

1 Submitted By:
2 David M. Torok
3 Attorney for Plaintiff Federal Trade Commission
4 600 Pennsylvania Avenue, N.W., Room H-238
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9

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 _____)
14 **FEDERAL TRADE COMMISSION,**)

15) Civil No.
16 Plaintiff,)

17) **STIPULATED FINAL**
18 v.) **JUDGMENT AND**

19) **ORDER FOR A**
20 **JOHN LUTHERAN,**) **PERMANENT**

21) **INJUNCTION**
22 Defendant.)
23 _____)
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27 Plaintiff, Federal Trade Commission (“Commission”), has filed a Complaint for
28 permanent injunction and other relief in this matter pursuant to Section 13(b) of the Federal
29 Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging defendant John Lutheran with
30 violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a). The parties have agreed to entry of
31 this Stipulated Final Judgment and Order for Permanent Injunction (“Order”) by this Court to
32 resolve all matters in dispute in this action without trial. Pursuant to agreement and stipulation,
33 IT IS HEREBY ORDERED, ADJUDGED AND AGREED as follows:

34 **FINDINGS**

35 1. This Court has jurisdiction over the subject matter of this case and over the defendant;

- 1 2. The Complaint states claims upon which relief may be granted against the defendant
2 under Sections 5(a) of the FTC Act, as amended, 15 U.S.C. §§ 45(a);
3 3. Venue in this district is proper under 28 U.S.C. §§ 1391(b) and (c) and 15 U.S.C. § 53(b);
4 4. The acts and practices of the defendant were or are in or affecting commerce, as
5 “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
6 5. Defendant waives any claim he may have under the Equal Access to Justice Act,
7 28 U.S.C. § 2412, amended by PL 104-121, 110 Stat. 847, 863-64 (1996), concerning the
8 prosecution of this action to the date of this Order;
9 6. Defendant waives all rights to seek judicial review or otherwise challenge or contest the
10 validity of this Order, and further waives and releases any claim he may have against the
11 FTC and the employees, agents, or representatives of the FTC; and
12 7. Entry of this Order is in the public interest.

13 **DEFINITIONS**

14 For the purposes of this Order, the following definitions apply:

- 15 A. “Defendant” means John Lutheran.
16 B. “Multi-level marketing program” means any marketing program in which participants pay
17 money to the program promoter in return for which the participants obtain the right to:
18 (1) recruit additional participants or have additional participants placed by the promoter
19 or any other person into the program participant’s downline, tree, cooperative, income
20 center, or other similar program grouping; (2) sell goods or services; and (3) receive
21 payment or other compensation, in whole or in part, based upon the sales of those in the
22 participant’s downline, tree, cooperative, income center or similar program grouping.

- 1 C. “Participating” in a multi-level marketing program or a prohibited marketing scheme
2 includes, but is not limited to, promoting, marketing, advertising, offering for sale or
3 selling, or assisting others in the offering for sale or selling the right to participate in, the
4 program or scheme, as well as acting or serving as an officer, director, employee,
5 salesperson, agent, shareholder, advisor, consultant, independent contractor or distributor,
6 or acting as a speaker or spokesperson on behalf of the program or scheme.
- 7 D. “Prohibited marketing program” means any marketing program, Ponzi scheme, chain
8 marketing scheme, or other marketing plan or program in which a person who
9 participates makes a payment and receives the right, license or opportunity to derive
10 income as a participant primarily from: (i) the recruitment of additional recruits by the
11 participant, program, promoter or others; or (ii) non-retail sales made to or by such
12 recruits or their successive generations of recruits.
- 13 E. “Retail sales” means sales of goods or services to third-party end-users who are not
14 participants or recruits in the multi-level marketing program.

15 **ORDER**

16 **Conduct Prohibitions**

17 **I.**

18 **IT IS THEREFORE ORDERED** that the defendant, his officers, agents, servants,
19 employees and those persons in active concert or participation with him who receive actual
20 notice of this Order by personal service or otherwise, are hereby permanently restrained and
21 enjoined from participating, in any manner or capacity whatsoever, directly, in concert with
22 others, or through any business entity or other device, in any prohibited marketing scheme.

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II.

