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UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF MICHIGAN

_____)
 FEDERAL TRADE COMMISSION,)

Plaintiff,)

v.)

EIGHT POINT COMMUNICATIONS, INC.,)
 a Michigan corporation, and)

JOHN E. SPANGLER, JR.,)

Defendants.)
 _____)

) CIVIL NO. 98-74855
) (HON. JOHN FEIKENS)
) _____
) STIPULATED FINAL JUDGMENT
) & ORDER FOR PERMANENT
) INJUNCTION
) _____

On November 10, 1998, plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed its complaint for a permanent injunction and other relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging defendants EIGHT POINT COMMUNICATIONS, INC. ("EPCI") and JOHN E. SPANGLER, JR. with violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a). On January 26, 1999, this Court entered a stipulated preliminary injunction as to defendants EPCI and JOHN E. SPANGLER, JR. The Commission and defendants EPCI and JOHN E. SPANGLER, JR., by and through their counsel, have agreed and stipulated to the entry of this Stipulated Final Judgment and Order for Permanent Injunction ("Final Order") by this Court. Therefore, the defendants and the Commission having requested the Court to enter this Final Order, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

Findings

1. This Court has jurisdiction over the subject matter of this action and over all of the parties hereto;
2. The Commission's complaint states a claim upon which relief may be granted against defendants EPCI and JOHN E. SPANGLER, JR. under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);
3. The defendants waive any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996) concerning the prosecution of this action;

4. The defendants have waived all rights to seek judicial review or otherwise challenge or contest the validity of this Final Order, and further waive and release any claim they may have arising from this law enforcement action against the FTC and the employees, agents, or representatives of the FTC;
5. The defendants do not admit the allegations set forth in the Commission's complaint; and
6. The entry of this Final Order is in the public interest.

Definitions

For purposes of this Final Order, the following definitions shall apply:

1. "Affiliated company" means any corporation, partnership, sole proprietorship, unincorporated entity or other organization of any kind owned or controlled, in whole or in part, directly or indirectly, by any of the defendants in this matter;
2. "Affiliated fundraiser" means any person that the defendants arrange for or authorize to solicit contributions in the name of or on behalf of any non-profit organization;
3. "Assets" means all real and personal property of any defendant, or held for the benefit of any defendant, including but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are defined in the Uniform Commercial Code), and all cash, wherever located;

4. "Assisting in soliciting contributions" includes providing any of the following goods or services to any person or entity that the defendants know or should know is engaged in soliciting contributions: (1) performing customer service functions for any entity engaged in soliciting contributions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating, assisting in the development of, providing, or arranging for the provision of, any telephone sales script or any other solicitation or marketing material; (3) providing names of, or assisting in the generation of, potential donors; or (4) performing marketing services of any kind;
5. "Defendants" or "each defendant" means EIGHT POINT COMMUNICATIONS, INC. ("EPCI") and JOHN E. SPANGLER, JR. and each of them and their successors, assigns, officers, agents, servants, employees, salespersons, independent contractors, affiliated fundraisers, corporations, subsidiaries, affiliates, affiliated companies, and those persons directly or indirectly under their control or in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device;
6. "Donation" or "contribution" means money or any item of value provided in response to a solicitation made on behalf of or in the name of any non-profit organization, including, but not limited to, any payment made in exchange for advertising or any listing in any magazine, journal, yearbook or other

publication produced (or purportedly produced) by or on behalf or in the name of any non-profit organization;

7. "Donor," "prospective donor," or "consumer" means any person or business solicited for a donation or contribution;
8. "Non-profit organization" means any person that is, or is represented to be, a non-profit entity or that has, or is represented to have, a charitable purpose, specifically including but not limited to any entity that benefits or purports to benefit, either in whole or in part, law enforcement, fire fighting, or veterans' organizations, personnel, or programs;
9. "Person" means any natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government agency, or any other group or combination acting as an entity;
10. "Solicitor" means any person who solicits or has solicited donations or contributions; and
11. "Telemarketing" means any business activity (including but not limited to initiating or receiving telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives the telephone calls) that involves attempts to induce consumers to purchase any item, good, service, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by

means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing. Provided, however, that the term "telemarketing" shall not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumer solicited.

Conduct Prohibitions

I.

IT IS THEREFORE ORDERED that the defendants are hereby permanently restrained and enjoined from engaging, participating, or assisting in any manner or in any capacity whatsoever in soliciting contributions from any donor, whether directly, indirectly, in concert with others, or through any intermediary, business entity, or device.

II.

IT IS FURTHER ORDERED that the defendants are hereby permanently restrained and enjoined from providing the means and instrumentalities to any person who any defendant knows or should know is engaging in soliciting contributions from any donor.

