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9 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 _____)
13 FEDERAL TRADE COMMISSION,)

14 Plaintiff)

15 v.)

16 TIPPECANOE MINING, INC., in its)
own name and d/b/a GLOBAL MINING)
17 CONSULTING, et al.,)

18 Defendants)
19 _____)

CV 97-4543-R (ANx)

) STIPULATED FINAL JUDGMENT
) AND PERMANENT INJUNCTION
) AS TO DEFENDANTS TIPPECANOE
) MINING, INC., GLOBAL MINING
) CONSULTING, HOPE MINING,
) INC., STEPHEN P. NOELL
) AND MARK FORD

20 WHEREAS, on June 20, 1997, plaintiff Federal Trade
21 Commission ("Commission") commenced this action by filing a
22 complaint for a permanent injunction and other equitable relief,
23 pursuant to Section 13(b) of the Federal Trade Commission Act
24 ("FTC Act"), 15 U.S.C. § 53(b), charging defendants Tippecanoe
25 Mining, Inc., in its own name and d/b/a Global Mining Consulting;
26 Hope Mining, Inc.; Stephen P. Noell, and Mark Ford (hereinafter,
27 "Defendants"), with violations of Section 5(a) of the FTC Act, 15

1 U.S.C. § 45(a);

2 WHEREAS the Court, on August 5, 1997, entered a
3 Stipulated Preliminary Injunction with Asset Freeze, Appointment
4 of a Permanent Receiver and Other Relief;

5 WHEREAS the parties and the Receiver have agreed to the
6 terms of this Stipulated Final Judgment and Order for Permanent
7 Injunction and Other Equitable Relief ("Order") and have agreed
8 further that the individual defendants have not, by so
9 stipulating, waived any privilege or constitutional rights,
10 including rights afforded by the Fourth and Fifth Amendments and
11 the Attorney-Client privilege;

12 THEREFORE, the Court, being advised in the premises, finds:

13 1. This is an action by the Commission instituted under
14 Sections 5 and 13(b) of the Federal Trade Commission Act, 15
15 U.S.C. ¶ ¶ 45 and 53(b). The Complaint seeks both permanent
16 injunctive relief and consumer redress for alleged unfair or
17 deceptive acts or practices in connection with the offer and sale
18 of interests in gold or silver mining ventures. The Commission
19 has the authority under Section 13(b) of the FTC Act to seek the
20 relief it has requested.

21 2. This Court has jurisdiction over the subject matter of
22 this case and has jurisdiction over all defendants. Venue in the
23 Central District of California is proper, and the complaint
24 states a claim upon which relief may be granted against
25 Defendants under Sections 5 and 13(b) of the FTC Act.

26 3. The activities of Defendants are in or affecting
27 commerce, as defined in 15 U.S.C. §45.

1 4. Defendants neither admit nor deny the allegations set
2 forth in the complaint.

3 5. This action and relief awarded herein are in addition
4 to, and not in lieu of, other remedies as may be provided by law,
5 including other civil and criminal remedies.

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

7 7. For purposes of this Order, "Investment" or "Investment
8 offering" shall mean any service, product or interest, including
9 any partnership, interest in any partnership, or other beneficial
10 interest, tangible or intangible, that in any way is (1) offered
11 for sale, traded, or sold, to be held, wholly or in part, for
12 purposes of economic benefit, profit, or income, or (2) offered
13 for sale, traded, or sold, based on representations, wholly or in
14 part, express or implied, about past or future income,
15 appreciation, or resale value.

16 8. "Telemarketing" shall mean any business activity
17 (including, but not limited to, initiating or receiving telephone
18 calls, managing others who initiate or receive telephone calls,
19 operating an enterprise that initiates or receives telephone
20 calls, owning an enterprise that initiates or receives telephone
21 calls, or otherwise participating as an officer, director,
22 employee or independent contractor in an enterprise that
23 initiates or receives telephone calls) that involves attempts to
24 induce consumers to purchase any item, good, service, investment
25 opportunity, partnership interest, trust interest or other
26 beneficial interest, to make a charitable contribution, or to
27 enter a contest for a prize, by means of telephone sales

1 presentations, either exclusively or in conjunction with the use
2 of other forms of marketing. Provided, however, that the term
3 "telemarketing" shall not include transactions that are not
4 completed until after a face-to-face contact between the seller
5 or solicitor and the consumers solicited.