IT IS FURTHER ORDERED that the defendant, his officers, agents, servants, employees and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, while participating in any multi-level marketing program not subject to Paragraph I, are hereby permanently restrained and enjoined from making, or assisting in the making of, expressly or by implication, directly or indirectly, orally or in writing, any false or misleading statement or omission of material fact, including but not limited to the following:

- A. Misrepresentations about the potential earnings or income derived from such activity;
- B. Misrepresentations about the benefits any person participating in such an activity actually can receive or reasonably can expect to receive from such activity;
- C. Misrepresentations about the amount of sales, incentives, profits or rewards a person actually made or can potentially make through such activity; and
- D. Misrepresentations about the legality of the program.

III.

IT IS FURTHER ORDERED that the defendant, his officers, agents, servants, employees and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, while participating in any multi-level marketing program not subject to Paragraph I, are hereby permanently restrained and enjoined from providing to others the means and instrumentalities with which to make, expressly or by implication, directly or indirectly, orally or in writing, any false or misleading statement.

1 **IV.**

2 **IT IS FURTHER ORDERED** that the defendant, his officers, agents, servants,
3 employees and those persons in active concert or participation with him who receive actual
4 notice of this Order by personal service or otherwise, are hereby permanently restrained and
5 enjoined from selling, renting, leasing, transferring or otherwise disclosing the name, address,
6 telephone number, credit card number, bank account number, e-mail address or other identifying
7 information of any person who paid any money to the defendant in connection with any
8 prohibited marketing program. Provided, however, that the defendant may disclose such
9 identifying information to a law enforcement agency or as required by any law, regulation or
10 court order.

11 **V.**

12 **IT IS FURTHER ORDERED** that the defendant shall, from the date of his signing of
13 this Order and continuing into the future, refund by mail, within fifteen (15) days of receipt, any
14 payments made to him by any person or entity as part of the chain letter program described in the
15 FTC's Complaint in this matter, and shall include with the mailed refund a copy of the
16 notification letter that is attached to this Order as Appendix A.

17 **Compliance Reporting**

18 **VI.**

19 **IT IS FURTHER ORDERED** that, to assist the Commission in monitoring compliance
20 with the provisions of this Order:

- 1 A. For a period of three (3) years from the date of entry of this Order, the defendant shall
2 notify the Commission of any changes in the defendant’s residence, mailing addresses
3 and telephone numbers, within ten (10) days of the date of such change;
- 4 B. One hundred eighty (180) days after the date of entry of this Order, the defendant shall
5 provide a written report to the FTC, sworn to under penalty of perjury, setting forth in
6 detail the following:
- 7 1. The defendant’s then current residence address and telephone number;
 - 8 2. A statement describing the manner in which the defendant has complied and is
9 complying with the Order; and
 - 10 3. A list of the names and addresses of all individuals or entities to which the
11 defendant has sent a refund and notification letter, pursuant to Paragraph V of this
12 Order;
- 13 C. Upon written request by a representative of the Commission, the defendant shall submit
14 additional written reports (under oath, if requested) and produce documents on fifteen
15 (15) days’ notice with respect to any conduct subject to this Order; and
- 16 D. For purposes of the compliance reporting required by this Paragraph, the Commission is
17 authorized to communicate directly with the defendant.

18 **Compliance Monitoring**

19 **VII.**

20 **IT IS FURTHER ORDERED** that the Commission is authorized to monitor the
21 defendant’s compliance with this Order by all lawful means, including but not limited to the
22 following means:

- 1 A. The Commission is authorized, without further leave of court, to obtain discovery from
2 any person in the manner provided by Federal Rules of Civil Procedure 26-34, 36 and 37,
3 and to use compulsory process pursuant to Federal Rule of Civil Procedure 45, for the
4 purpose of monitoring and investigating the defendant's compliance with any provision
5 of this Order; and
- 6 B. Nothing in this Order shall limit the Commission's lawful use of compulsory process,
7 pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate
8 whether the defendant has violated any provision of this Order or Section 5 of the FTC
9 Act, 15 U.S.C. § 45.

10 **Record Keeping Provisions**

11 **VIII.**

12 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry
13 of this Order, the defendant, his officers, agents, servants, employees and those persons in active
14 concert or participation with him who receive actual notice of this Order by personal service or
15 otherwise, are hereby permanently restrained and enjoined from failing to create and retain a
16 record of the names and addresses of all individuals or entities to which the defendant has sent a
17 refund and notification letter, pursuant to Paragraph V of this Order.

