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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 07 C 5597
)	
v.)	Judge Wayne R. Andersen
)	
SPEAR SYSTEMS, INC., a)	Magistrate Judge Michael T. Mason
Wyoming corporation, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**STIPULATED ORDER FOR PERMANENT INJUNCTION
AND FINAL JUDGMENT AS TO DEFENDANTS
SPEAR SYSTEMS, INC., BRUCE PARKER AND LISA KIMSEY**

Plaintiff Federal Trade Commission ("Commission" or "FTC") filed a Complaint For Injunctive And Other Equitable Relief on October 3, 2007, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM"), 15 U.S.C. § 7701 *et seq.* The FTC filed an Amended Complaint in this matter on May 15, 2008 (the "Amended Complaint"). The parties, having been represented by counsel and acting by and through such counsel, have consented to the entry of this Stipulated Order for Permanent Injunction and Final Judgment (the "Order") without a trial or adjudication of any issue of law or fact herein.

NOW, THEREFORE, the Commission and Stipulating Defendants, having requested the Court to enter this Order, and the Court having considered the Order reached among the parties and for other cause appearing, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. §§ 1331 and 1337(a), and 15 U.S.C. §§ 53(b) and 57b.
2. This Court has jurisdiction over Stipulating Defendants.
3. Venue in the United States District Court for the Northern District of Illinois is proper.
4. The activities of Stipulating Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. The Commission's Amended Complaint states a claim upon which relief may be granted against Stipulating Defendants under Section 5 of the FTC Act, 15 U.S.C. § 45 and CAN-SPAM, 15 U.S.C. § 7701, *et seq.*
6. Stipulating Defendants have entered into this Order freely and without coercion. Stipulating Defendants further acknowledge that they have read the provisions of this Order and are able to abide by them.
7. Stipulating Defendants do not admit any of the allegations set forth in the Amended Complaint, other than jurisdictional facts, and deny liability for any of the violations alleged in the Amended Complaint.
8. Stipulating Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Stipulating Defendants further waive and release any claims they may have against the Commission, its employees, representatives or agents. The parties shall each bear their own costs and attorneys' fees.

9. Stipulating Defendants agree that this Order does not entitle them to seek or obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and Stipulating Defendants further waive any right to attorneys' fees that may arise under said provision of law.

10. Entry of this Order is in the public interest.

DEFINITIONS

1. **"Assisting others"** means: (1) performing customer service functions including, but not limited to, receiving or responding to consumer complaints; (2) providing, or arranging for the provision of, names of potential customers; (3) performing marketing services of any kind; (4) acting as an officer or director of a business entity; or (5) providing credit or debit card account processing.

2. **"Clear and conspicuous"** or **"clearly and conspicuously"** with regard to the display of a notice means that the information shall be presented in writing, in a type size, color, and location sufficient for an ordinary consumer to read and comprehend it, and shall be disclosed in a manner that would be easily recognizable and understandable in language and syntax to an ordinary consumer. If the information is contained in a multi-page document, the disclosure shall appear on the first page.

3. **"Commercial electronic mail message"** (or **"commercial email"**) means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet web site operated for a commercial purpose). The term **"commercial electronic mail message"** does not include a **"transactional or relationship message"** as defined by 15 U.S.C. § 7702(17).

4. **“Competent and Reliable Scientific Evidence”** means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

5. **“Document”** is synonymous in meaning and equal in scope to the same term as defined in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term.

6. **“Electronic mail (“email”) address”** means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic mail message can be sent or delivered.

7. **“Electronic mail message”** means a message sent to a unique electronic mail address.

8. **“Header information”** means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.

9. **“Hoodia Products”** shall refer to any products that are advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product contains any form of *Hoodia gordonii*.

10. "Initiate," when used with respect to a commercial email message, means to originate or transmit such message or to procure the origination or transmission of such message.

11. "Procure," when used with respect to the initiation of a commercial email message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one's behalf.

12. "Sender," when used with respect to a commercial electronic mail message, means a person who initiates such a message and whose product, service, or Internet web site is advertised or promoted by the message.

13. "Stipulating Defendants" means Spear Systems, Inc., Bruce Parker, and Lisa P. Kimsey, and their successors and assigns.