6 9. "Assisting others engaged in telemarketing" means
7 knowingly providing any of the following goods or services to any
8 person or entity engaged in telemarketing: (1) performing
9 customer service functions for an entity engaged in
10 telemarketing, including, but not limited to, receiving or
11 responding to consumer complaints; (2) formulating or providing,
12 or arranging for the formulation or provision of, any telephone
13 sales script or any other marketing material for an entity
14 engaged in telemarketing; (3) providing names of, or assisting in
15 the generation of, potential customers for an entity engaged in
16 telemarketing; or (4) performing marketing services of any kind
17 for an entity engaged in telemarketing.

18 **I. PROHIBITED BUSINESS ACTIVITIES**

19 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that
20 defendants and their agents, servants, employees, attorneys,
21 successors, assigns, and other entities or persons directly or
22 indirectly under their control, and all persons or entities in
23 active concert or participation with them who receive actual
24 notice of this Order by personal service, facsimile or otherwise,
25 in connection with the advertising, promotion, offering for sale,
26 or sale of any investment offering are hereby permanently
27 restrained and enjoined from:

1 A. Falsely representing, directly or by implication, that
2 investors are likely to receive substantial annual returns from
3 an investment in any gold or silver mining venture, or any other
4 investment offering;

5 B. Falsely representing, directly or by implication, that
6 the value of any ore deposit has been proved;

7 C. Falsely representing, directly or by implication, that
8 the U.S. Government has confirmed the value of any ore deposit;

9 D. Falsely representing, directly or by implication, that
10 any mining venture has obtained requisite permits to operate
11 mines;

12 E. Falsely representing, directly or by implication, that
13 any individual or entity has expressed interest in acquiring a
14 mine;

15 F. Falsely representing, directly or by implication, that
16 an investment in any mining venture or other investment offering,
17 is a low risk or safe investment; or

18 G. Falsely representing, directly or by implication any
19 fact material to any investment or investment offering, including
20 the risk, liquidity, market value, or expected income to be
21 derived from said investment or investment offering.

22
23 **II. RECORD KEEPING AND DOCUMENT RETENTION**

24 IT IS FURTHER ORDERED that, for a period of five years from
25 the date of entry of this Order, defendants Noell and Ford each
26 and their officers, agents, servants, employees, and attorneys,
27 and all other persons or entities directly or indirectly under

1 D. Records that reflect, for every consumer complaint or
2 refund request, whether received directly or indirectly or
3 through any third party:

4 (1) the consumer's name, address, telephone number and
5 the dollar amount paid by the consumer;

6 (2) the written complaint or refund request, if any,
7 and the date of the complaint or refund request;

8 (3) the basis of the complaint, including the name of
9 any salesperson complained against, and the nature and
10 result of any investigation conducted concerning the
11 validity of any complaint;

12 (4) each response and the date of the response;

13 (5) any final resolution and the date of the
14 resolution; and

15 (6) in the event of a denial of a refund request, the
16 reason for such denial, or if the complaint was cured, the
17 basis for determining that the complaint was cured; and

18 E. Copies of all sales scripts, training packets,
19 advertisements, or other marketing materials utilized.

20
21 **III. ORDER DISTRIBUTION**

22 IT IS FURTHER ORDERED that, for a period of five years from
23 the date of entry of this Order, defendants Noell and Ford and
24 their officers, agents, servants, employees, and attorneys, and
25 all other persons or entities directly or indirectly under their
26 control or under common control with them, and all other persons
27 or other entities in active concert or participation with them

1 who receive actual notice of this Order by personal service or
2 otherwise, shall:

3 A. Provide a copy of this Order to, and obtain a signed
4 and dated acknowledgment of receipt of same from: each officer or
5 director, each individual serving in a management capacity, all
6 personnel involved in responding to consumer complaints or
7 inquiries, and all sales personnel, whether designated as
8 employees, consultants, independent contractors or otherwise,
9 immediately upon employing or retaining any such persons, for (1)
10 any business where defendant Noell or Ford is the majority owner
11 of the business or otherwise directly or indirectly manages or
12 controls the business and (2) where the business is engaged in
13 telemarketing or assisting others engaged in telemarketing, as
14 defined in this Order; *provided*, that should any recipient of
15 this Order fail or refuse to provide the defendant with the
16 signed statement required by this Section, the defendant shall
17 prepare a signed and dated statement which indicates (1) that
18 such recipient has been provided with a copy of this Order and
19 (2) that provides the recipient's residential address and
20 telephone number;

21 B. Maintain for a period of five years after creation, and
22 upon reasonable notice make available to representatives of the
23 Commission, the original signed and dated acknowledgments of the
24 receipt of copies of this Order, or the signed and dated
25 statements by defendants, as required by this Paragraph.

