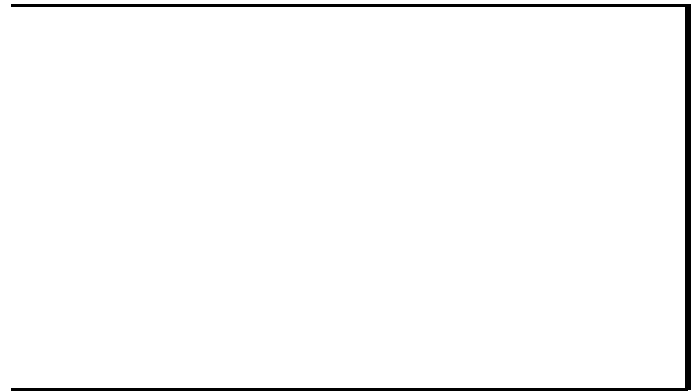


1 WILLIAM E. KOVACIC
2 General Counsel

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1 **THEREFORE**, these defendants and the Commission having requested the Court to enter this
2 Order, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

3 **FINDINGS**

4 A This Court has jurisdiction of the subject matter of this case and of the parties
5 consenting hereto.

6 B. Venue is proper as to all parties in the Southern District of California.

7 C. The activities of defendants are in or affecting commerce, as defined in Section 4
8 of the FTC Act, 15 U.S.C. § 44.

9 D. The complaint states a claim upon which relief may be granted against defendants
10 under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

11 E. Defendants have waived all rights to seek judicial review or otherwise challenge
12 or contest the validity of this Order, and further waive and release any claim defendants may
13 have against the Commission, its employees, and agents, including any rights that may arise
14 under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat.
15 847, 863-64 (1996).

16 F. The parties shall each bear their own costs and attorneys' fees incurred in this
17 action.

18 **DEFINITIONS**

19 For purposes of this Order, unless otherwise indicated, the following definitions shall
20 apply:

21 A. "Defendants" shall mean West Coast Advertising & Marketing, Inc., Mike S.
22 Thomas and Mark A. Christiansen.

23 B. "Donation" or "contribution" means money or item of value provided in response
24 to a solicitation made on behalf, or in the name, of any nonprofit organization.

25 C. "Donor" or "consumer" means any person or business solicited for a donation or
26 contribution.

27 D. "Solicitor" means any person who solicits donations or contributions.
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1 C. That the nonprofit has provided the programs or services described in the
2 solicitation scripts and in other solicitation materials used by defendants during the most recent
3 fiscal or calendar year, *provided that*, if such programs or services will be or have been provided
4 for the first time during the current calendar or fiscal year, the substantiation shall be sufficient if
5 it identifies or describes the program's intended beneficiaries and intended local communities
6 and includes the organization's written plan and itemized budget for delivering these benefits
7 during the current calendar or fiscal year. For purposes of this provision, "substantiation" means
8 copies of thank you letters, canceled checks, or other evidence showing that the nonprofit
9 undertakes the programs described in the solicitation materials used by defendants; and

10 D. That more than an incidental amount of the contributions received by the
11 nonprofit are spent on the programs or services described in the solicitation scripts and in other
12 solicitation materials used by defendants during the most recent fiscal or calendar year, including
13 a financial statement of the nonprofit for each year and accounting period during the past two
14 calendar or fiscal years (or for the period of the organization's operation, if less than two years)
15 or, if the organization has filed a Form 990 or other tax return with the Internal Revenue Service
16 at any time during the past three calendar or fiscal years, copies of each Form 990 or other tax
17 return filed by or on behalf of the organization during that time.

18 III. TRAINING, MONITORING, AND VERIFICATION

19 **IT IS FURTHER ORDERED** that defendants, their officers, agents, servants,
20 employees, and those persons in active concert or participation with them who receive actual
21 notice of this Order by personal service or otherwise, in connection with soliciting contributions,
22 are hereby permanently restrained and enjoined from:

23 A. Failing to provide initial and rebuttal scripts approved by the nonprofit, to each
24 solicitor who will solicit for the nonprofit, prior to soliciting donations for that nonprofit;

25 B. Failing to take steps sufficient to train and monitor each of its solicitors so that the
26 solicitor follows the authorized scripts and complies with the requirements of Section I of this
27 Order. Such steps shall include, but not be limited to, daily random monitoring of solicitation
28 calls made by each solicitor. Those employees conducting the monitoring shall maintain a log

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1 defendants, and any interest computed pursuant to 28 U.S.C. § 1961, as amended, shall
2 immediately begin to accrue on the unpaid balance;

3 D. The Commission and defendants acknowledge and agree that no portion of this
4 judgment for equitable monetary relief shall be deemed a fine, penalty, punitive assessment, or
5 forfeiture; and

6 E. For the purposes of any subsequent proceedings to enforce payments required by
7 this Section or Section V of this Order including, but not limited to, a non-dischargeability
8 complaint filed in a bankruptcy proceeding, defendants waive any right to contest any allegations
9 in the Commission's complaint.

