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9 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 _____)
13 FEDERAL TRADE COMMISSION,)

14 Plaintiff)

15 v.)

16 TIPPECANOE MINING, INC., in its)
own name and d/b/a GLOBAL MINING)
17 CONSULTING, et al.,)

18 Defendants)
19 _____)

CV 97-4543-R (ANx)

) STIPULATED FINAL JUDGMENT
) AND PERMANENT INJUNCTION
) AS TO DEFENDANTS TIPPECANOE
) MINING, INC., GLOBAL MINING
) CONSULTING, HOPE MINING,
) INC., STEPHEN P. NOELL
) AND MARK FORD

20 WHEREAS, on June 20, 1997, plaintiff Federal Trade
21 Commission ("Commission") commenced this action by filing a
22 complaint for a permanent injunction and other equitable relief,
23 pursuant to Section 13(b) of the Federal Trade Commission Act
24 ("FTC Act"), 15 U.S.C. § 53(b), charging defendants Tippecanoe
25 Mining, Inc., in its own name and d/b/a Global Mining Consulting;
26 Hope Mining, Inc.; Stephen P. Noell, and Mark Ford (hereinafter,
27 "Defendants"), with violations of Section 5(a) of the FTC Act, 15

1 U.S.C. § 45(a);

2 WHEREAS the Court, on August 5, 1997, entered a
3 Stipulated Preliminary Injunction with Asset Freeze, Appointment
4 of a Permanent Receiver and Other Relief;

5 WHEREAS the parties and the Receiver have agreed to the
6 terms of this Stipulated Final Judgment and Order for Permanent
7 Injunction and Other Equitable Relief ("Order") and have agreed
8 further that the individual defendants have not, by so
9 stipulating, waived any privilege or constitutional rights,
10 including rights afforded by the Fourth and Fifth Amendments and
11 the Attorney-Client privilege;

12 THEREFORE, the Court, being advised in the premises, finds:

13 1. This is an action by the Commission instituted under
14 Sections 5 and 13(b) of the Federal Trade Commission Act, 15
15 U.S.C. ¶ ¶ 45 and 53(b). The Complaint seeks both permanent
16 injunctive relief and consumer redress for alleged unfair or
17 deceptive acts or practices in connection with the offer and sale
18 of interests in gold or silver mining ventures. The Commission
19 has the authority under Section 13(b) of the FTC Act to seek the

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1 presentations, either exclusively or in conjunction with the use
2 of other forms of marketing. Provided, however, that the term
3 "telemarketing" shall not include transactions that are not
4 completed until after a face-to-face contact between the seller
5 or solicitor and the consumers solicited.

6 9. "Assisting others engaged in telemarketing" means
7 knowingly providing any of the following goods or services to any
8 person or entity engaged in telemarketing: (1) performing
9 customer service functions for an entity engaged in
10 telemarketing, including, but not limited to, receiving or
11 responding to consumer complaints; (2) formulating or providing,
12 or arranging for the formulation or provision of, any telephone
13 sales script or any other marketing material for an entity
14 engaged in telemarketing; (3) providing names of, or assisting in
15 the generation of, potential customers for an entity engaged in
16 telemarketing; or (4) performing marketing services of any kind
17 for an entity engaged in telemarketing.

18 **I. PROHIBITED BUSINESS ACTIVITIES**

19 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that
20 defendants and their agents, servants, employees, attorneys,
21 successors, assigns, and other entities or persons directly or
22 indirectly under their control, and all persons or entities in
23 active concert or participation with them who receive actual
24 notice of this Order by personal service, facsimile or otherwise,
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1 A. Falsely representing, directly or by implication, that
2 investors are likely to receive substantial annual returns from
3 an investment in any gold or silver mining venture, or any other
4 investment offering;

5 B. Falsely representing, directly or by implication, that
6 the value of any ore deposit has been proved;

7 C. Falsely representing, directly or by implication, that
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1 their control or under common control with them, and all other
2 persons or other entities in active concert or participation with
3 them who receive actual notice of this Order by personal service
4 or otherwise, in connection with any business engaged in
5 telemarketing in which the defendant is the majority owner of the
6 business, are hereby restrained and enjoined from failing to
7 create, and from failing to retain for a period of five years
8 following the date of such creation, unless otherwise specified:

