

FILED LODGED
 RECEIVED COPY

SEP 1 - 1998

CLERK U S DISTRICT COURT
DISTRICT OF ARIZONA
BY [Signature] DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

1970042

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

LEON SAJA, individually and doing business as
SOUTHWEST PUBLISHING; DONALD L.
RITTA, individually and as an officer of Stealth
Publications, Inc.; and
STEALTH PUBLICATIONS, INC.,

Defendants.

Civ. No. CIV-97-0666 PHX SMM

**STIPULATED FINAL
JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION
AS TO DEFENDANT DONALD
RITTA**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has filed a complaint for a permanent injunction and other relief, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging defendant Donald L. Ritta with violations of Section 5 of the FTC Act, 15 U.S.C. § 45.

109

1 Defendant, Donald L. Ritta, and the Commission, by and through its respective counsel,
2 have agreed to entry of this Order by this Court in order to resolve all matters in dispute in this
3 action. The defendant and the Commission have consented to the entry of this Order without
4 trial or adjudication of any issue of law or fact herein.

5 NOW, THEREFORE, defendant Donald L. Ritta and the Commission having requested
6 the Court to enter this Order, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as
7 follows:

8 FINDINGS

- 9 A. This Court has jurisdiction of the subject matter of this action and the parties
10 consenting hereto;
- 11 B. The complaint states a claim upon which relief may be granted against defendant
12 Donald L. Ritta under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b);
- 13 C. Entry of this Order is in the public interest; and
- 14 D. Defendant has waived all rights to seek judicial review or otherwise challenge or
15 contest the validity of this Stipulated Final Judgment and Order for Permanent Injunction.

16 DEFINITIONS

17 For purposes of this Order the following definitions shall apply:

- 18 A. "Affiliated fundraiser" means any person that defendant arranges for or authorizes
19 to solicit contributions in the name of or on behalf of any nonprofit organization;
- 20 B. "Defendant" means Donald L. Ritta, as well as his officers, agents, servants,
21 employees, attorneys, salespersons, independent contractors, affiliated fundraisers, corporations,
22 subsidiaries, affiliates, and those persons directly or indirectly under his control or in active
23 concert or participation with him who receive actual notice of this Order by personal service,
24 facsimile or otherwise, whether acting directly or through any corporation, subsidiary, division or
25 other device;
- 26 C. "Donation" or "contribution" means money or any item of value provided in
27 response to a solicitation made on behalf of or in the name of any nonprofit organization,
28

1 including any payment made in exchange for advertising or any listing in any magazine, journal
2 or other publication produced by or on behalf or in the name of any nonprofit organization;

3 D. "Donor" or "consumer" means any person or business solicited for a donation or
4 contribution;

5 E. "Material" means likely to affect a person's decision to make, or conduct
6 regarding, a donation or contribution;

7 F. "Nonprofit organization" means any person that is, or is represented to be, a
8 nonprofit entity or that has, or is represented to have, a charitable purpose, specifically including
9 any entity that purports to benefit, either in whole or in part, purported law enforcement,
10 firefighting, or veterans' organizations, personnel or programs;

11 G. "Person" means a natural person, organization or other legal entity, including a
12 corporation, partnership, proprietorship, association, cooperative, government agency, or any
13 other group or combination acting as an entity; and

14 H. "Solicitor" means any person who solicits donations or contributions.

15
16 **ORDER**

17 **I. MONETARY RELIEF**

18 IT IS THEREFORE ORDERED that:

19 A. Defendant Donald L. Ritta shall pay the Commission fifty thousand dollars
20 (\$50,000) no later than December 31, 1998. The payment of this sum shall fully satisfy all
21 monetary claims asserted by the Commission against defendant Ritta in the complaint filed
22 herein and shall be used to provide redress to consumers who made contributions in response to
23 defendant's solicitations, pay attendant expenses of administration, and to pay the expenses of
24 the receiver, James C. Sell, temporarily appointed in this matter. If the Commission determines,
25 in its sole discretion, that redress to donors is wholly or partially impracticable, any funds not
26 used for redress shall be deposited into the United States Treasury as disgorgement or be used by
27 the Commission to educate consumers affected by the defendant's deceptive practices. No
28 portion of the payments as herein provided shall be deemed a payment of any fine, penalty or

1 punitive assessment. Defendant shall be notified as to how funds are disbursed, but shall have no
2 right to contest the manner of distribution chosen by the Commission; and

3 B. In the event defendant defaults in payment of the \$50,000, which default
4 continues for ten (10) days beyond the due date of the payment, the entire unpaid amount,
5 together with interest, at the rate computed pursuant to 28 U.S.C. § 1961, from the date of default
6 to the date of payment, shall become immediately due and payable.

