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1 Plaintiff Federal Trade Commission ("Commission") has
2 commenced this action by filing its Complaint for a permanent
3 injunction and other equitable relief pursuant to Section 13(b) of
4 the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b),
5 charging the above-captioned defendants with violations of Section 5
6 of the FTC Act, 15 U.S.C. § 45, the accompanying Stipulation For
7 Entry of Final Judgment and Order for Permanent Injunction
8 ("Stipulation"), and this (Proposed) Final Judgment and Order for
9 Permanent Injunction ("Order"). Finding good cause therefore,

10 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

11 ~~847070 12-11-12~~
12 ~~247070 12-11-12~~

1 Lightning Tree, Inc., The Right Path, Inc., and Stone Fulfillment &
2 Shipping Company, while doing business in their own names or as
3 Handicapped Industries, Disadvantaged and Handicapped Industries,
4 Jobs for the Disadvantaged, Workshop for the Disadvantaged, Reliable
5 Handicapped Workers, Bruce Holley, Inc., B.H. Industries, or T.J.
6 Beard, Inc.

7 D. "Individual Defendants" mean Bruce Edward Holley, Benjamin
8 Wade Holley, Robert Dale Holley, Christopher Jay Cottet, Terry Jeff
9 Beard, and JoAnn Porter; and

10 E. "Defendants" and "HI" mean both the Corporate and
11 Individual Defendants.

12 F. "Telemarketing" means a plan, program, or campaign that is
13 conducted to induce the purchase of goods or services by use of one
14 or more telephones and involves more than one interstate telephone
15 call made to or from any customer, provided however, that
16 "telemarketing" does not include telephone calls in which the sale of
17 goods or services is not completed, and payment or authorization of
18 payment is not required, until after a face-to-face sales
19 presentation by the seller.

20 G. "Handicapped" or "Disabled" are synonymous in meaning and
21 equal in scope to the usage of term "Disability" in the Americans
22 With Disabilities Act, 42 U.S.C. § 12102.

23 II.

24 PROHIBITED BUSINESS ACTIVITIES

25 IT IS THEREFORE ORDERED that the Defendants and their agents,
26 servants, employees, and attorneys, and all persons or entities
27 directly or indirectly under their control or under common control

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1 with them, and all other persons or entities in active concert or
2 participation with them who receive actual notice of this Order by
3 personal service or otherwise, in connection with the marketing of
4 any product or service, are hereby permanently restrained and
5 enjoined from:

6 A. Falsely representing, expressly or by implication, that all
7 or most persons employed by HI are handicapped or disabled, or that
8 the purchase of goods from HI will benefit such employees;

9 B. Falsely representing, expressly or by implication, that the
10 Defendants' business is a non-profit corporation or business
11 organization, or a charity;

12 C. Falsely representing, expressly or by implication, the
13 attributes of the Defendants' services or products;

14 D. Falsely representing, expressly or by implication, that the
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1 HI Northwest, and HI Southeast; signed by Ben W. Holley, undated, for
2 Lightning Tree, (AZ); initialed by Ben W. Holley, undated, for The
3 Right Path; initialed by Ben W. Holley on 4/7/00 on behalf of Mamie
4 Beard as President of Stone Fulfillment; signed by Bruce E. Holley on
5 4/5/2000 for Bruce Edward Holley; signed by Ben W. Holley on 4/5/2000
6 for Ben Wade Holley; signed by Robert Dale Holley on 4/6/2000 for
7 Robert Dale Holley; signed by Chris Cottet, undated, for Chris
8 Cottet; signed by Terry Beard, undated, for Terry Jeff Beard; and
9 signed by JoAnn Porter on 4/7/2000 for JoAnn Porter, and related
10 documents that were submitted to the Federal Trade Commission, listed
11 on Attachment A. Such financial statements and supporting documents
12 contain material information upon which the Commission relied in
13 negotiating and agreeing to the amount or terms of the redress
14 payment stated in this paragraph. If, upon motion by the Commission,
15 this Court finds that any Defendant filed a financial statement that
16 failed to disclose any material asset, or materially misrepresented
17 the value of any asset, or made any other material misrepresentation
18 in or omission from the financial statement, the Court shall enter
19 judgment against such Defendant, in favor of the Commission, in the
20 amount of four million dollars (\$4,000,000), which is intended to
21 represent the amount of unjust enrichment obtained by the Defendants,
22 or the loss to consumers, and which will become immediately due and
23 payable. For purposes of this paragraph and any subsequent
24 proceedings to enforce payment, including but not limited to a non-
25 dischargeability complaint filed in a bankruptcy proceeding, the
26 Defendants waive any right to contest any of the allegations in the
27 Commission's Complaint.

