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 BY _____ *CB*

**UNITED STATES DISTRICT COURT
 DISTRICT OF OREGON**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
SOUND CITY 2000, INC.,)
 an Oregon Corporation, and)
LINDA M. SIMMONS, individually)
 and as President of Sound City 2000, Inc.)
)
 Defendants.)

CV **CV '02 - 268** E. 'AS

CONSENT DECREE
 Deceptive Trade
 Practices Action (28 U.S.C. § 1331)
**ORDER FOR CIVIL
 PENALTIES, INJUNCTIVE
 AND OTHER RELIEF**

WHEREAS Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; Defendants have waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without

Certified to be a true and correct
 copy of original filed in my office.
 Dated 11/10/02
 By Donald M. Diamond, Clerk
 Deputy

adjudication of any issue of fact or law and without Defendants admitting liability for any of the matters alleged in the Complaint;

THEREFORE, upon stipulation of Plaintiff and Defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction over the subject matter and over the parties.
2. The Complaint states a claim upon which relief may be granted against the Defendants under Sections 5(a)(1), 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), 56(a), and 57b.

DEFINITION

3. For the purposes of this Consent Decree, the term "Mail Order Rule" or "the Rule" means the Federal Trade Commission's Trade Regulation Rule Concerning Mail or Telephone Order Merchandise, 16 C.F.R. § 435, or as the Rule may hereafter be amended. A copy of the Mail Order Rule is attached hereto as "Attachment A" and incorporated herein as if fully set forth verbatim

4. For the purposes of this Consent Decree, the term "buyer due a refund" means person who ordered and paid for any item of merchandise from Defendant Sound City 2000, Inc. ("Sound City") to whom Sound City did not ship such merchandise by September 1, 2001.

CIVIL PENALTY

5. Defendants, Sound City 2000, Inc., and Linda M. Simmons, their successors and assigns, shall pay to Plaintiff a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A), in the amount of thirty thousand dollars (\$30,000). Defendants are jointly and severally liable for payment of the civil penalty. Based on: (1) the

financial disclosure statement of individual Defendant Linda M. Simmons signed and dated June 27, 2001, with attachments, and (2) the financial disclosure information for corporate Defendant Sound City 2000, Inc., sent to the Federal Trade Commission ("Commission" or "FTC") by Redden & Evers, LLP, in July 2001, payment of the monetary civil penalty is suspended. Defendants shall submit to the Commission, in the form shown at "Attachment B," a statement reaffirming and attesting to the truthfulness, accuracy, and completeness of the these financial disclosures.

6. Plaintiff's agreement to this Consent Decree is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' above-referenced financial disclosures, which constitute material information upon which FTC staff relied in negotiating and agreeing to the terms of this Consent Decree. If, upon motion by Plaintiff, this Court finds that either Defendant made any material misrepresentation in or omission from the above-referenced financial disclosures, the entire amount of the \$30,000 suspended judgment entered against Defendants shall immediately become due and payable. In connection with any such motion, the only issue shall be whether the financial disclosures either Defendant provided were fraudulent, misleading, inaccurate or incomplete in any material respect. For the purposes of this Paragraph, and any subsequent proceedings to enforce payment, including but not limited to a nondischargeability complaint filed in any bankruptcy proceeding, Defendants waive any right to contest any of the allegations of Plaintiff's Complaint.

7. In the event of any default in payment, which default continues for ten (10) business days beyond the due date of payment, the entire unpaid penalty, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall

immediately become due and payable.

CONSUMER REDRESS

8. Defendant Sound City 2000, Inc., its successors and assigns, and Defendant Linda M. Simmons shall compile, from their regularly kept business records and from any other information made available to them by the Federal Trade Commission and the Oregon Department of Justice, a list containing, for each buyer due a refund to whom Sound City has paid or pays a refund after May 18, 2001, his or her name, last known address, the total purchase price paid for all items of merchandise ordered, including all charges for shipping and handling costs and applicable taxes, the pro rata price of all items ordered but not shipped, and the amount of any refund paid. Defendants shall, within ninety (90) days after entry of this Order, cause each buyer due a refund who has not yet received one to be reimbursed for the full pro rata price of the unshipped items.

INJUNCTION

9. Defendants, their successors and assigns, and their officers and agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined from violating, directly or through any corporation, subsidiary, division or other device, any provision of the Mail Order Rule, including but not limited to:

- a. Failing to have a reasonable basis to expect that they will be able to ship any ordered merchandise to the buyer: (i) Within that time clearly and conspicuously stated in any solicitation, or (ii) if no such time is clearly and conspicuously stated, within thirty (30) days after receipt of a properly completed order from the

buyer, as required by Section 435.1(a)(1), 16 C.F.R. § 435.1(a)(1);

- b. Failing to timely offer the buyer, clearly and conspicuously and without prior demand, an option to consent to a delay in shipping or to cancel the buyer's order, as required by Section 435.1(b)(1) of the Rule, 16 C.F.R. § 435.1(b)(1);
- c. Failing to deem an order canceled and to make a prompt refund to buyers who are entitled to such refunds under the Rule, as required by Section 435.1(c) of the Rule, 16 C.F.R. § 435.1(c); and
- d. Failing to inform expressly the buyer that the buyer's order will be automatically deemed to have been canceled unless the conditions set forth in Section 435.1(b)(1)(iii)(A) or (B) of the Rule, 16 C.F.R. § 435.1(b)(1)(iii)(A) or (B), are met, as required by Section 435.1(b)(1)(iii) of the Rule, 16 C.F.R. § 435.1(b)(1)(iii).