7 II. RIGHT TO REOPEN

8 IT IS FURTHER ORDERED that, by agreeing to this Order, defendant Donald L. Ritta
9 reaffirms and attests to the truthfulness, accuracy, and completeness of his financial statement
10 that was executed on May 5, 1997 (designated the "Financial Statement"). The Commission's
11 agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness
12 of defendant's financial condition as represented in the Financial Statement referenced above,
13 which contains material information upon which the Commission relied in negotiating and
14 agreeing to the terms of this Order, including the monetary redress provided for by this Order. If,
15 upon motion by the Commission, this Court finds that defendant Ritta failed to disclose any
16 material asset, or materially misrepresented the value of any asset, or made any other material
17 misrepresentation in or omission from the Financial Statement, the Court may reopen the
18 judgment for the purpose of requiring additional monetary consumer redress in an amount
19 approximately equivalent to any resulting understatement of assets, overstatement of liabilities or
20 understatement of net worth, provided, however, that in all other respects, this Order shall remain
21 in full force and effect unless otherwise ordered by this Court; and provided further that
22 proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil
23 or criminal remedies as may be provided by law, including any other proceedings the
24 Commission may initiate to enforce this Order.

25 III. PROHIBITED PRACTICES - REPRESENTATIONS AND OMISSIONS

26 IT IS FURTHER ORDERED that defendant, in connection with soliciting contributions
27 from any donor, and in connection with providing the means and instrumentalities to solicit
28 contributions, is hereby permanently restrained and enjoined from:

1 A. Making, or assisting others to make, expressly or by implication, orally or in
2 writing, any statement or representation of material fact that is false or misleading including, but
3 not limited to, any false representation about:

- 4 (1) the solicitor's affiliation with a law enforcement, fire fighting,
5 veterans' or other nonprofit organization;
- 6 (2) the organization on whose behalf a contribution is solicited;
- 7 (3) whether the donor's contribution will be used to support a local
8 program or organization;
- 9 (4) the program or organization that the donor's contribution will
10 support;
- 11 (5) the tax-exempt status of the organization for which the contribution
12 is sought;
- 13 (6) the tax deductibility of the donor's contribution;
- 14 (7) the obligation of any donor to pay any contribution;
- 15 (8) any person's approval, authorization or obligation to make a contribution,
16 or to make any payment for any advertisement, publication, program,
17 service or product;
- 18 (9) the printing, publishing or distribution of any journal,
19 advertisement, publication, program, service or product; or
- 20 (10) the prior approval, authorization or sponsorship of any advertisement,
21 publication, program, service or product by any person;

22 B. Failing to disclose, during the initial telephone contact with any donor, and in any
23 follow-up contact, that the solicitor is, or is employed by, a professional fundraiser;

24 C. Failing to disclose, if asked by any donor, the percentage or regularly distributed
25 amount of donations that is or will be paid to the nonprofit organization on whose behalf the
26 solicitor seeks contributions;

27
28

1 D. Soliciting or accepting contributions made in the name of or on behalf of any
2 nonprofit organization from whom defendant does not have written authorization to solicit at the
3 time the solicitation is made; and

4 E. Failing to disclose clearly and conspicuously on the front of each receipt or
5 invoice that defendant or any affiliated fundraiser sends to any consumer, in black ink against a
6 light background, in print at least as large as that of any other text on the page and in no event
7 smaller than eight (8) points, that:

8 (1) the solicitation was made by a paid fundraiser; and

9 (2) the donor's contribution is not tax deductible, if that is the case.