ORDER

I. PROHIBITIONS AGAINST PRODUCT MISREPRESENTATIONS

IT IS THEREFORE ORDERED that Stipulating Defendants, and their officers, agents, servants, and employees, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Hoodia Product, or any other food, drug, device, or dietary supplement, in or affecting commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of any trade name or endorsement, any representation:

- A. That the product causes weight or fat loss or the reduction of caloric intake;

- B. That scientific research establishes that the product causes weight or fat loss or the reduction of caloric intake; or
- C. About the absolute or comparative health benefits, efficacy, performance, safety, or side effects of such product;

unless the representation is true, non-misleading, and, at the time it is made, Stipulating Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II. PROHIBITION AGAINST VIOLATING THE CAN-SPAM ACT

IT IS THEREFORE ORDERED that Stipulating Defendants, and their officers, agents, servants, and employees, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are permanently restrained and enjoined from violating, or assisting others in violating, the provisions contained in CAN-SPAM, 15 U.S.C. § 7701, *et seq.*, as currently promulgated or as it hereafter may be amended, including, but not limited to, initiating the transmission of a commercial electronic mail message that:

- A. Contains, or is accompanied by, header information that is materially false or materially misleading;
- B. Contains, or is accompanied by, subject headings that would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message;

- C. Fails to include a clear and conspicuous notice of the recipient's opportunity to decline to receive further commercial electronic mail messages from the sender at the recipient's electronic mail address;
- D. Fails to include a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that a recipient can use to submit a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from the sender at the electronic mail address where the message was received, and that remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message; and
- E. Fails to include the sender's valid physical postal address.

Provided, however, in the event that Congress amends or modifies CAN-SPAM, in whole or in part, Stipulating Defendants shall comply fully and completely with all applicable requirements thereof, on and after the effective date of any such amendments, modifications, or rules.

III. EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that:

- A. Judgment is hereby entered in favor of the FTC and against Stipulating Defendants, jointly and severally, in the amount of Twenty Nine Thousand Four Hundred and Four Dollars (\$29,404.00 USD). Payment shall be made in accordance with Section III.B of this Order.
- B. Prior to or within five (5) days of signing this Order, Stipulating Defendants shall transfer the \$29,404 to their attorney, who shall hold the funds for the sole purpose

of satisfying this judgment. Within five (5) days of receipt of notice of the entry of this Order by the Court, Stipulating Defendants' attorney shall transfer the \$29,404 to the FTC by wire transfer or certified check in accordance with instructions to be provided by counsel for the FTC.

- C. All funds obtained by the Commission pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. Stipulating Defendants shall cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Order. If the Commission determines, in its sole discretion, that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the practices alleged in the Amended Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Stipulating Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph. Stipulating Defendants shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, punitive assessment, or forfeiture;

- D. In the event of any default on Stipulating Defendants' obligation to make payment under this Section, interest, computed pursuant to 28 U.S.C. § 1961, shall accrue from the date of default to the date of payment, and shall immediately become due and payable;
- E. In accordance with 31 U.S.C. § 7701, Stipulating Defendants are hereby required, unless they have done so already, to furnish to the Commission their respective taxpayer identifying numbers (social security numbers or employer identification numbers), which shall be used for the purpose of collecting and reporting on any delinquent amount arising out of Stipulating Defendants' relationship with the government.
- F. Stipulating Defendants agree that the facts as alleged in the Amended Complaint filed in this action shall be taken as true, without further proof, in the event of any subsequent proceedings or litigation to enforce this Order or to collect amounts due pursuant to this Section, including, but not limited to, a non-dischargeability complaint in any bankruptcy case; and
- G. Nothing herein shall be deemed or construed to prevent the Commission from initiating any appropriate proceedings to enforce the provisions of this Order.

IV. LIFTING OF THE ASSET PRESERVATION ORDER

IT IS FURTHER ORDERED that the preservation of Stipulating Defendants' assets pursuant to Section V of the Temporary Restraining Order entered by this Court on October 3, 2007 as to Stipulating Defendants Spear Systems, Inc. and Bruce Parker, and Section V of the Stipulated Preliminary Injunction entered by the Court on October 25, 2007 as to Defendant Lisa Kimsey, shall

be lifted to the extent necessary to transfer assets for equitable monetary relief as required by Section III of this Order, and, after transfer of the funds to the FTC pursuant to Sections III.A and III.B of this Order, shall be lifted permanently.