III.

IT IS FURTHER ORDERED that the defendants are hereby permanently restrained and enjoined from, directly or indirectly, owning, managing, or otherwise controlling any business that is engaged in any manner whatsoever in telemarketing, whether directly, indirectly, in concert with others, or through any intermediary, business entity or device.

IV.

IT IS FURTHER ORDERED that, subject to the prohibitions set forth in Paragraphs I, II, and III above, in connection with engaging, participating, or assisting in any manner or any capacity whatsoever in the business of telemarketing, whether directly, indirectly, in concert with others, or through any intermediary, business entity or device, the defendants shall provide written notice to the Commission, within ten (10) days of commencing such activity. Such notice shall include the name, address, and telephone number of the defendants' employer or affiliate, the dates of commencement of the defendants' employment or affiliation, and the nature of the telemarketing activities engaged in or to be engaged in by the defendants. Provided, however, that the Commission shall not disclose such information publicly unless required by any law, regulation or court order.

V.

IT IS FURTHER ORDERED that the defendants are further permanently restrained and enjoined from, directly or indirectly, selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, facsimile number, credit or debit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any of the defendants, at any time prior to the entry of this Final Order, in connection with the solicitation of contributions. Provided, however, that the defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation or court order.

Judgment

VI.

IT IS FURTHER ORDERED that Judgment in the amount of five hundred thousand dollars (\$500,000) is entered jointly and severally against the defendants EPCI and JOHN E. SPANGLER, JR., and the estate of defendant JOHN E. SPANGLER JR., in the event of his death; provided, however, that upon payment by defendant JOHN E. SPANGLER, JR. of ten thousand dollars (\$10,000), the Commission will consider this Judgment satisfied as to the defendants; provided further that this Judgment shall be subject to the reopening conditions set forth in Paragraph VIII below.

- A. The Commission may apply any or all funds received by the defendants pursuant to this Final Order, and any interest received thereon, to a consumer redress program and to related administrative expenses; provided, however, that if the Commission determines that a consumer redress program is not feasible, the Commission may pay its portion to the United States Treasury as disgorgement. The Commission shall have full and sole discretion to:
1. Determine the criteria for participation by individual claimants in any consumer redress program implemented pursuant to this Final Order;
 2. Determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs; and
 3. Delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations; and pay the fees, salaries, and

expenses incurred thereby from the payments made pursuant to this Final Order.

- B. The defendants expressly waive their rights to litigate the issue of disgorgement, and shall not have any right to contest any decision or action of the Commission concerning the disbursement or disposition of the funds. The defendants acknowledge and agree that all money paid pursuant to this Final Order is irrevocably paid to the Commission for purposes of settlement between the Commission and the defendants.

VII.

IT IS FURTHER ORDERED that the defendants shall, within seven (7) business days following entry of this Final Order, tender to the Commission the five thousand dollars (\$5,000) that are in escrow pursuant to the January 26, 1999, stipulated preliminary injunction and, shall, within thirty (30) business days following entry of this Final Order, deliver to the Commission a check in the amount of five thousand dollars (\$5,000).

Right to Re-Open

VIII.

IT IS FURTHER ORDERED that the Court's approval of this Final Order is expressly premised upon the truthfulness, accuracy, and completeness of the financial

statements that have been submitted to the Commission by the defendants and that will be reaffirmed by the defendants pursuant to Paragraph IX. Paragraph VI above is expressly premised upon the truthfulness, accuracy, and completeness of the financial statements that have been submitted to the Commission by the defendants. If, upon motion by the Commission, this Court finds that any of the defendants' financial statements either failed to disclose any material asset or source of income or materially misrepresented the value of any asset or source of income, or contained any other material misrepresentation or omission, the entire amount of the Judgment set forth in Paragraph VI (\$500,000) will be rendered immediately due and payable by the defendants.

Provided, however, that in all other respects this Final Order shall remain in full force and effect unless otherwise ordered by this Court; and provided further, that proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Final Order. For the purposes of reopening or enforcing this Final Order under this Paragraph, the defendants waive any right to contest any of the allegations in the complaint filed in this matter.

IX.

IT IS FURTHER ORDERED that, within five (5) business days of entry of this Final Order, the defendants shall submit to the Commission a truthful sworn statement, in the form that is Appendix A, that shall reaffirm and attest to the truth, accuracy, and completeness of the financial statement executed by the defendants on February 8, 1999, and updated on or

about February 24, 1999. The Commission is authorized to verify any information provided in the financial statements with any appropriate third party, including but not limited to any financial institution or credit reporting bureau.

Lifting of Prior Orders

X.

IT IS FURTHER ORDERED that all prior orders shall be lifted as to the defendants.