10 **IV. PROHIBITED PRACTICES - TRAINING, MONITORING, AND VERIFICATION**

11 IT IS FURTHER ORDERED that defendant, in connection with soliciting contributions
12 from any donor, is hereby permanently restrained and enjoined from:

13 A. Failing to provide, prior to soliciting donations, initial and rebuttal scripts
14 authorized by the respective nonprofit organization to each solicitor directly compensated by
15 defendant who will solicit donations on behalf of that nonprofit organization;

16 B. Failing to take steps sufficient to train and monitor each solicitor directly
17 compensated by defendant so that the solicitor follows the authorized scripts and complies with
18 the requirements of Paragraph III of this Order. Such steps shall include, but not be limited to,
19 daily random tape-recording of solicitation calls made by each solicitor and randomly monitoring
20 all other solicitation calls. Those employees conducting the monitoring shall maintain a log
21 listing the solicitors and calls monitored and noting any material misrepresentations or
22 omissions;

23 C. Failing to take steps sufficient to verify, prior to sending an invoice, bill or C.O.D.
24 package to any donor called by each solicitor directly compensated by defendant or to any
25 commercial donor called by one of defendant's affiliated fundraisers, that each donor agreed to
26 make the donation and that the bill or invoice will be sent to the donor C.O.D., if that is the case.
27 Such steps shall include, but not be limited to, using non-commissioned employees to make
28 verification calls to donors; the verifier shall either maintain a daily log listing the name and

1 telephone number of each donor called and the date called, or tape-record each verification call-
2 back; and

3 D. Failing to provide a written reprimand to each solicitor directly compensated by
4 defendant who makes any representation in violation of Paragraph III of this Order, and to
5 terminate any solicitor directly compensated by defendant who makes more than one (1) material
6 representation in violation of Paragraph III of this Order in any consecutive twelve (12) month
7 period.

8 V. PROHIBITED PRACTICES - AFFILIATED FUNDRAISERS

9 IT IS FURTHER ORDERED that defendant, in connection with arranging for affiliated
10 fundraisers to solicit contributions from any donor, is hereby permanently restrained and
11 enjoined from:

12 A. Failing to ensure, prior to soliciting donations, each affiliated fundraiser has initial
13 and rebuttal scripts authorized by the respective nonprofit organization for which solicitations
14 will be made. Defendant shall require each such affiliated fundraiser to provide these authorized
15 scripts to, and require their use by, each solicitor employed by the affiliated fundraiser;

16 B. Failing to require that each affiliated fundraiser train, monitor, and discipline its
17 solicitors, and verify all donations in a manner consistent with Paragraph IV of this Order; and

18 C. Failing to evaluate the training, monitoring, and verification processes of
19 affiliated fundraisers on a regular basis.

20 VI. PROHIBITED PRACTICES - NONPROFIT ORGANIZATIONS

21 IT IS FURTHER ORDERED that defendant is hereby permanently restrained and
22 enjoined from failing to obtain from each nonprofit organization for whom defendant solicits or
23 arranges for solicitation of contributions, directly or through any corporation, subsidiary, division
24 or other device, prior to any solicitation on behalf of any such nonprofit organization and again
25 every six (6) months until defendant's contractual arrangement with that nonprofit organization
26 terminates:

27 A. Written certification that all sales, verification, rebuttal, and other telephone
28 solicitation scripts used in connection with any solicitation do not misrepresent:

- 1 (1) The identity or occupation of the solicitor;
- 2 (2) The program or programs benefitted by the solicited contributions;
- 3 (3) The geographic area or areas within which those programs or
- 4 services are provided;
- 5 (4) The tax-exempt status of the organization or the tax deductibility
- 6 of any contributions; and

7 B. A written report detailing the programs or services provided by the nonprofit
8 organization in support of each affirmative representation contained in each script used in
9 connection with soliciting contributions on its behalf.