10. In the event that the Mail Order Rule is hereafter amended or modified by the Commission in a manner which would create a new or different standard applicable to Defendants' obligations under this Consent Decree, Defendants' compliance with that Rule as so amended or modified shall not be deemed a violation of this injunction.

RECORD KEEPING REQUIREMENTS

11. For a period of five (5) years from the date of entry of this Consent Decree, Defendants shall maintain and preserve from destruction:
- a. All records demonstrating compliance with the Mail Order Rule and this Consent Decree;
 - b. All written consumer complaints, including those received by e-mail and Better

Business Bureau inquiries;

- c. All written complaints and inquiries received from any federal, state, or local law enforcement agency.

COMPLIANCE

12. Defendants shall, within thirty (30) days of the entry of this Consent Decree, provide a copy of this Consent Decree and the Business Guide to the Federal Trade Commission's Mail or Telephone Order Merchandise Rule (Jan. 1995) ("Business Guide") to each of its supervisory or managerial agents, servants, employees and attorneys who are engaged in Defendants' mail, telephone, facsimile or Internet order sales business, secure from each such person a signed statement acknowledging receipt of a copy of this Consent Decree and Business Guide, and shall, within ten (10) days of complying with this Paragraph, file an affidavit with the Director, Federal Trade Commission, Northwest Region, 915 Second Avenue, Suite 2896, Seattle, WA 98174, setting forth the fact and manner of its compliance, including the name and title of each person to whom a copy of the Consent Decree and Business Guide has been provided.

13. For a period of five (5) years from the date of entry of this Consent Decree, Defendants, their successors and assigns, shall make available to the Federal Trade Commission, within seven (7) days of the date of receipt of a written request, business records demonstrating compliance with the terms and provisions of this Consent Decree.

14. For a period of twenty (20) years from the date of entry of this Consent Decree, Defendants, their successors and assigns, shall notify the Director, Federal Trade Commission, Northwest Region, 915 Second Avenue, Suite 2896, Seattle, WA 98174, at least thirty (30) days

prior to any change in Defendants' business, including, but not limited to, merger, incorporation, dissolution, assignment, sale resulting in the emergence of a successor corporation, the creation or dissolution of a subsidiary or parent, or any other change in corporate status which may affect Defendants' obligations under this Consent Decree. Provided, however, that with respect to any proposed change in Defendants' relevant business status about which Defendants learn less than thirty (30) days prior to the date such action is to take place, Defendants shall notify the Director, Federal Trade Commission, Northwest Region, as soon as practicable after obtaining such knowledge.

15. One hundred twenty (120) days after entry of this Consent Decree, Defendants shall provide a written report to the Federal Trade Commission signed by Defendant Linda M. Simmons individually and as an officer of Defendant Sound City 2000, Inc., setting forth in detail the manner and form in which Defendants have complied and are complying with this Consent Decree. This report shall include but not be limited to:

- a. A specimen copy of each delay option notice used to comply with any provision of the Mail Order Rule, and a statement setting forth in detail the procedures in place for providing such notices;
- b. A specimen copy of each advertisement, including each website page, that contains a shipping representation made available to the public by Defendants beginning sixty (60) days after the date of entry of this Consent Decree through the date ten (10) business days before such submission;
- c. A statement setting forth in detail Defendants' procedures for providing prompt refunds pursuant to the Mail Order Rule;

- d. A statement setting forth in detail the basis for Defendants' claim that they will be able to ship merchandise:
 - i. within the time stated in any advertisement; or
 - ii. within thirty (30) days, where no time is clearly and conspicuously stated in any advertisement; and
- e. A statement setting forth in detail the manner and form in which Defendants have satisfied all redress obligations required by this Order, including but not limited to, a copy of the list compiled pursuant to Paragraph 8 of this Consent Decree, and the amount of redress paid to each consumer on the list.

Defendants shall mail this written notification to: Director, Federal Trade Commission, Northwest Region, 915 Second Avenue, Suite 2896, Seattle, WA 98174.

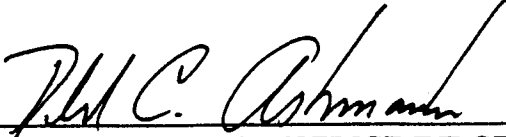
16. Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Federal Trade Commission their taxpayer identifying numbers (employer identification number and social security number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of their relationships with the government.

CONTINUING JURISDICTION

17. This Court shall retain jurisdiction of this matter for the purposes of enabling any of the parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Consent Decree, for the enforcement of compliance therewith, or for the punishment of violations thereof.

JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and against Defendants,
pursuant to all the terms and conditions recited above.

Dated this 6 day of March, 2002.