Bankruptcy Provisions

XI.

IT IS FURTHER ORDERED that the defendants agree that, for ninety (90) days following entry of this Final Order, they will not file or cause to be filed a petition for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

XII.

IT IS FURTHER ORDERED that the defendants shall notify the Commission contemporaneously upon filing a petition for relief under the United States Bankruptcy Code involving them. In the event that any of the defendants' creditors file a petition for relief under the United States Bankruptcy Code, the defendants shall notify the Commission in writing within five (5) business days of receiving notice of such petition.

XIII.

IT IS FURTHER ORDERED that, notwithstanding any other provision of this Final Order, for the purposes of determining the dischargeability only, and for no other purpose, the defendants agree that the facts as alleged in the complaint shall be taken as true in any subsequent bankruptcy matter to which any of the defendants is a party.

Compliance Reporting

XIV.

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

- A. For a period of five (5) years from the date of entry of this Final Order, each defendant shall notify the Commission in writing of the following:
1. Any changes in the defendants' residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 2. Any changes in the defendants' employment status (including self-employment), within ten (10) days of such change. Such notices shall include the name and address of each business that the defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of the defendant's duties and responsibilities in connection with the business or employment;
 3. Any proposed change in the structure of defendant EPCI or of any business entity owned or controlled by defendants EPCI or JOHN E.

SPANGLER, JR., such as creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other changes that may affect compliance obligations arising out of this Final Order, thirty (30) days prior to the effective date of any proposed change; provided, however, that with respect to any proposed change in the corporation about which the defendant learns fewer than thirty (30) days prior to the date such action is to take place, the defendant shall notify the Commission as soon as practicable after learning of such proposed change;

- B. One hundred eighty (180) days after the date of entry of this Final Order, each defendant shall provide a written report to the Commission, sworn under penalty of perjury, setting forth in detail the manner and form in which the defendant has complied and is complying with this Final Order. This report shall include but not be limited to:
1. The defendant's then-current residence address and telephone number;
 2. The defendant's then-current employment, business address and telephone numbers, a description of the business activities of each such employer, and the defendant's title and responsibilities for each employer;
 3. A copy of each acknowledgment of receipt of this Final Order obtained by the defendant pursuant to Paragraph XVII below;

4. A statement describing the manner in which the defendant has complied and is complying with the permanent injunction against engaging, participating or assisting in any manner or in any capacity whatsoever in soliciting contributions from any donor; against providing the means and instrumentalities to any person who any defendant knows or should know is engaging in the soliciting contributions from any donor; and against owning, managing, or otherwise controlling any business that is engaged in any manner whatsoever in the business of telemarketing.
- C. Upon written request by a representative of the Commission, the defendants shall submit additional written reports (under oath, if requested) and produce documents that relate to this Paragraph on fifteen (15) days' notice;
- D. For the purposes of this Final Order, the defendants shall, unless otherwise directed by the Commission's representatives, mail all written notifications to the Commission to:
- Associate Director, Division of Marketing Practices
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20580
Re: FTC v. Eight Point Communications, Inc. et al.
- E. For the purposes of this Paragraph, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom defendant JOHN E.

SPANGLER, JR. performs services as an employee, consultant, or independent contractor; and

- F. For purposes of the compliance reporting only required by this Paragraph, the Commission is authorized to communicate directly with defendant JOHN E. SPANGLER, JR.

Commission's Authority to Monitor Compliance

XV.

IT IS FURTHER ORDERED that the Commission is authorized to monitor defendants EPCI and JOHN E. SPANGLER, JR.'s compliance with this Final Order by all lawful means, including but not limited to the following means:

- A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating defendants EPCI and JOHN E. SPANGLER, JR.'s compliance with any provision of this Final Order;
- B. The Commission is authorized to use representatives posing as consumers and suppliers to defendants EPCI and JOHN E. SPANGLER, JR., the defendants' employees, or any other entity controlled in whole or in part by defendants EPCI and JOHN E. SPANGLER, JR., without the necessity of identification or prior notice;

- C. Nothing in this Final 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 investigate whether defendants EPCI and JOHN E. SPANGLER, JR. have violated any provision of this Final Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

Access to Business Premises

XVI.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Order, for the purpose of further determining compliance with this Final Order, defendants EPCI and JOHN E. SPANGLER, JR. shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

- A. Access during normal business hours to any office, or facility storing documents, of any business where (1) defendant EPCI or JOHN E. SPANGLER, JR. is the majority owner of the business or directly or indirectly controls the business, and where (2) the business is engaged in promotion, marketing, offering for sale, or sale of any goods or services, and/or assisting others engaged in said activities.