10 VII. ASSISTANCE TO OTHER PERSONS

11 IT IS FURTHER ORDERED that defendant is hereby permanently restrained and
12 enjoined from assisting or facilitating any person who defendant knows or should know makes
13 false or misleading representations including, but not limited to, those set forth in Paragraph III
14 of this Order. "Assisting" includes, but is not limited to:

15 A. Formulating or providing, or arranging to formulate or provide, any script or other
16 marketing material;

17 B. Formulating or mailing, or arranging to formulate or mail, any solicitation,
18 receipt, invoice or any other materials sent to donors;

19 C. Providing or arranging to provide the names of donors ("leads");

20 D. Arranging for affiliation between any person and any purported nonprofit
21 organization for the purpose of soliciting donations;

22 E. Providing or arranging customer service functions including, but not limited to,
23 receiving or responding to donor questions or complaints, or accepting or handling any refund
24 requests; and

25 F. Providing consultation services to any person soliciting contributions.

26 VIII. MAINTENANCE OF RECORDS

27 IT IS FURTHER ORDERED that defendant, for a period of three (3) years after the date
28 of entry of this Order, in connection with soliciting contributions from any donor or in

1 connection with assisting or facilitating any person who solicits contributions from any donor, as
2 described in Paragraph VII of this Order, is hereby permanently restrained and enjoined from
3 failing to create and from failing to retain for a period of one (1) year following the date of such
4 creation, unless otherwise specified:

5 A. Records of any contract or agreement utilized in any fundraising venture
6 undertaken by defendant, as well as copies of any advertisement, script or promotional material
7 relating to such fundraising venture;

8 B. Books, records, and accounts which, in reasonable detail, accurately and fairly
9 reflect the cost of conducting any fundraising venture and the income, disbursements,
10 transactions, and use of monies by defendant;

11 C. Records accurately reflecting the name, address, and telephone number of each
12 person employed by defendant in any capacity, that person's job title or position, the date upon
13 which the employee commenced work, and the date and reason for the employee's termination, if
14 applicable;

15 D. Records containing the name, address, and telephone number of each donor
16 solicited by defendant or by any solicitor directly compensated by defendant;

17 E. Records of every consumer inquiry, complaint or refund request, whether received
18 directly or indirectly, that reflect:

- 19 (1) the consumer's name, address, telephone number, and the dollar
20 amount paid by the consumer;
- 21 (2) the written inquiry, if any, or the telephone log describing the
22 nature and the date of the inquiry, complaint or refund request;
- 23 (3) the basis of the inquiry, complaint or refund request, and the nature
24 and result of any investigation conducted relating to any inquiry or
25 complaint;
- 26 (4) each response by defendant and the date of the response;
- 27 (5) any final resolution and the date of resolution; and
28

1 (6) in the event of a denial by defendant of a refund request, the reason
2 for such denial or, if cured, the basis for determining that such
3 complaint has been cured;

4 F. All notices and reports required by this Order;

5 G. All tape recordings required by this Order together with all documents detailing
6 the locations at which defendant conducts such taping, to be kept by defendant for a period of
7 one (1) year;

8 H. All records maintained or created by defendant's training, monitoring, and
9 verification pursuant to Paragraph IV of this Order;

10 I. All records of violations of Paragraph III of this Order that defendant discovers as
11 a result of his monitoring, taping, verification or other compliance efforts made pursuant to
12 Paragraphs IV and V of this Order or otherwise, including the date of the violation, the name of
13 the employee or affiliated fundraiser, the name of the consumer solicited, the misrepresentation,
14 the number of times the employee or affiliated fundraiser has violated Paragraph III of this Order
15 in the preceding six (6) months, and a copy of the written warning or termination notice resulting
16 from such violation;

17 J. All statements, certifications, reports, and acknowledgments required to be
18 obtained by this Order; and

19 K. A record of each person for whom defendant is assisting, as that term is defined in
20 Paragraph VII of this Order, including all affiliated fundraisers, which record shall include:

- 21 (1) the person's legal name, any business name used, its address, and
22 telephone number;
- 23 (2) the individual(s) to be contacted and their position(s) or job title(s);
- 24 (3) all accounting or bookkeeping records generated by defendant for
25 such person;
- 26 (4) the date of initiation of any agreement or business relationship
27 between such person and defendant, and, if applicable, the date and
28

1 reasons for the termination of such agreement or business
2 relationship; and

- 3 (5) each inquiry or complaint received by defendant as a result of
4 fundraising by such person, together with a description of the
5 investigation and/or resolution of each such inquiry or complaint.

