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JAN 23 2001

AT BALTIMORE  
CLERK U.S. DISTRICT COURT  
DISTRICT OF MARYLAND DEPUTY

BY

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
NORTHERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JOHN T. POLK, individually and as an officer of the  
corporate defendant(s),

PATRICK FARAH, individually and as an officer of the  
corporate defendant(s),

PETER HIRSCH, individually and as an officer of the  
corporate defendant(s),

USASURANCE GROUP, INC., a Colorado corporation,

AKAHI CORP., a Texas and Colorado corporation,

AKAHI.COM CORP., a Texas corporation,

2XTREME PERFORMANCE INTERNATIONAL, LLC,

a Delaware LLC, and

AFEW, INC., a Delaware corporation,

Defendants.

)  
)  
) CIVIL NO. JFM99CV3679  
)  
) STIPULATED FINAL  
) JUDGMENT AND ORDER FOR  
) PERMANENT INJUNCTION  
) AS TO DEFENDANTS  
) JOHN T. POLK AND AFEW, INC  
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On December 9, 1999, plaintiff, the Federal Trade Commission ("FTC" or the "Commission"), filed its complaint for injunctive and other equitable relief in this matter pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging defendants John T. Polk, Patrick Farah, Peter Hirsch, USAurance Group, Inc., Akahi Corp., Akahi.com Corp., 2Xtreme Performance International, LLC, and AFEW, Inc. with violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a). On or about February 25, 2000, this Court entered a Stipulated Preliminary Injunction as to Defendants John T. Polk and AFEW, Inc. The Commission and defendants John T. Polk and AFEW, Inc., by and through their counsel, have agreed and stipulated to the entry by this Court of a Stipulated Final Judgment and Order for Permanent Injunction ("Final Order"). Pursuant to agreement and stipulation, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

#### **FINDINGS**

1. This Court has jurisdiction over the subject matter of this action and has personal jurisdiction over defendants John T. Polk and AFEW, Inc.;
2. Venue in this district is proper;
3. The Commission's complaint states a claim upon which relief may be granted against defendants John T. Polk and AFEW, Inc. under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);
4. Defendants John T. Polk and AFEW, Inc. waive any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. No. 104-121, 110 Stat. 846, 863-64 (1996), concerning the prosecution of this action;
5. Defendants John T. Polk and AFEW, Inc. have waived all rights to seek judicial review or otherwise challenge or contest the validity of this Final Order, and further waive and release any

claim they may have arising from this law enforcement action against the FTC and the employees, agents, or representatives of the FTC;

6. Defendants John T. Polk and AFEW, Inc. deny liability for any of the actions alleged in the Complaint and this Order does not constitute, and shall not be interpreted to constitute, either an admission by defendants Polk and AFEW of any wrongdoing or a finding by the Court that defendants Polk and AFEW have engaged in any violations of law; and
7. Entry of this Final Order is in the public interest.

### **DEFINITIONS**

For the purpose of this Final Order, the following definitions shall apply:

- A. "Defendants" means John T. Polk and AFEW, Inc., whether acting individually or together, directly, indirectly, in concert or participation with others, or through any agent, representative, business entity, or other intermediary or device.
- B. "Asset" means any legal or equitable interest in, right to, or claim to any real or personal property of the defendants or held for the benefit of the defendants, wherever located, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), chattels, leaseholds, contracts, mails, other deliveries, shares of stock, lists of participants, intellectual property, accounts, credits, receivables, cash, and trusts, including but not limited to any trust held for the benefit of any defendant, any defendant's minor children, or any defendant's spouse.
- C. "Business opportunity" means any written or oral business arrangement, however denominated, whether or not covered by the FTC's Trade Regulation Rule entitled "Disclosure Requirements

and Prohibitions Concerning Franchising and Business Opportunity Ventures” (“Franchise Rule”), 16 C.F.R. Part 436, which consists of the payment of any consideration for both: a) the right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and b) assistance to any person in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