In providing such access, defendants EPCI and JOHN E. SPANGLER, JR. shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Final Order; and shall permit Commission representatives to remove

documents relevant to any matter contained in this Final Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subsection (A) of this Paragraph applies, concerning matters relating to compliance with the terms of this Final Order. The person interviewed may have counsel present.

Provided that, upon application of the Commission and for good cause shown, the Court may enter an ex parte order granting immediate access to the defendants' business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Final Order.

Notice to Related Persons and Entities

XVII.

IT IS FURTHER ORDERED that the defendants shall immediately provide a copy of this Final Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, employee, independent contractor, agent, subcontractor, prime contractor, attorney, and representative, as well as all non-profit organizations with whom they contract to do business, and shall, within ten days from the date of entry of this Final Order, provide plaintiff with a sworn statement that each defendant has complied with this provision of the Final Order,

which statement shall include the names and addresses of each such person or entity who received a copy of the Final Order.

XVIII.

IT IS FURTHER ORDERED that agents of the Commission may serve copies of this Final Order upon any financial institution or person or entity that may be in possession of any assets, property, or property rights of the defendants or that may be subject to any provision of this Final Order for a period of five (5) years. Thereafter, the Commission may serve such copies if it has reason to believe any provision of this Final Order has been violated.

XIX.

IT IS FURTHER ORDERED that, within five (5) business days after receipt by defendants EPCI and JOHN E. SPANGLER, JR. of this Final Order as entered by the Court, the defendants shall submit to the Commission a truthful sworn statement, in the form shown on Appendix B, that shall acknowledge receipt of this Final Order.

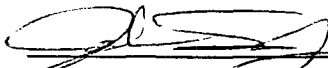
XX.

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for all purposes.

SO ORDERED, this _____ day of _____, 199__.

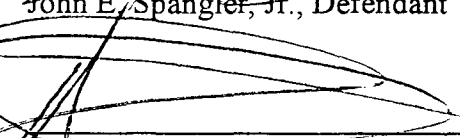
United States District Judge

Stipulated and agreed to by:



John E. Spangler, Jr., Defendant

Dated: 6/24/99



Allan S. Rubin (MI #P44420)
Rubin & Rubin
Attorney for Defendants
John E. Spangler, Jr. and
Eight Point Communications, Inc.

Dated: 6/24/99

Mona Sedky Spivack (DC #447968)
Attorney for Plaintiff
Federal Trade Commission

Dated: _____

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

| | | |
|-----------------------------------|-------------|-----------------------|
| <hr/> | |) |
| FEDERAL TRADE COMMISSION, | |) |
| | |) CIVIL NO. 98-74855 |
| | Plaintiff, |) (HON. JOHN FEIKENS) |
| | v. |) |
| | |) |
| EIGHT POINT COMMUNICATIONS, INC., | |) REAFFIRMATION OF |
| a Michigan corporation, and | |) FINANCIAL |
| | |) STATEMENT |
| | |) |
| JOHN E. SPANGLER, JR., | |) |
| | |) |
| | Defendants. |) |
| | |) |
| <hr/> | |) |

I, _____, hereby state that the information contained in the financial statement that I executed on February 8, 1999, and updated on or about February 24, 1999, and provided to the Federal Trade Commission shortly thereafter was true, accurate, and complete at such time.

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

Subscribed and sworn to before me this _____ day of _____, 199__.

Notary Public

My Commission Expires:

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

| | | |
|-----------------------------------|-------------|-----------------------|
| <hr/> | |) |
| FEDERAL TRADE COMMISSION, | |) CIVIL NO. 98-74855 |
| | Plaintiff, |) (HON. JOHN FEIKENS) |
| | v. |) |
| | |) |
| EIGHT POINT COMMUNICATIONS, INC., | |) AFFIDAVIT OF |
| a Michigan corporation, and | |) DEFENDANT |
| | |) |
| JOHN E. SPANGLER, JR., | |) |
| | |) |
| | Defendants. |) |
| <hr/> | |) |

I, _____, being duly sworn, hereby state and affirm as follows:

1. My name is _____. My current residence address is

_____. I am a citizen of the
United States and am over the age of eighteen. I have personal knowledge of the facts set
forth in this Affidavit.

2. I am a defendant in FTC v. Eight Point Communications, Inc. et al. (United States
District Court for the Eastern District of Michigan).

3. On _____ [date], I received a copy of the Stipulated Final Judgment and
Order for Permanent Injunction, which was signed by the Honorable John Feikens and entered by

the Court on _____ [date of entry of Order]. A true and correct copy of the Order I received is appended to this Affidavit.

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

[Full name of defendant]

Subscribed and sworn to before me this ____ day of _____, 199 ____.

Notary Public

My Commission Expires:
