the date of their
7 creation the following records:

8 A. Records that reflect donations received and the cost of soliciting those donations;

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

13 C. Files containing the name, address, and phone number for each donor;

14 D. Records of all complaints, cancellation or refund requests, requests to be removed
15 from call lists, and program related inquiries made to any toll-free number operated by
16 defendants, and a written record disclosing the name and telephone number of the caller, the date
17 of the call, and the nature of the call;

18 E. Written complaints and refund requests (whether received directly, indirectly or
19 through any third party) and any responses to those written complaints or requests; and

20 F. Copies of any contract or agreement used in any fundraising endeavor and all
21 scripts, training materials, advertisements, or other solicitation materials used by defendants.
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1 **VII. COMPLIANCE REPORTING BY DEFENDANTS**

2 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this
3 Order may be monitored:

4 A. For a period of five (5) years from the date of entry of this Order the defendants
5 shall notify the Commission of the following:

- 6 1. any change in the residence, mailing address, or telephone number, within
7 ten (10) days of the date of such change;
- 8 2. any change in their employment status (including self-employment) within
9 ten (10) days of the date of such change; such notice shall include the
10 name and address of each business that the defendant is affiliated with,
11 employed by, or performs services for; a statement of the nature of the
12 business; and a statement of the defendant’s duties and responsibilities in
13 connection with the business;
- 14 3. any changes in corporate structure that may affect compliance obligations
15 arising under this Order, including but not limited to a dissolution,
16 assignment, sale, merger, or other action that would result in the
17 emergence of a successor corporation; the creation or dissolution of a
18 subsidiary, parent, or affiliate that engages in any acts or practices subject
19 to this Order; the filing of a bankruptcy petition; or a change in the
20 corporate name or address, at least thirty (30) days prior to such change,
21 *provided* that, with respect to any proposed change in the corporation
22 about which the defendant learns less than thirty (30) days prior to the
23 date such action is to take place, defendant shall notify the Commission as
24 soon as is practicable after obtaining such knowledge, and
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27 4. any changes in their name or use of any aliases or fictitious names.
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1 B. One hundred eighty (180) days after the date of entry of this Order, defendants
2 shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in
3 detail the manner and form in which they have complied and are complying with this Order.
4

5 This report shall include, but not be limited to:

- 6 1. any changes required to be reported pursuant to Section VII.A;
- 7 2. a copy of each acknowledgment of receipt of this Order obtained by
8 defendants pursuant to Section IX.

9 C. For purposes of the compliance reporting required by this Section, the
10 Commission is authorized to communicate directly with each defendant.
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12 VIII. COMPLIANCE MONITORING

13 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating
14 compliance with any provision of this Order:

15 A. Within ten (10) days of receipt of written notice from a representative of the
16 Commission, each defendant shall submit additional written reports, sworn to under penalty of
17 perjury; produce documents for inspection and copying; appear for deposition; and/or provide
18 entry during normal business hours to any business location in such defendant's possession or
19 direct or indirect control to inspect the business operation.
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21 B. In addition, the Commission is authorized to monitor compliance with this Order
22 by all other lawful means, including but not limited to the following:
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- 24 1. obtaining discovery from any person, without further leave of court, using
25 the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
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1 2. posing as donors and suppliers to defendants, or any other entity managed
2 or controlled in whole or in part by them, without the necessity of
3 identification or prior notice;
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5 *Provided* that nothing in this Order shall limit the Commission’s lawful use of
6 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to
7 obtain any documentary material, tangible things, testimony, or information relevant to unfair or
8 deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C.
9 § 45(a)(1)).
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11 C. Defendants shall permit representatives of the Commission to interview any
12 employer, consultant, independent contractor, representative, agent, or employee who has agreed
13 to such an interview, relating in any way to any conduct subject to this Order. The person
14 interviewed may have counsel present.

15 **IX. DISTRIBUTION OF ORDER BY DEFENDANTS**

16 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry
17 of this Order defendants shall deliver a copy of this Order to the principals, officers, directors,
18 managers and employees under defendants’ control for any business that (1) defendants own or
19 that employs or contracts for personal services from them and (2) has responsibilities with
20 respect to the subject matter of this Order. Defendants shall secure from each such person a
21 signed and dated statement acknowledging receipt of the Order within three (3) days after the
22 date of service of the Order or the commencement of the employment relationship.
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1 **X. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

2 **IT IS FURTHER ORDERED** that each defendant, within five (5) business days of
3 receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn
4 statement acknowledging receipt of this Order.
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6 **XI. SERVICE ON COMMISSION**

7 **IT IS FURTHER ORDERED** that, for the purposes of this Order, defendants shall,
8 unless otherwise directed by the Commission’s authorized representatives, mail to the
9 Commission any correspondence, pleadings, or notifications related to this Order to:
10

11 Regional Director
12 Federal Trade Commission
13 915 Second Avenue, Suite 2896
14 Seattle, WA 98174
RE: *FTC v. West Coast Advertising and Marketing, Inc.*, et al.

15 **XII. RETENTION OF JURISDICTION**

16 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for
17 purposes of construction, modification, and enforcement of this Order.
18

19 SO ORDERED, this _____ day of _____, 2004, at _____.
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21 _____
22 United States District Judge
23 The Honorable Larry A. Burns
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27 The parties hereby consent to the terms and conditions of this Order as set forth above
28 and consent to entry thereof.

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