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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF ARIZONA**

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9 Federal Trade Commission,
10 Plaintiff,
11 v.
12 Handicapped & Disabled
Workshops, Inc., *et al.*,
13 Defendants.

Case No. CV-08-0908-PHX-DGC

**STIPULATED FINAL JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF AGAINST
GEORGE THOMAS**

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15 This matter comes before the Court on the stipulation of Plaintiff, the Federal
16 Trade Commission (“FTC” or “Commission”), and Defendant George Thomas. On
17 May 13, 2008, the Commission filed a Complaint for a permanent injunction and other
18 equitable relief in this matter pursuant to Sections 13(b) and 19(a) of the Federal Trade
19 Commission Act (“FTC Act”), 15 U.S.C. § 53(b) and 57b(a). The FTC charged
20 defendants Handicapped & Disabled Workshop, Inc., Handi-Hope Industries, Inc., Handi-
21 Ship, LLC, Bruce D. Peeples, George Thomas, and Joshua D. Abramson with engaging in
22 deceptive acts or practices in connection with the telemarketing and sale of various
23 household products, in violation of: Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); the
24 Commission’s Telemarketing Sales Rule, 16 C.F.R. Part 310; and the Unordered
25 Merchandise Statute, 39 U.S.C. § 3009. The Commission and Defendant George Thomas
26 have agreed to the entry of this Stipulated Final Order for Permanent Injunction and Other
27 Equitable Relief (“Order”) and to entry of the First Amended Complaint to resolve all
28 matters of dispute between them with respect to the conduct alleged in this action.

1 Accordingly, by stipulation of the parties to this Order, it is hereby **ORDERED**,
2 **ADJUDGED, AND DECREED:**

3 **FINDINGS**

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1 real and personal property, including, but not limited to chattel, goods, instruments,
2 equipment, fixtures, general intangibles, inventory, checks, notes, leaseholds, effects,
3 contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts,
4 credits, premises, receivables, funds, and cash, wherever located, whether in the United
5 States or abroad.

6 2. “Defendant Thomas” means George Thomas.

7 3. “Document” is synonymous in meaning and equal in scope to the usage of
8 the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings,
9 graphs, charts, photographs, audio and video recordings, computer records, and other data
10 compilations from which information can be obtained and translated, if necessary,
11 through detection devices into reasonably usable form. A draft or non-identical copy is a
12 separate document within the meaning of the term.

13 4. “Material” means likely to affect a person’s choice of, or conduct regarding,
14 goods or services.

15 5. “Person” means a natural person, an organization or other legal entity,
16 including a corporation, partnership, sole proprietorship, limited liability company,
17 association, cooperative, or any other group or combination acting as an entity.

18 6. “Representatives” means Defendant Thomas’s successors, assigns, officers,
19 agents, servants, employees, and those persons in active concert or participation with
20 Defendant Thomas who receive actual notice of this Order, by personal service or
21 otherwise.

22 7. “Telemarketing” means any plan, program or campaign (whether or not
23 covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310) that is conducted to induce
24 the purchase of goods or services by means of the use of one or more telephones.

25 8. The terms “and” and “or” have both conjunctive and disjunctive meanings.
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1 **ORDER**

2 **I.**

3 **PROHIBITED REPRESENTATIONS**

4 **IT IS THEREFORE ORDERED** that Defendant Thomas and his
5 Representatives are hereby permanently restrained and enjoined from making or assisting
6 others in making, expressly or by implication, any false or misleading statement or
7 representation or omission of Material fact in connection with the advertising, offering for
8 sale, sale, or distribution of any good or service, including, but not limited to,
9 misrepresenting any of the following:

10 A. That any consumer's purchase will significantly help handicapped or
11 disabled people;

12 B. That the person soliciting any consumer's purchase is handicapped or
13 disabled;

14 C. That all or most persons employed by or working on behalf of Defendant
15 Thomas or his Representatives are handicapped or disabled;

16 D. That any handicapped or disabled person packages products;

17 E. That Defendant Thomas or his Representatives operate a charitable
18 organization;

19 F. That any consumer ordered, purchased, or agreed to purchase goods or
20 services, and therefore owes money to Defendant Thomas or his Representatives;

21 G. The total cost to purchase, receive, or use, and the quantity of, any goods or
22 services that are subject to the sales offer;

23 H. Any material restrictions, limitations, or conditions to purchase, receive, or
24 use the goods or services;

25 I. Any material aspect of the nature or terms of a refund, cancellation,
26 exchange, or repurchase policy for the goods or services; and

27 J. Any material aspect of the performance, efficacy, nature, or central
28 characteristics of goods or services that are the subject of the sale.

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II.