10 **V. RIGHT TO REOPEN**

11 IT IS FURTHER ORDERED that, by agreeing to this Order, defendants reaffirm and
12 attest to the truthfulness, accuracy, and completeness of the financial statements received by the
13 Commission on September 8, 2003, and the letter and financial documents received by the
14 Commission on October 9, 2003 (designated collectively as the "Financial Statements").
15 Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and
16 completeness of defendants' financial condition as represented in the Financial Statements
17 referenced above, which contain material information upon which plaintiff relied in negotiating
18 and agreeing to the terms of this Order. If, upon motion by plaintiff, this Court finds that any
19 defendant failed to disclose any material asset, or materially misrepresented the value of any
20 asset, or made any other material misrepresentation in or omission from the Financial
21 Statements, the Court shall enter a judgment against such defendant in favor of the Commission
22 in the amount of \$745,863, and the entire amount shall become immediately due and payable.
23 *Provided however*, that in all other respects, this Order shall remain in full force and effect
24 unless otherwise ordered by this Court; *provided further* that proceedings instituted under this
25 Section are in addition to, and not in lieu of, any other civil or criminal remedies as may be
26 provided by law, including any other proceedings plaintiff may initiate to enforce this Order.

VI. RECORD KEEPING

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of

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1 **VII. COMPLIANCE REPORTING BY DEFENDANTS**

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

4 A. For a period of five (5) years from the date of entry of this Order the defendants
5 shall notify the Commission of the following:

- 6 1. any change in the residence, mailing address, or telephone number, within
7 ten (10) days of the date of such change;
- 8 2. any change in their employment status (including self-employment) within
9 ten (10) days of the date of such change; such notice shall include the
10 name and address of each business that the defendant is affiliated with,
11 employed by, or performs services for; a statement of the nature of the
12 business; and a statement of the defendant’s duties and responsibilities in
13 connection with the business;

1 B. One hundred eighty (180) days after the date of entry of this Order, defendants
2 shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in
3 detail the manner and form in which they have complied and are complying with this Order.
4

5 This report shall include, but not be limited to:

- 6 1. any changes required to be reported pursuant to Section VII.A;
- 7 2. a copy of each acknowledgment of receipt of this Order obtained by
8 defendants pursuant to Section IX.

9 C. For purposes of the compliance reporting required by this Section, the
10 Commission is authorized to communicate directly with each defendant.
11

12 **VIII. COMPLIANCE MONITORING**

13 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating
14 compliance with any provision of this Order:

15 A. Within ten (10) days of receipt of written notice from a representative of the
16 Commission, each defendant shall submit additional written reports, sworn to under penalty of
17 perjury; produce documents for inspection and copying; appear for deposition; and/or provide
18 entry during normal business hours to any business location in such defendant's possession or
19 direct or indirect control to inspect the business operation.
20

21 B. In addition, the Commission is authorized to monitor compliance with this Order
22 by all other lawful means, including but not limited to the following:
23

- 24 1. obtaining discovery from any person, without further leave of court, using
25 the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
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1 2. posing as donors and suppliers to defendants, or any other entity managed
2 or controlled in whole or in part by them, without the necessity of
3 identification or prior notice;

4 *Provided* that nothing in this Order shall limit the Commission’s lawful use of
5 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to
6 obtain any documentary material, tangible things, testimony, or information relevant to unfair or
7 deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C.
8 § 45(a)(1)).

9 C. Defendants shall permit representatives of the Commission to interview any
10 employer, consultant, independent contractor, representative, agent, or employee who has agreed
11 to such an interview, relating in any way to any conduct subject to this Order. The person
12 interviewed may have counsel present.

13 **IX. DISTRIBUTION OF ORDER BY DEFENDANTS**

14 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry
15 of this Order defendants shall deliver a copy of this Order to the principals, officers, directors,
16 managers and employees under defendants’ control for any business that (1) defendants own or
17 that employs or contracts for personal services from them and (2) has responsibilities with
18 respect to the subject matter of this Order. Defendants shall secure from each such person a
19 signed and dated statement acknowledging receipt of the Order within three (3) days after the
20 date of service of the Order or the commencement of the employment relationship.

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Mike S. Thomas, Pro Se

Mark A. Christiansen, Pro Se

Errol Copilevitz
Attorney for Defendant
West Coast Advertising & Marketing, Inc.

Eleanor Durham
Attorney for Plaintiff
Federal Trade Commission