18 **Acknowledgment of Receipt of Order**

19 **IX.**

20 **IT IS FURTHER ORDERED** that, within five (5) days of receipt by the defendant of
21 this Order as entered by the Court, the defendant shall submit to the Commission a truthful sworn

1 statement, in the form shown in Appendix B to this Order, that shall acknowledge receipt of this
2 Order.

3 **Notification**

4 **X.**

5 **IT IS FURTHER ORDERED** that, for the purpose of this Order, all correspondence,
6 notifications, or reports that the defendant is required to provide to the Commission shall
7 reference the case name and number of this matter and shall be sent to the following address, or
8 at such future address as the Commission may designate in writing to the defendant:

9 Associate Director for Marketing Practices
10 Federal Trade Commission
11 600 Pennsylvania Avenue, NW
12 Washington, DC 20580
13

14 **Retention of Jurisdiction and Entry of Judgment**

15 **XI.**

16 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for
17 all purposes.

18 There being no just cause for delay, this Stipulated Final Judgment and Order for a
19 Permanent Injunction as to defendant John Lutheran is hereby entered this ____ day of _____,
20 2001.

21 _____
22
23
24 United States District Judge
25

1 The parties hereby consent to the terms and conditions of the Final Order as set forth
2 above and consent to entry thereof.

3

4 **FOR THE COMMISSION:**

5 **FOR THE DEFENDANT:**

6

7

8 _____
9 DAVID M. TOROK, ESQ.
10 Federal Trade Commission
11 600 Pennsylvania Ave., N.W., Room 238
12 Washington, D.C. 20580
13 (202) 326-3075
14 (202) 326-3395 (Fax)
15 Email: dtorok@ftc.gov

JOHN LUTHERAN, individually

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Appendix A
Sample Notification Letter Required by Paragraph V

John Lutheran
4424 44th Street, Apartment 107
San Diego, California 92115

[Insert current date]

Dear [insert name of new recruit]:

I recently received a five dollar payment from you in response to either an email sent to you, or to an advertisement posted on the Internet, which contained my name as a participant. You should be aware that, contrary to the false statements made in that message, the advertised program is, in fact, a chain mail scheme that is illegal. Participation in the program can result in legal action being taken against you. As a result, I am returning your five dollar payment. I ask that you pass this message on to anyone else you know of that is participating, or thinking about participating, in this program.

I am sending you this letter as a result of a lawsuit filed by the United States Federal Trade Commission (“FTC”) against me and other participants in this chain mail program. A copy of the press release issued by the FTC, announcing the law enforcement action, is enclosed. As you can see from the announcement, the FTC is serious about bringing an end to this and all other chain mail programs. They may bring additional actions against others who continue to participate in this program. You should cease any further participation.

Please feel free to copy and distribute this letter at will.

Sincerely,

John Lutheran

Enclosure (FTC Press Release)

1 **Appendix B**

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3
4 UNITED STATES DISTRICT COURT
5 SOUTHERN DISTRICT OF CALIFORNIA
6

7 _____)
8 **FEDERAL TRADE COMMISSION,**)

9) Civil No.
10 Plaintiff,)

11) **AFFIDAVIT OF**
12 v.) **JOHN LUTHERAN**

13)
14 **JOHN LUTHERAN,**)

15)
16 Defendant.)
17 _____)

18
19 I, John Lutheran, being duly sworn, hereby state and affirm as follows:

20 1. My name is John Lutheran. My current residence address is 4424 44th Street,
21 Apartment 107, San Diego, California 92115. I am a citizen of the United States and am over
22 the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

23 2. I am a defendant in FTC v. John Lutheran, Case No. _____ (United
24 States District Court for the Southern District of California).

25 3. On _____ [date], I received a copy of the Stipulated Final Judgment and
26 Final Order For Permanent Injunction, which was signed by the Honorable _____
27 [name of judge] and entered by the Court on _____ [date of entry of Final Order]. A true
28 and correct copy of the Final Order I received is appended to this Affidavit.
29

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

3

4 _____
5 John Lutheran

6

7

8 Subscribed and sworn to before me this _____ day of _____, 2001.

9

10 _____
11 Notary Public

12 My Commission Expires:

13 _____

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