26 **IV. NOTIFICATION OF RESIDENCE AND EMPLOYMENT**

27 IT IS FURTHER ORDERED that, in order that compliance with
28

1 the provisions of this Order may be monitored:

2 A. Defendants Noell and Ford each shall notify the
3 Commission in writing, within ten days of the date of entry of
4 this Order, of their current residence address, mailing address,
5 business and home telephone numbers, and employment status,
6 including the names, telephone numbers, and business addresses of
7 any current employers;

8 B. For a period of five years from the date of entry of
9 this Order, defendants Noell and Ford each shall notify the
10 Commission in writing within thirty days of any changes in their
11 residence or mailing addresses;

12 C. For a period of five years from the date of entry of
13 this Order, defendants Noell and Ford each shall notify the
14 Commission in writing within thirty days of any changes in
15 employment status, including the name and business address of any
16 new employer(s);

17 D. For the purposes of this Order, all written
18 notifications to the Commission shall be mailed to:

19 Associate Director for Service Industry Practices
20 Room H-200
21 Federal Trade Commission
22 Washington, D.C. 20580
23 Re: FTC v. Tippecanoe Mining Inc.,
24 CV-97-4543 R (C.D. Cal.)

25 E. For the purposes of this Paragraph, "employment"
26 includes the performance of services as an employee, consultant,
27 or independent contractor; and "employers" include any individual
28 or entity for whom defendants Noell or Ford perform services as
an employee, consultant, or independent contractor.

1 **V. ACCESS AND MONITORING**

2 IT IS FURTHER ORDERED that, for a period of five years from
3 the date of entry of this Order, for the purpose of further
4 determining compliance with this Order, defendants Noell and Ford
5 each shall permit representatives of the Commission, within seven
6 business days of receipt of written notice from the Commission:

7 A. Access during normal business hours to their offices, or
8 facility storing documents, and to any offices of any business
9 entity or person under their control to inspect and copy all
10 documents reasonably relating to compliance with the terms of
11 this Order; and

12 B. To interview or depose the officers, directors, and
13 employees, including all personnel involved in responding to
14 consumer complaints or inquiries, and all sales personnel,
15 whether designated as employees, consultants, independent
16 contractors or otherwise, concerning matters reasonably relating
17 to compliance with the terms of this Order. The person
18 interviewed or deposed may have counsel present. *Provided* that
19 the Commission may otherwise monitor defendants' compliance with
20 this Order by all lawful means available, including the use of
21 compulsory process seeking production of documents and the use of
22 investigators posing as consumers or suppliers.

23 **VI. EQUITABLE MONETARY RELIEF**

24 A. IT IS FURTHER ORDERED that judgment is hereby entered
25 against the defendants Tippecanoe Mining, Inc., doing business in
26 its own name and d/b/a Global Mining Consulting and Hope Mining,
27 Inc., in the amount of \$2,374,259. Judgment against defendant

1 Noell is entered in the amount of \$8,500 and against defendant
2 Ford in the amount of \$27,000.

3 1. The monetary judgment against defendant Ford shall be
4 satisfied as follows: Wells Fargo Bank shall close accounts
5 #6617-883301, 0617-443965 and 0940-402621 and pay over all
6 proceeds therefrom to the Commission by cashiers check; and
7 defendant Ford shall, within 30 days from the date of entry of
8 this Order, sell his BMW, Vehicle ID Number WBABK5320REC82511 and
9 pay \$18,502.00 from the proceeds therefrom to the Commission by
10 cashiers check. If defendant Ford does not sell the automobile
11 within the allotted time, or is unable to sell the automobile for
12 at least \$18,502.00, then within 32 days from entry of this
13 Order, he shall deliver said automobile (with title and
14 registration) to the Receiver who shall sell the vehicle and pay
15 over the net proceeds to the Commission. Defendant Ford shall,
16 for 60 days after the date of entry of this Order or until
17 notified by the Receiver that title on the automobile has passed
18 to a purchaser, keep in force the automobile insurance policy in
19 effect on December 15, 1997.