9 A. Books, records and accounts that, in reasonable detail,
10 accurately and fairly reflect the cost of goods or services sold,

1 D. Records that reflect, for every consumer complaint or
2 refund request, whether received directly or indirectly or
3 through any third party:

4 (1) the consumer's name, address, telephone number and
5 the dollar amount paid by the consumer;

6 (2) the written complaint or refund request, if any,
7 and the date of the complaint or refund request;

8 (3) the basis of the complaint, including the name of
9 any salesperson complained against, and the nature and
10 result of any investigation conducted concerning the
11 validity of any complaint;

12 (4) each response and the date of the response;

13 (5) any final resolution and the date of the
14 resolution; and

15 (6) in the event of a denial of a refund request, the
16 reason for such denial, or if the complaint was cured, the
17 basis for determining that the complaint was cured; and

18 E. Copies of all sales scripts, training packets,
19 advertisements, or other marketing materials utilized.

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21 **III. ORDER DISTRIBUTION**

22 IT IS FURTHER ORDERED that, for a period of five years from
23 the date of entry of this Order, defendants Noell and Ford and
24 their officers, agents, servants, employees, and attorneys, and
25 all other persons or entities directly or indirectly under their
26 control or under common control with them, and all other persons
27 or other entities in active concert or participation with them

1 the provisions of this Order may be monitored:

2 A. Defendants Noell and Ford each shall notify the
3 Commission in writing, within ten days of the date of entry of
4 this Order, of their current residence address, mailing address,
5 business and home telephone numbers, and employment status,
6 including the names, telephone numbers, and business addresses of
7 any current employers;

8 B. For a period of five years from the date of entry of
9 this Order, defendants Noell and Ford each shall notify the
10 Commission in writing within thirty days of any changes in their
11 residence or mailing addresses;

12 C. For a period of five years from the date of entry of
13 this Order, defendants Noell and Ford each shall notify the
14 Commission in writing within thirty days of any changes in
15 employment status, including the name and business address of any
16 new employer(s);

17 D. For the purposes of this Order, all written
18 notifications to the Commission shall be mailed to:

19 Associate Director for Service Industry Practices
20 Room H-200

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1 **V. ACCESS AND MONITORING**

2 IT IS FURTHER ORDERED that, for a period of five years from
3 the date of entry of this Order, for the purpose of further
4 determining compliance with this Order, defendants Noell and Ford
5 each shall permit representatives of the Commission, within seven
6 business days of receipt of written notice from the Commission:

7 A. Access during normal business hours to their offices, or
8 facility storing documents, and to any offices of any business
9 entity or person under their control to inspect and copy all
10 documents reasonably relating to compliance with the terms of
11 this Order; and

12 B. To interview or depose the officers, directors, and
13 employees, including all personnel involved in responding to
14 consumer complaints or inquiries, and all sales personnel,
15 whether designated as employees, consultants, independent
16 contractors or otherwise, concerning matters reasonably relating
17 to compliance with the terms of this Order. The person
18 interviewed or deposed may have counsel present. *Provided* that
19 the Commission may otherwise monitor defendants' compliance with
20 this Order by all lawful means available, including the use of
21 compulsory process seeking production of documents and the use of
22 investigators posing as consumers or suppliers.

23 **VI. EQUITABLE MONETARY RELIEF**

24 A. IT IS FURTHER ORDERED that judgment is hereby entered
25 against the defendants Tippecanoe Mining, Inc., doing business in
26 its own name and d/b/a Global Mining Consulting and Hope Mining,
27 Inc., in the amount of \$2,374,259. Judgment against defendant

1 Noell is entered in the amount of \$8,500 and against defendant
2 Ford in the amount of \$27,000.

3 1. The monetary judgment against defendant Ford shall be
4 satisfied as follows: Wells Fargo Bank shall close accounts
5 #6617-883301, 0617-443965 and 0940-402621 and pay over all
6 proceeds therefrom to the Commission by cashiers check; and
7 defendant Ford shall, within 30 days from the date of entry of
8 this Order, sell his BMW, Vehicle ID Number WBABK5320REC82511 and
9 pay \$18,502.00 from the proceeds therefrom to the Commission by
10 cashiers check. If defendant Ford does not sell the automobile
11 within the allotted time, or is unable to sell the automobile for
12 at least \$18,502.00, then within 32 days from entry of this
13 Order, he shall deliver said automobile (with title and
14 registration) to the Receiver who shall sell the vehicle and pay
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1 federal agency related to the collection of the judgment,
2 including but not limited to a non-dischargeability complaint in
3 bankruptcy proceeding.