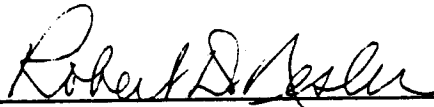

UNITED STATES DISTRICT JUDGE
Magistrate

The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. Defendants waive any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the investigation and prosecution of this action.

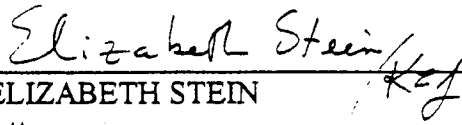
FOR THE UNITED STATES OF AMERICA:

ROBERT D. McCALLUM, Jr.
Assistant Attorney General
Civil Division
U.S. Department of Justice

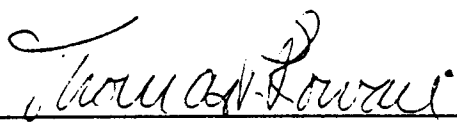
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EUGENE M. THIROLF
Director
Office of Consumer Litigation


ELIZABETH STEIN
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Office of Consumer Litigation
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U.S. Department of Justice
Washington, D.C. 20530
(202) 307-0486

FOR THE FEDERAL TRADE COMMISSION:

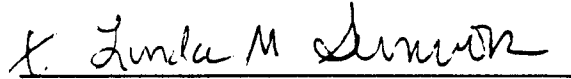

THOMAS P. ROWAN
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Seattle, WA 98174
(206) 220-6350


CHARLES A. HARWOOD
Director
Federal Trade Commission
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FOR THE DEFENDANTS:

SOUND CITY 2000, INC.

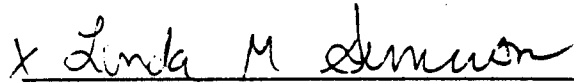
BY:



LINDA M. SIMMONS

President,

Sound City 2000, Inc.



LINDA M. SIMMONS



MICHAEL REDDEN

Attorney for Defendants

Redden & Evers LLP

2722 NE 33rd Avenue

Portland, OR 97212

(ph) 503-284-5118

1 **ATTACHMENT B**

2 Federal Trade Commission v. Sound City 2000, et al.
3 **CONSENT DECREE**

4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF OREGON**

6
7 **UNITED STATES OF AMERICA,**

8 Plaintiff,

CV

9
10 v.

CONSENT DECREE
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OTHER RELIEF

11
12
13 **SOUND CITY 2000, INC.**
an Oregon Corporation, and
14 **LINDA M. SIMMONS**, individually
and as President of Sound City 2000,
15 Inc.

16 Defendants.
17

18
19 I, Linda M. Simmons, hereby state that the information contained in the Financial
20 Statement of Individual Defendant dated and signed by me on June 27, 2001, with attachments,
21 and the financial disclosure material for Sound City 2000, Inc. sent to the Federal Trade
22 Commission by Redden & Evers, LLP in July, 2001, were true, accurate and complete at the time
23 these documents were compiled and executed.

24
25 I declare under penalty of perjury under the laws of the United States that the foregoing is
26 true and correct. Executed on 8-24-01, at

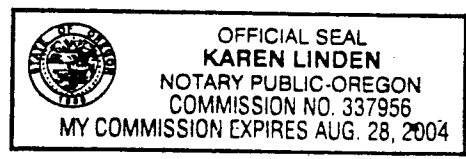
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X Linda M Simmons
Linda M. Simmons,
President, Sound City 2000, Inc.

X Linda M Simmons
Linda M. Simmons

Subscribed and sworn to before me
this 24 day of August, 2001.

Karen Linden



REASONS FOR SETTLEMENT

This statement accompanies the Consent Decree executed by defendant Linda M. Simmons on behalf of herself and her company, defendant Sound City 2000, Inc. ("Sound City"), in settlement of an action brought to recover penalties and other equitable relief from defendants for engaging in acts and practices in violation of the Commission's Trade Regulation Rule Concerning Mail or Telephone Order Merchandise ("Mail Order Rule"), 16 C.F.R. § 435.

Pursuant to Section 5(m)(3) of the Federal Trade Commission Act, as amended (15 U.S.C. § 45(m)(3)), the Commission hereby sets forth its reasons for settlement by entry of a Consent Decree and injunction:

The Consent Decree holds defendants liable for payment of \$30,000 in civil penalties. However, the Consent Decree suspends payment of this \$30,000 judgment because: (1) according to financial disclosure information supplied by defendants, they lack the ability to pay substantial penalties; and (2) the Consent Decree requires defendants to pay redress in the form of refunds to consumers who are owed them. The \$30,000 judgment would come due only if, upon motion by plaintiff, the court finds that either defendant made any material misrepresentation in or omission from their financial disclosure information. The required payment of refunds, the suspended judgment, and order monitoring provisions should assure compliance with the law by defendants and by others who engage in practices covered by the Mail Order Rule. The time and expense of litigation will also be avoided by the entry of this Consent Decree.

For the foregoing reasons, the Commission believes that the settlement by entry of the attached Consent Decree with defendants Sound City 2000, Inc., and Linda M. Simmons is justified and well within the public interest.