**PROHIBITIONS AGAINST DECEPTIVE AND ABUSIVE
TELEMARKETING PRACTICES**

IT IS FURTHER ORDERED that Defendant Thomas and his Representatives, in connection with the advertising, offering for sale, sale, or distribution of any good or service, are hereby permanently restrained and enjoined from violating or assisting others in violating, in any manner, any provision of the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310 (attached hereto as Attachment A), as currently promulgated or as it may hereafter be amended, including, but not limited to, any of the following:

A. Making any false or misleading statements to induce consumers to pay for goods or services or to induce a charitable contribution, in violation of Section 310.3(a)(4) of the TSR, 16 C.F.R. Part 310.3(a)(4);

B. Causing consumers' telephones to ring repeatedly, and/or engaging consumers repeatedly in telephone conversation with the intent to annoy, abuse, or harass persons at the called number, in violation of Section 310.4(b)(1)(i) of the TSR, 16 C.F.R. Part 310.4(b)(1)(i);

C. Causing billing information to be submitted for payment without the express informed consent of the consumer, in violation of Section 310.4(a)(6) of the TSR, 16 C.F.R. Part 310.4(a)(6);

D. Causing billing information to be submitted for payment when using a payment method other than a credit card or a debit card, without the consumer's express verifiable authorization, in violation of Section 310.3(a)(3) of the TSR, 16 C.F.R. Part 310.3(a)(3);

E. Initiating any outbound telemarketing call to a person's telephone number on the National Do Not Call Registry of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services, in violation of Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. Part 310.4(b)(1)(iii)(B), unless:

1. Defendant Thomas or his Representatives have obtained the express

1 agreement, in writing, of such person to place calls to that person. Such written agreement
2 shall clearly evidence such person’s authorization that calls made by or on behalf of a
3 specific party may be placed to that person, and shall include the date the express
4 agreement was obtained, the telephone number to which the calls may be placed, and the
5 signature of that person; or

6 2. Defendant Thomas or his Representatives have an established
7 business relationship with such person and that person has not previously stated that he or
8 she does not wish to receive outbound telemarketing calls made by or on behalf of
9 Defendant Thomas or his Representatives;

10 F. Initiating any outbound telemarketing call to a person when that person has
11 previously stated that he or she does not wish to receive an outbound telephone call made
12 by or on behalf of Defendant Thomas or his Representatives, in violation of
13 Section 310.4(b)(1)(iii)(A) of the TSR, 16 C.F.R. Part 310.4(b)(1)(iii)(A); and

14 G. Initiating any outbound telemarketing call to a telephone number within a
15 given area code without first paying the required annual fee required for access to the
16 telephone numbers within that area code that are included in the National Do Not Call
17 Registry, in violation of Section 310.8 of the TSR, 16 C.F.R. Part 310.8.

18 **III.**

19 **COMPLYING WITH THE UNORDERED MERCHANDISE STATUTE**

20 **IT IS FURTHER ORDERED** that Defendant Thomas and his Representatives, in
21 connection with the advertising, offering for sale, sale, or distribution of any good or
22 service, are hereby permanently restrained and enjoined from violating or assisting others
23 in violating any of the provisions of the Unordered Merchandise Statute,
24 39 U.S.C. § 3009, including, but not limited to:

25 A. Sending any merchandise without the prior expressed request or consent of
26 the recipient unless such merchandise is clearly and conspicuously marked as a free
27 sample and has attached to it a clear and conspicuous statement that the recipient may treat
28 the merchandise as a gift and may retain, use, discard, or dispose of it in any manner

1 without any obligation whatsoever to the sender; and

2 B. Sending any communication, including, but not limited to, bills, invoices,
3 reminders, letters, notices, or dunning communications, that in any manner seek to obtain
4 payment for any merchandise shipped without the prior expressed request or consent of the
5 recipient.

6 **IV.**

7 **MONETARY RELIEF**

8 **IT IS FURTHER ORDERED** that:

9 A. Judgment is hereby entered against Defendant Thomas, jointly and severally
10 with the other Defendants named in the First Amended Complaint in this case, in the
11 amount of THIRTEEN MILLION FOUR HUNDRED ELEVEN THOUSAND NINE
12 HUNDRED EIGHTEEN (\$13,411,918); *provided, however*, that this judgment, as to
13 Defendant Thomas, shall be suspended upon receipt by the Commission of the monies as
14 specified in Section IV.B. of this Order.

15 B. Mountain America Credit Union, 7181 South Campus View Drive, West
16 Jordan, Utah, 84084, shall transfer to the Commission the sum of TWO THOUSAND
17 THREE HUNDRED EIGHTY DOLLARS AND TWENTY-FIVE CENTS (\$2,380.25)

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20 amended in above shall be sum indtd to, he Commission thth t theenn

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1 used for equitable relief, including, but not limited to, consumer redress and any attendant
2 expenses for the administration of any redress fund. In the event that redress to consumers
3 is wholly or partially impracticable, or any funds remain after redress is completed, the
4 Commission may apply any remaining funds to such other equitable relief (including
5 consumer information remedies) as it determines to be reasonably related to the acts and
6 practices alleged in the First Amended Complaint. Any funds not used for such equitable
7 relief shall be deposited in the United States Treasury as disgorgement. Defendant
8 Thomas shall have no right to contest the manner of distribution or other disposition of
9 funds chosen by the Commission. The Commission in its sole discretion may use a
10 designated agent to administer consumer redress.