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1 A. The funds paid by Defendants pursuant to this paragraph
2 shall be deposited into a redress fund, administered by the
3 Commission, to be used for equitable relief including but not limited
4 to consumer redress and any attendant expenses for the administration
5 of any redress fund. The Commission, in its sole discretion, may use
6 a designated agent to administer consumer redress. If the Commission
7 determines, in its sole discretion, that redress to purchasers is
8 wholly or partially impractical, any funds not so used shall be paid
9 to the United States Treasury in lieu of redress;

10 B. If an administrator is employed to administer redress, such
11 administrator may destroy all records relating to this matter six
12 years after the transfer of any remaining redress funds to the FTC
13 Treasury account or the closing of the account from which such funds
14 were disbursed, whichever is earlier, provided that no records shall
15 be destroyed unless and until a representative of the Commission has
16 received and approved the administrator's final accounting report.
17 Records shall be destroyed in accordance with disposal methods and
18 procedures to be specified by the Commission. The Commission may, in
19 its sole discretion, require that such records, in whole or in part,
20 be transferred, in lieu of destruction, to the Commission;

21 C. Defendants forever disclaim all right, title, and interest
22 in all sums paid. None of these funds shall be returned to the
23 Defendants, their successors, heirs, or assigns. No portion of any
24 payments under the judgment herein shall be deemed a payment of any
25 fine, penalty, or punitive assessment;

26 D. Unless previously provided to the FTC, Defendants are
27 hereby required, in accordance with 31 U.S.C. § 7701, to furnish to
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1 the FTC their respective taxpayer identifying numbers (social
2 security numbers or employer identification numbers), which shall be
3 used for purposes of collecting and reporting on any delinquent
4 amount arising out of such persons' relationship with the government;
5 and

6 E. Proceedings instituted under this paragraph are in addition
7 to, and not in lieu of, any other civil or criminal remedies that may
8 be provided by law, including any other proceedings the Commission
9 may initiate to enforce this Order.

10 **IV.**

11 **CUSTOMER LISTS**

12 **IT IS FURTHER ORDERED** that Defendants, and each of their
13 successors, assigns, officers, agents, servants, employees,
14 subsidiaries and affiliates, and those persons in active concert or
15 participation with them who receive actual notice of this Order by
16 personal service or otherwise, are permanently restrained and
17 enjoined from selling, renting, leasing, transferring, or otherwise
18 disclosing the name, address, telephone number, credit card number,
19 bank account number, e-mail address, or other identifying information
20 of any person who paid any money to any Defendant, at any time prior
21 to entry of this Order, in connection with the advertising,
22 promotion, offering for sale or sale of any product or service;
23 provided, however, that Defendants may disclose such identifying
24 information to a law enforcement agency, or as required by any law,
25 regulation, or court order.

26 **V.**

27 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

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IT IS FURTHER ORDERED

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1 VII.

2 MONITORING COMPLIANCE OF SALES PERSONNEL

3 IT IS FURTHER ORDERED that Defendants, in connection with any
4 business where:

5 (1) any Defendant is the majority owner of the business or
6 directly or indirectly manages or controls the business, and where

7 (2) the business engages in the sale or distribution of any
8 product or service or assists others engaged in these activities, are
9 hereby permanently restrained and enjoined from:

10 A. Failing to take reasonable steps sufficient to monitor and
11 ensure that all employees and independent contractors engaged in
12 sales or other customer service functions comply with Paragraph II of
13 this Order. Such steps shall include adequate monitoring of sales
14 presentations or other calls with customers, and shall also include,
15 at a minimum, the following: (1) listening to the oral
16 representations made by persons engaged in sales or other customer
17 service functions, as necessary; (2) establishing a procedure for
18 receiving and responding to customer complaints; and (3) ascertaining
19 the number and nature of customer complaints regarding transactions
20 in which each employee or independent contractor is involved;
21 provided that this sub-paragraph does not authorize or require
22 Defendants to take any steps that violate any federal, state, or
23 local laws;

24 B. Failing promptly to investigate fully any customer
25 complaint received by any business to which this paragraph applies;
26 and

27 C. Failing to take corrective action with respect to any sales
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1 person whom any Defendant determines is not complying with this
2 Order.