- D. “Multi-level marketing program” means any marketing program in which participants pay money to the program promoter in return for which the participants obtain the right to: (1) recruit additional participants, or have additional participants placed by the promoter or any other person into the program participant’s downline, tree, cooperative, income center, or other similar program grouping; (2) sell goods or services; and (3) receive payment or other compensation, in whole or in part, based upon the sales of those in the participant’s downline, tree, cooperative, income center or similar program grouping. This definition is intended to include both currently legal and illegal multi-level marketing programs.
- E. “Participating” in a multi-level marketing program or business opportunity includes, but is not limited to, promoting, marketing, advertising, offering for sale, or selling, or assisting others in the offering for sale or selling the right to participate in, the multi-level marketing program or business opportunity, as well as acting or serving as an officer, director, employee, salesperson, agent, shareholder, advisor, consultant, independent contractor, or distributor, or acting as a speaker or spokesperson on behalf of, any multi-level marketing program or business opportunity.

## **CONDUCT PROHIBITIONS**

### **I.**

**IT IS THEREFORE ORDERED** that the defendants, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, are permanently restrained and enjoined from engaging in, participating in, promoting, advertising, marketing, offering for sale, selling, or assisting in any manner or in any capacity whatsoever in, any multi-level marketing program or business opportunity.

### **II.**

**IT IS FURTHER ORDERED** that the defendants, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, are permanently restrained and enjoined from, directly or indirectly, selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, facsimile number, credit or debit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any of the defendants, at any time prior to the entry of this Final Order, in connection with participation in any of the 2Xtreme Performance International, Akahi Corp., Akahi.com, and/or Cynergy International multi-level marketing program(s). Provided, however, that the defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation or court order.

## MONETARY RELIEF

### III.

**IT IS FURTHER ORDERED** that Judgment in the amount of two million dollars (\$2,000,000) is entered jointly and severally against defendants John T. Polk and AFEW, Inc., and the estate of defendant Polk, in the event of his death; provided, however, that upon payment by defendant Polk of the entire value of the assets maintained in the Knox Trust account (an amount that shall not be less than \$833,000.00) to the United States Attorney's Office for the District of Maryland in the matter of *United States v. John T. Polk*, Case No. JFM-98-0425-ALL (D. Md.), such payment to be made by no later than January 31, 2001, the Commission will consider this Judgment satisfied as to defendants Polk and AFEW; provided further that, at the sole discretion of the United States Attorney's Office for the District of Maryland, based upon a review of the financial information provided by defendant Polk's wife, Kathy Polk, a portion of the funds in the Knox Trust account may be released as living expenses for defendant Polk's immediate family; and provided further that this Judgment shall be subject to the reopening conditions set forth in Paragraph IV below.

## RIGHT TO RE-OPEN

### IV.

**IT IS FURTHER ORDERED** that:

- A. The Commission's agreement to, and the Court's approval of, this Final Order is expressly premised upon the truthfulness, accuracy and completeness of the defendants' financial statements dated March 3, 2000, filed with the Court on March 10, 2000, and supplemented on April 13, 2000 (hereinafter collectively referred to as "defendants' financial statements"). The defendants' financial statements contain material information upon which the Commission relied

in negotiating and agreeing to this Final Order. If, upon motion by the Commission, this Court finds that any of the defendants' financial statements either failed to disclose any material asset or source of income or materially misrepresented the value of any asset or source of income, or contained any other material misrepresentation or omission, the Court shall enter judgment in the amount of two million dollars (\$2,000,000), rendered immediately due and payable by the defendants. This judgment is in addition to, and not in lieu of, any amount paid or judgment entered pursuant to Paragraph III of this Final Order. Provided, however, that in all other respects this Final Order shall remain in full force and effect unless otherwise ordered by this Court;

- B. The defendants authorize the Commission to verify all information provided on the defendants' financial statements with all appropriate third parties, including, but not limited, to financial institutions or credit reporting bureaus;
- C. The defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including, but not limited to, a nondischargeability complaint in any bankruptcy proceeding; and
- D. Proceedings instituted under this Paragraph are in addition to, and not in lieu of, any and all other proceedings and remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Final Order.