6 **IX. DETERMINING COMPLIANCE**

7 IT IS FURTHER ORDERED that defendant, for a period of three (3) years after the date
8 of entry of this Order, for purposes of determining compliance with this Order, shall permit
9 representatives of the Federal Trade Commission, upon reasonable written notice to defendant:

10 A. Access during normal office hours to any office or facility in which documents
11 relating to compliance with the terms of this Order are stored or held, to inspect and copy any
12 documents retained pursuant to Paragraph VIII or otherwise relating to the subject of this Order;
13 and

14 B. To interview, subject to the reasonable convenience of defendant and without
15 restraint or interference from him, at a location reasonably convenient to defendant and the
16 Federal Trade Commission, the officers, directors, and employees of any company or other
17 business entity owned, managed or controlled, in whole or in part, by defendant, relating to
18 compliance with the terms of this Order. The person interviewed may have counsel present.

19 **X. NOTICE TO RELATED PERSONS AND ENTITIES**

20 IT IS FURTHER ORDERED that defendant, for a period of three (3) years after the date
21 of entry of this Order, in connection with soliciting contributions from any donor, shall:

22 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of
23 receipt of the same from each of defendant's officers, directors, managing agents, employees,
24 independent contractors or affiliated fundraisers, nonprofit organizations with whom he contracts
25 to do business, and from each person whom defendant assists, as that term is defined in
26 Paragraph VII of this Order; and
27
28

1 B. Maintain, and upon reasonable notice make available to representatives of the
2 Commission, the original acknowledgments of the receipts required by Paragraph X.A. of this
3 Order.

4 XI. CHANGES IN EMPLOYMENT

5 IT IS FURTHER ORDERED that defendant, for a period of three (3) years after the date
6 of entry of this Order, shall give written notice to the FTC of his affiliation or employment with
7 any new business that is related to the solicitation of donations or is engaged in telemarketing
8 any product or service within twenty-one (21) days of the commencement of such affiliation.
9 Such notice shall include the new business' name and address, a statement of the nature of the
10 business, and a statement of defendant's duties and responsibilities in connection with the
11 business.

12 XII. COMPLIANCE REPORT

13 IT IS FURTHER ORDERED that defendant, within ninety (90) days after the date of
14 entry of this Order, and annually thereafter for a period of three (3) years, shall file a report, in
15 writing, setting forth in detail the manner and form in which he has complied with this Order.

16 XIII. NOTICES

17 IT IS FURTHER ORDERED that all notices and reports required of defendant by this
18 Order shall be made to the following address:

19 Regional Director
20 Federal Trade Commission
21 915 Second Avenue, Suite 2896
22 Seattle, Washington 98174

23 XIV. RETENTION OF JURISDICTION

24 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the
25 purpose of enabling either of the parties to this Order to apply to the Court at any time for such
26 further orders or directives as may be necessary or appropriate for the interpretation or
27 modification of this Order, for the enforcement of compliance therewith or for the punishment of
28

1 violations thereof. This Permanent Injunction supersedes the Preliminary Injunction previously
2 entered in this matter.

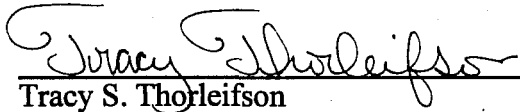
3 SO ORDERED, this 1 day of September, 1998.

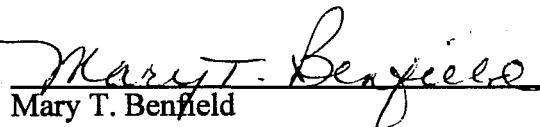
4
5 

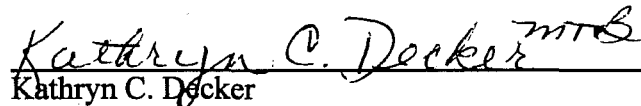
6 Stephen M. McNamee
7 United States District Judge

8
9 The parties hereby consent to the terms and conditions set forth above and consent to
10 entry of this Order without further notice to the parties. The parties also stipulate that defendant
11 waives any claim he may have against the Commission or the FTC attorneys of record in this
12 matter. Defendant waives any rights that may arise under the Equal Access to Justice Act,
13 28 U.S.C. § 2412.

14 FOR PLAINTIFF FEDERAL TRADE COMMISSION:

15
16 
17 Tracy S. Thorleifson

18 
19 Mary T. Benfield

20 
21 Kathryn C. Decker

22 FOR THE DEFENDANT:

23 
24 Donald L. Ritta