3 **VIII.**

4 **RECORD KEEPING**

5 **IT IS FURTHER ORDERED** that, for a period of three years from the
6 date of entry of this Order, in connection with any business where
7 any Defendant is the majority owner of the business or directly or
8 indirectly manages or controls the business, and where the business
9 is engaged in the sale, distribution, or marketing of any product or
10 service, the Defendants are hereby restrained and enjoined from
11 failing to create, and from failing to retain for a period of three
12 years following the date of such creation, unless otherwise
13 specified:

14 A. Books, records and accounts that, in reasonable detail,
15 accurately and fairly reflect the cost of goods or services sold,
16 revenues generated, and the disbursement of such revenues;

17 B. Records accurately reflecting: the name, address, and
18 telephone number of each person employed in any capacity by such
19 business, including as an independent contractor; that person's job
20 title or position; the date upon which the person commenced work; and
21 the date and reason for the person's termination, if applicable. The
22 businesses subject to this paragraph shall retain such records for
23 any terminated employee for a period of two years following the date
24 of termination;

25 C. Records containing the names, addresses, phone numbers,
26 dollar amounts paid, quantity of items or services purchased, and
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1 description of items or services purchased, for all customers to whom
2 such business has sold, invoiced or shipped any goods or services;

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

6 1. the consumer's name, address, telephone number and the
7 dollar amount paid by the consumer;

8 2. the written complaint or refund request, if any, and
9 the date of the complaint or refund request;

10 3. the basis of the complaint, including the name of any
11 salesperson complained against, and the nature and result
12 of any investigation conducted concerning any complaint;

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A. For a period of five years from the date of entry of this Order, Defendants shall notify the Commission of the following:

1. Any changes in the residence, mailing addresses, and telephone numbers of any individual Defendant, within ten days of the date of such change;

2. Any changes in the employment status (including self-employment) of any individual Defendant, within ten days of such change. Such notice shall include the name and address of each business that such Defendant is

1 Defendant directly or indirectly manages, controls or has a
2 majority ownership interest in, about which the Defendant
3 learns less than thirty days prior to the date such action
4 is to take place, the Defendant shall notify the Commission
5 as soon as is practicable after learning of such proposed
6 change;

7 B. One hundred eighty days after the date of entry of this
8 Order, Defendants shall provide a written report to the FTC, sworn to
9 under penalty of perjury, setting forth in detail the manner and form
10 in which Defendants have complied and are complying with this Order.

11 This report shall include but not be limited to:

12 1. Each Individual Defendant's then current residence
13 address and telephone numbers;

14 2. Each Individual Defendant's then current employment,
15 business address and telephone numbers, a description of
16 the business activities of each such employer or business,
17 and the Individual Defendants' title and responsibilities
18 for each such employer or business;

19 3. A copy of each acknowledgment of receipt of this Order
20 obtained by Defendant pursuant to Paragraph VI; and

21 4. A statement describing the manner in which Defendants
22 have complied and are complying with Paragraphs II-III of
23 this Order; and

24 C. Upon written request by a representative of the Commission,
25 Defendants shall submit additional written reports (under oath, if
26 requested) and produce documents on fifteen days' notice with respect
27 to any conduct that is subject to this Order;

1 D. For the purposes of this Order, Defendants shall, unless
2 otherwise directed by the Commission's authorized representatives,
3 mail all written notifications to the Commission to:

4
5 Regional Director
6 Western Region
7 Federal Trade Commission
8 901 Market Street, Room 570
9 San Francisco, CA 94103
10 Re: FTC v. Handicapped Industries

11 E. For the purposes of this paragraph, "employment" includes
12 the performance of services as an employee, consultant, or
13 independent contractor; and "employers" include any individual or
14 entity for whom any Individual Defendant performs services as an
15 employee, consultant, or independent contractor; and

16 F. For purposes of the compliance reporting required by this
17 paragraph, the Commission is authorized to communicate directly with
18 Defendants.
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20 **X.**

21 **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

22 **IT IS FURTHER ORDERED** that the Commission is authorized to
23 monitor the Defendants' compliance with this Order by all lawful
24 means, including but not limited to the following means:

25 A. The Commission is authorized, without further leave of
26 Court, to obtain discovery from any person in the manner provided by
27 Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26
28 - 37, including the use of compulsory process pursuant to Fed. R.