11 **V.**

12 **RIGHT TO REOPEN**

13 **IT IS FURTHER ORDERED** that:

14 A. The Commission's agreement to, and the Court's approval of, this Order is
15 expressly premised upon the truthfulness, accuracy, and completeness of Defendant
16 Thomas's financial statement dated May 20, 2008, and previously submitted by Defendant
17 Thomas to the FTC ("Defendant's Financial Statement"), which contain material
18 information relied upon by the Commission in negotiating and agreeing to the terms of this
19 Order.

20 B. If, upon motion by the Commission, this Court finds that Defendant Thomas
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1 **VI.**

2 **LIFTING OF ASSET FREEZE**

3 **IT IS FURTHER ORDERED** that the freeze against the assets of Defendant
4 Thomas pursuant to the Preliminary Injunction entered by this Court on May 27, 2008,
5 shall be lifted upon entry of this Order.

6 **VII.**

7 **CUSTOMER LISTS**

8 **IT IS FURTHER ORDERED** that Defendant Thomas and his Representatives are
9 permanently restrained and enjoined from selling, renting, leasing, transferring, or
10 otherwise disclosing the name, address, telephone number, credit card number, bank
11 account number, e-mail address, or other identifying information of any person who paid
12 money to any of the Defendants at any time prior to the entry of this Order, in connection
13 with the purchase of any products. Provided, however, that Defendant Thomas or his
14 Representatives may disclose such identifying information to a law enforcement agency or
15 as required by any law, regulation, or court order.

16 **VIII.**

17 **COOPERATION WITH FTC COUNSEL**

18 **IT IS FURTHER ORDERED** that Defendant Thomas shall, in connection with
19 this action or any subsequent investigations related to or associated with the transactions
20 or the occurrences that are the subject of the FTC's First Amended Complaint, cooperate
21 in good faith with the FTC and appear at such places and times as the FTC shall
22 reasonably request, after written notice, for interviews, conferences, pretrial discovery,
23 review of documents, and for such other matters as may be reasonably requested by the
24 FTC. If requested in writing by the FTC, Defendant Thomas shall appear and provide
25 truthful testimony in any trial, deposition, or other proceeding related to or associated with
26 the transactions or the occurrences that are the subject of the First Amended Complaint,
27 without the service of a subpoena.

1 **IX.**

2 **COMPLIANCE MONITORING**

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

5 A. Within ten (10) days of receipt of written notice from a representative of the
6 Commission, Defendant Thomas shall submit additional written reports, sworn to under
7 penalty of perjury; produce documents for inspection and copying; appear for deposition;
8 and/or provide entry during normal business hours to any business location in Defendant
9 Thomas's possession or direct or indirect control to inspect the business operation;

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

12 1. obtaining discovery from any person, without further leave of court,
13 using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

14 2. posing as consumers and suppliers to: Defendant Thomas, Defendant
15 Thomas's employees, or any other entity managed or controlled in whole or in part by
16 Defendant Thomas, without the necessity of identification or prior notice; and

17 C. Defendant Thomas shall permit representatives of the Commission to
18 interview any employer, consultant, independent contractor, representative, agent, or
19 employee who has agreed to such an interview, relating in any way to any conduct subject
20 to this Order. The person interviewed may have counsel present.

21 ***Provided, however,*** that nothing in this Order shall limit the Commission's lawful
22 use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C.
23 §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or
24 information relevant to unfair or deceptive acts or practices in or affecting commerce
25 (within the meaning of 15 U.S.C. § 45(a)(1)).

1 **X.**

2 **COMPLIANCE REPORTING**

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

5 A. For a period of seven (7) years from the date of entry of this Order,

6 1. Defendant Thomas shall notify the Commission of the following:

7 a. Any changes in his residence, mailing addresses, and
8 telephone numbers, within ten (10) days of the date of such change;

9 b. Any changes in his employment status (including self-
10 employment), and any change in Defendant Thomas's ownership of any business entity,
11 within ten (10) days of the date of such change. Such notice shall include the name and
12 address of each business that Defendant Thomas is affiliated with, employed by, creates or
13 forms, or performs services for; a statement of the nature of the business; and a statement
14 of Defendant Thomas's duties and responsibilities in connection with the business or
15 employment; and