4 B. IT IS FURTHER ORDERED THAT the Permanent Receiver
5 appointed by the Court shall continue with full power of an
6 equity receiver and under the terms set forth in Paragraphs V
7 through XI of the Stipulated Preliminary Injunction with Asset
8 Freeze, Appointment of a Permanent Receiver and other Relief
9 entered by this Court on August 5, 1997. The Permanent Receiver
10 shall submit a proposal to the Court for the disposition of the
11 assets of the receivership estate.

1 **VII. RIGHT TO REOPEN**

2 IT IS FURTHER ORDERED THAT within three business days from
3 the date of entry of this Stipulated Judgment, defendants Ford
4 and Noell each shall submit to the Commission a truthful, sworn
5 statement in the form shown on Appendix A (1) and (2) that shall
6 reaffirm and attest to the truth, accuracy, and completeness of
7 the Financial Statements executed by defendant Ford on December
8 2, 1997 and executed by Noell on December 4, 1997. The
9 Commission's agreement to this Order is expressly premised upon
10 the truthfulness, accuracy, and completeness of defendants'
11 financial condition as represented in their sworn financial
12 statements, which contain material information relied upon by the
13 Commission in negotiating and agreeing to the terms of this
14 Order. If upon motion by the Commission, this Court finds that
15 the above referenced financial statement of either Noell or Ford
16 failed to disclose any material asset, materially misrepresented
17 the value of any asset, or made any other material
18 misrepresentation or omission, the Commission may request that
19 this Order be reopened for the sole purpose of allowing the
20 Commission to modify the monetary liability as to that defendant;
21 provided, however, that in all other respects this Order shall
22 remain in full force and effect unless otherwise ordered by the
23 Court and that defendants have no right to contest any of the
24 allegations in the Commission's complaint in this matter in any
25 proceedings brought pursuant to this subparagraph; and provided
26 further, that proceedings instituted under this provision would
27 be in addition to and not in lieu of any other civil or criminal

1 remedies as may be provided by law, including any other
2 proceedings the Commission may initiate to enforce this Order.

3 **VIII. RETENTION OF JURISDICTION**

4 IT IS FURTHER ORDERED that this Court shall retain
5 jurisdiction of this matter for purposes of construction,
6 modification and enforcement of this Order.

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8 **IX. WAIVER OF 28 U.S.C. § 2412**

9 IT IS FURTHER ORDERED that by consenting to entry of this
10 judgment, defendants waive any claim that they may have under the
11 Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the
12 prosecution of this action through the date of this Order. Each
13 settling party shall bear its own costs and attorneys' fees.

14 **X. ENTRY OF THIS JUDGMENT**

15 IT IS FURTHER ORDERED that there is no just reason for delay
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1 of entry of this judgment, and, pursuant to Fed. R. Civ. P.
2 54(b), the Clerk shall enter this Order immediately.

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4 **STIPULATED AND AGREED TO:**

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John Francis Carroll
Law Offices of John Francis
Carroll
PERMANENT RECEIVER for
Tippecanoe Mining, Inc. and
Hope Mining, Inc.

Rita Haeusler
Hughes, Hubbard & Reed
COUNSEL FOR RECEIVER

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David Lefkowitz
ATTORNEY FOR DEFENDANTS
Stephen P. Noell and Mark Ford

Stephen P. Noell
Individually and as
President of Tippecanoe
Mining, Inc. and Hope
Mining, Inc.

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CONNIE WAGNER
ATTORNEY FOR PLAINTIFF
Federal Trade Commission

Mark Ford
Defendant

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IT IS SO ORDERED.

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DATE:

UNITED STATES DISTRICT JUDGE

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