1 Civ. P. 45, for the purpose of monitoring and investigating the
2 Defendants' compliance with any provision of this Order;

3 B. The Commission is authorized to use representatives posing
4 as consumers and suppliers to the employees of any Defendant, or any
5 other entity managed or controlled in whole or in part by any
6 Defendant without the necessity of identification or prior notice;

7 C. Nothing in this Order shall limit the Commission's lawful
8 use of compulsory process, pursuant to Sections 9 and 20 of the FTC
9 Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether any Defendant has
10 violated any provision of this Order or Section 5 of the FTC Act, 15
11 U.S.C. § 45;

12 D. During the period in which the Defendants are required to
13 maintain records pursuant to this Order, they shall permit
14 representatives of the Commission, within three days of receipt of a
15 written notice from the Commission:

- 16 1. Access during normal business hours to any office, or
17 facility storing documents, of any business where any
18 Defendant is the majority owner, or any business that
19 either directly or indirectly manages or controls that
20 engages in the sale, distribution, or marketing any product
21 or service. In providing such access, the Defendants shall
22 permit representatives of the Commission to inspect and
23 copy all documents relevant to any matter contained in this
24 Order, and shall permit Commission representatives to
25 remove documents relevant to any matter contained in this
26 Order for a period not to exceed five business days so that

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1 the documents may be inspected, inventoried, and copied;
2 and

3 2. to interview the officers, directors, and employees,
4 including all personnel involved in responding to consumer
5 complaints or inquiries, and all sales personnel, whether
6 designated as employees, consultants, independent
7 contractors or otherwise, of any business engaged in the
8 sale, distribution, or marketing of any product or service,
9 concerning matters relating to compliance with the terms of
10 this Order, subject to the reasonable convenience of the
11 Defendants and their counsel and the person to be
12 interviewed, and without restraint or interference from the
13 Defendants, at a location reasonably convenient to the
14 person to be interviewed or deposed, the Defendants and
15 their counsel, and the Commission. The person interviewed
16 may have counsel present.

17 *Provided* that, upon application of the Commission and a
18 showing that it is in the interest of justice, the Court may
19 issue an *ex parte* order, without prior notice to the Defendants
20 granting immediate access to the business premises of any
21 Defendant for the purposes of inspecting and copying all
22 documents relevant to any matter contained in this Order.

23 **XI.**

24 **COSTS AND ATTORNEYS FEES**

25 **IT IS FURTHER ORDERED** that each party shall bear its own costs
26 and attorneys fees incurred in connection with this action.

27 **XII.**

1 CONTINUING JURISDICTION

2 IT IS FURTHER ORDERED that this Court shall retain jurisdiction
3 of this matter for all purposes.

4 IT IS SO ORDERED.

5
6 DATED this ___ day of _____ 2000.

7
8 _____
9 UNITED STATES DISTRICT JUDGE

ATTACHMENT A

- 1
- 2 A. For Chris Cottet: U.S. and Arizona Individual Tax returns for
- 3 1997 and 1998.
- 4 B. For JoAnn Porter: U.S and Arizona Individual Tax returns for
- 5 1997, 1998, and 1999.
- 6 C. For The Right Path: U.S. Corporate tax Return for 1997; Arizona
- 7 Corporate Tax returns for 1997 and 1998.
- 8 D. Lightning Tree, Inc.: U.S and Arizona corporate tax returns for
- 9 1998 and 1999.
- 10 E. Documents attached to and information stated in the April 6,
- 11 2000, letter from Robert Mothershead to Raymond E. McKown;
- 12 F. Documents attached to and information stated in the February 4,
- 13 2000, letter from Robert Mothershead to Raymond E. McKown;
- 14 G. Documents attached to and information stated in the October 14,
- 15 1999, letter from Robert Mothershead to Jerome M. Steiner.
- 16 H. Bankruptcy schedule for defendant Terry Jeff Beard filed March
- 17 16, 1999.
- 18 I. Bankruptcy schedule for defendant Bruce Edward Holley filed
- 19 December 9, 1998.
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ATTACHMENT B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CROOKED OAK INVESTMENTS, INC.,
et al.

Defendants.

CIVIL NO.

AFFIDAVIT OF DEFENDANT
(NAME) _____

RE RECEIPT OF ORDER

_____, being duly sworn, hereby states and affirms 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 Federal Trade Commission v. Crooked Oak Investments, Inc., (United States District Court for the Central District of California).

3. On _____, I received a copy of the Stipulated Judgment and Order for Permanent Injunction, which was signed by the Honorable _____, and entered by the Court on _____, 2000. A true and correct copy of the Order I received is appended to this Affidavit.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

[Full name of defendant]

Executed on _____, at _____ [city and state].

State of _____

County of _____