16 c. Any changes in Defendant Thomas's name or use of any
17 aliases or fictitious names; and

18 2. Defendant Thomas shall notify the Commission of any changes in
19 corporate structure of any business entity that Defendant Thomas directly or indirectly
20 controls, or has an ownership interest in, that may affect compliance obligations arising
21 under this Order, including but not limited to a dissolution, assignment, sale, merger, or
22 other action that would result in the emergence of a successor entity; the creation or
23 dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject
24 to this Order; the filing of a bankruptcy petition; or a change in the corporate name or
25 address, at least thirty (30) days prior to such change, *provided* that, with respect to any
26 proposed change in the corporation about which the Defendant Thomas learns less than
27 thirty (30) days prior to the date such action is to take place, Defendant Thomas shall
28 notify the Commission as soon as is practicable after obtaining such knowledge.

1 B. One hundred eighty (180) days after the date of entry of this Order,
2 Defendant Thomas shall provide a written report to the FTC, sworn to under penalty of
3 perjury, setting forth in detail the manner and form in which he has complied and is
4 complying with this Order. This report shall include, but not be limited to:

5 1. The then-current residence address, mailing addresses, and telephone
6 numbers of Defendant Thomas;

7 2. The then-current employment and business addresses and telephone
8 numbers of Defendant Thomas, a description of the business activities of each such
9 employer or business, and the title and responsibilities of Defendant Thomas, for each
10 such employer or business;

11 3. Any other changes required to be reported under subsection A of this
12 Section; and

13 4. A copy of each acknowledgment of receipt of this Order, obtained
14 pursuant to Section XII.

15 C. For the purposes of this Order, Defendant Thomas shall, unless otherwise
16 directed by the Commission's authorized representatives, mail all written notifications to
17 the Commission to:

18 Associate Director
19 Division of Enforcement
20 Re: FTC v. Handicapped & Disabled Workshops, Case No. 08-0908-PHX-DGC
21 Federal Trade Commission
22 600 Pennsylvania Ave., NW

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comasn to:

1 indirectly controls the business, are hereby restrained and enjoined from failing to create,
2 and from failing to retain the following records:

3 A. Accounting records that reflect the cost of goods or services sold, revenues
4 generated, and the disbursement of such revenues;

5 B. Personnel records accurately reflecting: the name, address, and telephone
6 number of each person employed in any capacity by such business, including as an
7 independent contractor; that person's job title or position; the date upon which the person
8 commenced work; and the date and reason for the person's termination, if applicable;

9 C. Customer files containing the names, addresses, phone numbers, dollar
10 amounts paid, quantity of items or services purchased, and description of items or services
11 purchased, to the extent such information is obtained in the ordinary course of business;

12 D. Complaints and refund requests (whether received directly, indirectly or
13 through any third party) and any responses to those complaints or requests;

14 E. Copies of all sales scripts, training materials, advertisements, or other
15 marketing materials; and

16 F. All records and documents necessary to demonstrate full compliance with
17 each provision of this Order, including but not limited to, copies of acknowledgments of
18 receipt of this Order, required by Section XII, and all reports submitted to the FTC
19 pursuant to Section X.

20 XII.

21 DISTRIBUTION OF ORDER

22 **IT IS FURTHER ORDERED** that, for a period of seven (7) years from the date of
23 entry of this Order, Defendant Thomas shall deliver copies of the Order as directed below:

24 A. Defendant Thomas as a Control Person: For any business that Defendant
25 Thomas controls, directly or indirectly, or in which he has a majority ownership interest,
26 Defendant Thomas must deliver a copy of this Order to all principals, officers, directors,
27 and managers of that business. Defendant Thomas must also deliver copies of this Order
28 to all employees, agents, and representatives of that business who engage in conduct

1 related to the subject matter of the Order. For current personnel, delivery shall be within
2 five (5) days of service of this Order upon Defendant Thomas. For new personnel,
3 delivery shall occur prior to them assuming their responsibilities.

4 B. Defendant Thomas as employee or non-control person: For any business
5 where Defendant Thomas is not a controlling person of a business but otherwise engages
6 in conduct related to the subject matter of this Order, Defendant Thomas must deliver a
7 copy of this Order to all principals and managers of such business before engaging in such
8 conduct.

9 C. Defendant Thomas must secure a signed and dated statement acknowledging
10 receipt of the Order, within thirty days of delivery, from all persons receiving a copy of the
11 Order pursuant to this Section.

12 **XIII.**

13 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

14 **IT IS FURTHER ORDERED** that Defendant Thomas, within five (5) business
15 days of receipt of this Order as entered by the Court, must submit to the Commission a
16 truthful sworn statement acknowledging receipt of this Order.

17 **XIV.**

18 **COURT'S RETENTION OF JURISDICTION**

19 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter
20 for purposes of construction, modification and enforcement of this Order.

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