V. COOPERATION WITH COMMISSION COUNSEL

IT IS FURTHER ORDERED that Stipulating Defendants shall, in connection with this action or any concurrent or subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Amended Complaint, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Stipulating Defendants shall appear, or cause their officers, employees, representatives, or agents to appear, and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Amended Complaint, without the service of a subpoena.

VI. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

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

- A. Within twenty (20) days of receipt of written notice from a representative of the Commission, Stipulating Defendants Spear Systems, Inc., Bruce Parker, and Lisa Kimsey, each shall submit additional written reports, sworn to or affirmed under penalty of perjury; produce documents for inspection and copying; appear for

deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation;

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

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36 and 45; and
2. posing as consumers and suppliers to Stipulating Defendants Spear Systems, Inc., Bruce Parker, or Lisa Kimsey, any of their employees, or any other entity managed or controlled in whole or in part by them, without the necessity of identification or prior notice; and

C. Stipulating Defendants Spear Systems, Inc., Bruce Parker, and Lisa Kimsey shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VII. COMPLIANCE REPORTING BY STIPULATING DEFENDANTS

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

- A. For a period of three (3) years from the date of entry of this Order,:
 1. Bruce Parker and Lisa Kimsey shall notify the Commission of the following:
 - (a) Any changes in his or her residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - (b) Any changes in his or her employment status (including self-employment), and any change in his or her ownership interest in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that the individual defendants are affiliated with, employed by, create or form, or perform services for; a statement of the nature of the business; and a statement of the individual defendant's duties and responsibilities in connection with the business or employment; and
 - (c) Any changes in his or her name or use of any aliases or fictitious names; and
 2. Stipulating Defendants Spear Systems, Inc., Bruce Parker, and Lisa Kimsey shall notify the Commission of any changes in the corporate structure of Spear Systems, Inc. or any business entity that Bruce Parker or Lisa Kimsey directly or indirectly control, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in

the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the Stipulating Defendants learn less than thirty (30) days prior to the date such action is to take place, the Stipulating Defendants shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Stipulating Defendants Spear Systems, Inc., Bruce Parker, and Lisa Kimsey, each shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. For Bruce Parker and Lisa Kimsey:
 - a. His or her then-current residence address, mailing address, and telephone numbers;
 - b. His or her then-current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and his or her title and responsibilities for each such employer or business; and
 - c. Any other changes required to be reported under subparagraph A of this Section.

2. For all Stipulating Defendants:
 - a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Section IX; and
 - b. Any other changes required to be reported under subparagraph A of this Section.

- C. For purposes of this Order, Stipulating Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director, Division of Enforcement
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20580
Re: *FTC v. Spear Systems, Inc., et. al.*
Civ. No. 07C 5597 (N.D. Ill)

- D. For the purposes of the compliance reporting and monitoring required by this Order, representatives of the Commission are authorized to communicate directly with Stipulating Defendants, unless Stipulating Defendants indicate that they are represented by counsel and provide the name and address of such counsel to the Commission.

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, Stipulating Defendants Spear Systems, Inc., Bruce Parker, and Lisa Kimsey, in connection with any business involving the marketing, advertising, promotion, offering for sale, or sale of Hoodia Products, food, drugs, devices or dietary supplements, or the marketing of goods or services via commercial email messages, and their agents, employees, officers, corporations,

successors, and assigns, and those in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;
- E. Copies of all advertisements or other marketing materials; and
- F. All other records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, all documents obtained, created, generated or which in any way relate to the requirements, provisions, or terms of this Order, copies of signed and dated acknowledgments of receipt of this Order, required by Section IX of this Order, and all reports submitted to the Commission pursuant to this Order.

