

1 TRACY S. THORLEIFSON  
2 MAXINE R. STANSELL  
3 Federal Trade Commission  
4 915 Second Avenue, Suite 2896  
5 Seattle, Washington 98174  
6 (206) 220-4481 (Thorleifson)  
7 (206) 220-4474 (Stansell)  
8 (206) 220-6366 (fax)

9 THOMAS J. SYTA  
10 CA Bar No. 116286  
11 Federal Trade Commission  
12 10877 Wilshire Boulevard  
13 Los Angeles, CA 90024  
14 (310) 874-4324

15 **ENTERED**  
16 5-16-03  
17 MAY 16 2003  
18 ATTORNEYS FOR PLAINTIFF

19 CLERK, U.S. DISTRICT COURT  
20 CENTRAL DISTRICT OF CALIFORNIA  
21 SANTA ANA OFFICE  
22 DEPUTY

23 UNITED STATES DISTRICT COURT  
24 CENTRAL DISTRICT OF CALIFORNIA  
25 WESTERN DIVISION

26 FEDERAL TRADE COMMISSION,

27 Plaintiff,

28 v.

MITCHELL D. GOLD, *et al.*,

Defendants.

LODGED

5-14-03  
MAY 14 2003  
4305

CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION AT SANTA ANA  
DEPUTY

FILED

5-15-03  
MAY 15 2003

CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION AT SANTA ANA  
DEPUTY

Priority  
Send  
Clsd  
Enter  
JS-4/JS-6  
JS-2/JS-3

✓ SA EV 98-966 DOC (RZ)  
No. EV-99-2895-CBM (RZX)

(PROPOSED)

DEFAULT JUDGMENT AS TO  
U.S. MARKETING, INC., AND  
NORTH AMERICAN  
CHARITABLE SERVICES, INC.

19 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has filed a  
20 complaint for a permanent injunction and other relief, pursuant to Section 13(b) of the  
21 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging defendants  
22 Mitchell David Gold, Patricia Ann Cooley Gold, Herbert Gold, Celia Gold, Jonathan  
23 Philip Cohen, Steven John Chinarian, U.S. Marketing, Inc., and North American  
24 Charitable Services, Inc., with violations of Section 5 of the FTC Act, 15 U.S.C. § 45,  
25 in connection with solicitations of charitable donations by telephone and by mail. The  
26 answers of U.S. Marketing, Inc. ("USM"), and North American Charitable Services,  
27  
28

303

FEDERAL TRADE COMMISSION  
915 Second Ave., S.E.  
Seattle, Washington 98102  
(206) 220-0130

FILED ON ICMS  
MAY 16 2003  
5-16-03

1 Inc. ("NACS"), have been stricken and defaults entered by order dated April 29, 2003,  
2 based on the suspension of corporate status and inability to defend of these parties.  
3 Plaintiff having applied for entry of default judgment, having supported that application  
4 with evidence of the amount of liability pursuant to L.R. 55-2, and having notified  
5 USM and NACS, and no objection having been made, this Court hereby enters  
6 judgment by default as follows:

7 **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND**  
8 **DECREED** as follows:

9 **FINDINGS**

10 1. This is an action by the Commission under Section 13(b) of the FTC Act,  
11 15 U.S.C. § 53(b). Pursuant to this Section, the Commission has the authority to seek  
12 the relief contained herein.

13 2. The Commission's complaint states a claim upon which relief may be  
14 granted against defendants USM and NACS under Sections 5(a) and 13(b) of the FTC  
15 Act, 15 U.S.C. §§ 45(a) and 53(b).

16 3. This Court has jurisdiction of the subject matter of this case and all the  
17 parties hereto. Venue in the Central District of California is proper.

18 4. The alleged activities of defendants USM and NACS are in or affecting  
19 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

20 5. Defendants were each served with the complaint and summons as required  
21 by Rule 4 of the Federal Rules of Civil Procedure.

22 6. Defendants USM and NACS have had their corporate status suspended,  
23 are unable to defend under California law, which is the applicable law, and do not  
24 intend to defend. On that basis, an Order for Entry of Default as to USM and NACS  
25 was entered on April 29, 2003, and their answers to plaintiff's complaint stricken.

26 7. The Court now finds that in numerous instances, in connection with  
27 soliciting contributions from prospective donors, defendants USM and NACS have  
28 violated Section 5 of the FTC Act by the following acts and practices:

1 a. Directly or through their fundraising agents, defendants have falsely  
2 represented, expressly or by implication:

3 i. that donors' contributions will directly benefit persons or programs  
4 in the donors' state or local area, or will be earmarked for use in the donors'  
5 community, when, in truth and in fact, in numerous instances, none of the donors'  
6 contributions directly benefit persons or programs in the donors' state or local area, or  
7 are specifically earmarked for use in the donors' community;

8 ii. that donors' contributions will be used to fund or support a  
9 particular charitable program, when, in truth and in fact, in numerous instances, donors'  
10 contributions are not used to fund or support the particular charitable programs  
11 represented by defendants;