20 2. The monetary judgment against defendant Noell shall be
21 satisfied as follows: Wells Fargo Bank shall close accounts
22 #6834-666794 and 0835-784729 and pay over all proceeds therefrom
23 to the Commission by cashiers check; and defendant Noell shall
24 within 6 (six) months from the date of entry of the Order, pay
25 \$300 to the Commission and shall pay \$900 to the Commission every
26 quarter thereafter until the judgment of \$8,500.00 is paid in
27 full.

1 federal agency related to the collection of the judgment,
2 including but not limited to a non-dischargeability complaint in
3 bankruptcy proceeding.

4 B. IT IS FURTHER ORDERED THAT the Permanent Receiver
5 appointed by the Court shall continue with full power of an
6 equity receiver and under the terms set forth in Paragraphs V
7 through XI of the Stipulated Preliminary Injunction with Asset
8 Freeze, Appointment of a Permanent Receiver and other Relief
9 entered by this Court on August 5, 1997. The Permanent Receiver
10 shall submit a proposal to the Court for the disposition of the
11 assets of the receivership estate.

1 **VII. RIGHT TO REOPEN**

2 IT IS FURTHER ORDERED THAT within three business days from
3 the date of entry of this Stipulated Judgment, defendants Ford
4 and Noell each shall submit to the Commission a truthful, sworn
5 statement in the form shown on Appendix A (1) and (2) that shall
6 reaffirm and attest to the truth, accuracy, and completeness of
7 the Financial Statements executed by defendant Ford on December
8 2, 1997 and executed by Noell on December 4, 1997. The
9 Commission's agreement to this Order is expressly premised upon
10 the truthfulness, accuracy, and completeness of defendants'
11 financial condition as represented in their sworn financial
12 statements, which contain material information relied upon by the
13 Commission in negotiating and agreeing to the terms of this
14 Order. If upon motion by the Commission, this Court finds that
15 the above referenced financial statement of either Noell or Ford
16 failed to disclose any material asset, materially misrepresented
17 the value of any asset, or made any other material
18 misrepresentation or omission, the Commission may request that
19 this Order be reopened for the sole purpose of allowing the
20 Commission to modify the monetary liability as to that defendant;
21 provided, however, that in all other respects this Order shall
22 remain in full force and effect unless otherwise ordered by the
23 Court and that defendants have no right to contest any of the
24 allegations in the Commission's complaint in this matter in any
25 proceedings brought pursuant to this subparagraph; and provided
26 further, that proceedings instituted under this provision would
27 be in addition to and not in lieu of any other civil or criminal

1 remedies as may be provided by law, including any other
2 proceedings the Commission may initiate to enforce this Order.

3 **VIII. RETENTION OF JURISDICTION**

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

7
8 **IX. WAIVER OF 28 U.S.C. § 2412**

9 IT IS FURTHER ORDERED that by consenting to entry of this
10 judgment, defendants waive any claim that they may have under the
11 Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the
12 prosecution of this action through the date of this Order. Each
13 settling party shall bear its own costs and attorneys' fees.

14 **X. ENTRY OF THIS JUDGMENT**

15 IT IS FURTHER ORDERED that there is no just reason for delay
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1 of entry of this judgment, and, pursuant to Fed. R. Civ. P.
2 54(b), the Clerk shall enter this Order immediately.

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4 **STIPULATED AND AGREED TO:**

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John Francis Carroll
Law Offices of John Francis
Carroll
PERMANENT RECEIVER for
Tippecanoe Mining, Inc. and
Hope Mining, Inc.

Rita Haeusler
Hughes, Hubbard & Reed
COUNSEL FOR RECEIVER

10

11

12

13

David Lefkowitz
ATTORNEY FOR DEFENDANTS
Stephen P. Noell and Mark Ford

Stephen P. Noell
Individually and as
President of Tippecanoe
Mining, Inc. and Hope
Mining, Inc.

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CONNIE WAGNER
ATTORNEY FOR PLAINTIFF
Federal Trade Commission

Mark Ford
Defendant

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IT IS SO ORDERED.

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DATE:

UNITED STATES DISTRICT JUDGE

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