IX. DISTRIBUTION OF ORDER BY STIPULATING DEFENDANTS

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Stipulating Defendants shall deliver copies of this Order as directed below:

- A. **Corporate Defendant:** Spear Systems, Inc. must deliver a copy of this Order to all of its principals, officers, directors, and managers. Spear Systems, Inc. also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- B. **Individual Defendants Bruce Parker and Lisa Kimsey as Control Person:** For any business that Stipulating Defendants Bruce Parker or Lisa Kimsey controls, directly or indirectly, or in which they have majority ownership interest in, the Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Bruce Parker or Lisa Kimsey must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- C. **Bruce Parker and Lisa Kimsey as employee or non-control person:** For any business where Stipulating Defendants Bruce Parker or Lisa Kimsey are not a controlling person of a business but otherwise engage in conduct related to the subject matter of this Order, Bruce Parker and Lisa Kimsey must deliver a copy of

this Order to all principals and managers of such business before engaging in such conduct.

- D Stipulating Defendants Spear Systems, Inc, Bruce Parker, and Lisa Kimsey must secure a signed and dated statement acknowledging receipt of this Order, within thirty (30) days of delivery, from all persons receiving a copy of this Order pursuant to this Section.

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, within five (5) business days after receipt of this Order as entered by the Court, Stipulating Defendants Spear Systems, Inc., Bruce Parker and Lisa Kimsey each shall submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XI. TRANSFER OF CUSTOMER LISTS

IT IS FURTHER ORDERED that Stipulating Defendants are hereby restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, electronic mail address, or other identifying information of any person who submitted such information to Stipulating Defendants as a result of, derived from, or otherwise related to the activities alleged to be in violation of the FTC Act or the CAN-SPAM Act in the Commission's Amended Complaint, *provided, however*, that Stipulating Defendants may disclose such information: to any contractor or vendor for the purposes of billing Stipulating Defendants' own charges; to a law enforcement agency; to the Commission; or, as required by any law, regulation, or court order.

XII. FEES AND COSTS

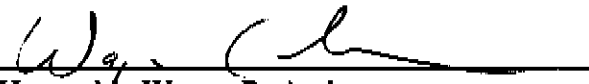
IT IS FURTHER ORDERED that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

XIII. RETENTION OF JURISDICTION

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

JUDGMENT IS THEREFORE ENTERED, pursuant to all the terms and conditions recited above.

IT IS SO ORDERED, this 23rd day of May, 2008



Honorable Wayne R. Andersen
United States District Judge

STIPULATED AND AGREED TO BY:

FOR THE PLAINTIFF:



Dated

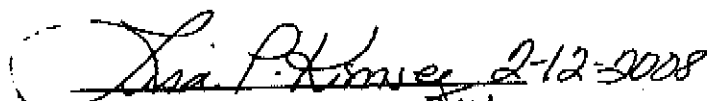
Steven M. Wernikoff
Marissa J. Reich
Federal Trade Commission
55 West Monroe Street, Suite 1825
Chicago, Illinois 60603
(312) 960-5634 [Telephone]
(312) 960-5600 [Facsimile]

Attorneys For Plaintiff
FEDERAL TRADE COMMISSION

FOR THE STIPULATING DEFENDANTS:

Dated
Bruce Parker
on behalf of Spear Systems, Inc.

Dated
Bruce Parker



Dated
Lisa Kimsey

Andrew M. Jaffe Dated
3359 South Smith Road
Fairlawn, OH 44333
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100 N. LaSalle St., Suite 1910
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Attorneys for Stipulating Defendants
**SPEAR SYSTEMS, BRUCE PARKER AND
LISA KIMSEY**

STIPULATED AND AGREED TO BY:

FOR THE PLAINTIFF:


_____ Dated

Steven M. Wernikoff
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55 West Monroe Street, Suite 1825
Chicago, Illinois 60603
(312) 960-5634 [Telephone]
(312) 960-5600 [Facsimile]

Attorneys For Plaintiff
FEDERAL TRADE COMMISSION

FOR THE STIPULATING DEFENDANTS:

Dated

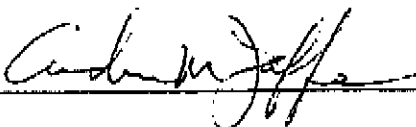
Bruce Parker
on behalf of Spear Systems, Inc.

Dated

Bruce Parker

Dated

Lisa Kimsey

 2-14-8

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Attorneys for Stipulating Defendants
**SPEAR SYSTEMS, BRUCE PARKER AND
LISA KIMSEY**