12 iii. that most of the consumer's donation will be used to fund the  
13 program services described to the prospective donor when, in truth and in fact, in  
14 numerous instances, most of the consumer's donation is not used to fund the program  
15 services described to the prospective donor; and

16 iv. that the publication containing an advertisement will be widely  
17 distributed in the advertiser's local community, the advertisement will receive special  
18 placement or distribution, or that proceeds from the publication's advertising sales will  
19 support particular projects or benefit local community organizations, when, in truth and  
20 in fact, in numerous instances, the publication containing the advertisement is not  
21 widely distributed in the advertiser's local community, the advertisement does not  
22 receive special placement or distribution, and proceeds from the publication's  
23 advertising sales do not support particular projects or benefit local community  
24 organizations.

25 b. Defendants have provided their fundraising agents with the means and  
26 instrumentalities to deceive potential donors.

27 c. Defendants, by disseminating to prospective donors and to fundraising  
28 agents for use in soliciting donations, scripts and other written materials containing the

1 representations set forth in paragraph 11.a, have represented, expressly or by  
2 implication, that they possessed and relied upon a reasonable basis that substantiated  
3 such representations, at the time the representations were made, when, in truth and in  
4 fact, defendants did not possess and rely upon a reasonable basis that substantiated such  
5 representations.

6 8. The plaintiff's Application for Entry of Default Judgment supports a  
7 judgment for consumer injury against USM in the amount of \$9,649,535 and against  
8 NACS in the amount of \$14,154,492.

9 9. Plaintiff is entitled to permanent injunctive relief and redress to consumers  
10 from defendants in the forms and amounts set forth below.

11 10. The parties shall each bear their own costs and attorney's fees incurred in  
12 this action and have waived all claims under the Equal Access to Justice Act, 28 U.S.C.  
13 § 2412.

14 11. Entry of this Order is in the public interest.  
15  
16

## 17 ORDER

### 18 I. PROHIBITION ON MISREPRESENTATIONS

19 IT IS THEREFORE ORDERED that defendants USM and NACS and those  
20 persons in active concert or participation with them who receive actual notice of this  
21 Order by personal service, facsimile or otherwise, whether acting directly or through  
22 any corporation, subsidiary, division or other device, are hereby permanently restrained  
23 and enjoined from making, or assisting in making, any material misrepresentation in  
24 connection with the solicitation of donations of money or any item of value from any  
25 person or business to any person that is, or is represented to be, a nonprofit entity or  
26 that has, or is represented to have, a charitable purpose.  
27  
28

1 **II. JUDGMENT**

2 IT IS FURTHER ORDERED that:

3 A. Judgment for consumer redress is hereby entered in favor of the  
4 Commission against USM in the amount of \$9,649,535 and against NACS in the  
5 amount of \$14,154,492.  
6

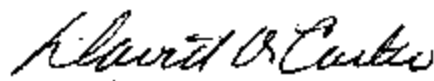
7 **III. RETENTION OF JURISDICTION**

8 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this  
9 matter for the purpose of enabling the parties to apply to the Court at any time for such  
10 further orders or directives as may be necessary or appropriate for the interpretation or  
11 modification of this Order, for the enforcement of compliance therewith or for the  
12 punishment of violations thereof.  
13

14 **IV. ENTRY OF THIS JUDGMENT**

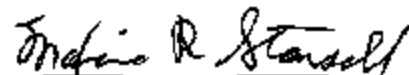
15 IT IS FURTHER ORDERED that, as there is no just reason for delay, the Clerk  
16 of the Court is hereby directed to enter this Order.

17  
18 SO ORDERED, this ~~Dec~~ <sup>Dec</sup> 15 day of May, 2003.

19  
20 

21 Honorable David O. Carter  
22 United States District Judge

23 Submitted by:

24   
25 Maxine R. Stansell  
26 Attorney for Plaintiff  
27 Federal Trade Commission  
28

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be served on all defendants by providing a true and correct copy thereof on the date set forth below by first-class mail, deposited with the United States Postal Service at Seattle, Washington to:

◆ S. Daniel Harbottle, Rutan and Tucker, LLP (counsel for North American Charitable Services, U.S. Marketing, Mitchell Gold, Herbert Gold, and Celia Gold), 714-546-9035, 611 Anton Blvd., Suite 1400, Costa Mesa, CA 92626;

◆ Frank Battaile, Battaile & Hargrave, LLP (counsel for Jonathan P. Cohen), 949-719-1326, 110 Newport Center Dr., Suite 200, Newport Beach, CA 92660;

◆ Robert C. Moest (counsel for North American Charitable Services, U.S. Marketing, Mitchell Gold, Herbert Gold, and Celia Gold), 310-915-9897, 2530 Wilshire Blvd., 2d Floor, Santa Monica, CA 90403; and

◆ Ben Pesta (counsel for Steven Chinarian), 310-203-2150, 1801 Avenue of the Stars, Ste. 900, Los Angeles, CA 90067.

Date: May 13, 2003

Maferio R. Stansell