V.

**IT IS FURTHER ORDERED** that, within five (5) business days of entry of this Final Order, the defendants shall submit to the Commission a truthful sworn statement, in the form that is the Appendix to this Final Order, that shall reaffirm and attest to the truth, accuracy, and completeness of the financial statement dated March 3, 2000, filed with the Court on March 10, 2000, and supplemented on April 13, 2000.

**COMPLIANCE REPORTING**  
VI.

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

- A. For a period of five (5) years from the date of entry of this Final Order, the defendants shall notify the Commission in writing of the following:
1. Any changes in defendant Polk's residence, mailing address, and telephone numbers, within fifteen (15) days of the date of such change;
  2. Any changes in defendant Polk's employment status (including self-employment) within fifteen (15) days of such change. Such notices shall include the name and address of each business that the defendant is employed by, a statement of the nature of the business, and a statement of the defendant's duties, responsibilities or involvement in connection with the business or employment;
  3. Any proposed change in the structure of defendant AFEW, Inc. or any business entity owned or controlled by defendant Polk, such as creation, incorporation, dissolution,



assignment, sale, merger, creation or dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Final Order, thirty (30) days prior to the effective date of any proposed change; provided, however, that with respect to any proposed changes about which the defendants learn fewer than thirty (30) days prior to the date such action is to take place, the defendants shall notify the Commission as soon as practicable after learning of such proposed change;

4. Any filing by any of the defendants of a petition for relief under the United States Bankruptcy Code, contemporaneously upon the filing of such petition; and
  5. Any filing by any of the defendants' creditors of a petition for relief under the United States Bankruptcy Code against any of the defendants, within five (5) days of receipt of notice of such petition;
- B. Upon written request by a representative of the Commission, the defendants shall submit a written report (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct subject to this Final Order;
- C. For purposes of this Paragraph, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom the defendants perform services as an employee, consultant, or independent contractor; and
- D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with the defendant.

**COMPLIANCE MONITORING  
VII.**

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

- A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Federal Rules of Civil Procedure 26-34, 36 and 37, and the use of compulsory process pursuant to Federal Rule of Civil Procedure 45, for the purpose of monitoring and investigating the defendants' compliance with any provision of this Final Order;
- B. The Commission is authorized to use representatives posing as consumers and employees of, and suppliers to, the defendants, the defendants' employees, or any other entity managed or controlled in whole or in part by the defendants, without the necessity of identification or prior notice;
- C. Nothing in this Final Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether the defendants have violated any provision of this Final Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

**ACCESS TO BUSINESS PREMISES  
VIII.**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Final Order, for the purpose of further determining compliance with this Final Order, the defendants shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

- A. Access during normal business hours to any office, or facility storing documents, of any business where (1) defendant Polk is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business appears to be engaged in the marketing of business opportunities or multi-level marketing programs, or assists others engaged in these activities. In providing such access, the defendants shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Final Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Final Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and
- B. To interview the officers, directors and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subsection (A) of this Paragraph applies, concerning matters relating to compliance with the terms of this Final Order. The person interviewed may have counsel present.

Provided that, upon application of the Commission and for good cause shown, the Court may enter an ex parte order granting immediate access to the defendants' business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Final Order.

**SERVICE OF ORDER**  
**IX.**

**IT IS FURTHER ORDERED** that copies of this Final Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have

possession, custody, or control of any documents or assets, as defined in this Final Order, of the defendants, or that may be subject to any provision of this Final Order. Pursuant to Fed. R. Civ. P. 4(c)(2), this Final Order and the initial papers filed in this matter may be served by agents of plaintiff, and by agents of any process service retained by the plaintiff.

**ACKNOWLEDGMENT OF RECEIPT OF ORDER**  
**X.**

**IT IS FURTHER ORDERED** that, within five (5) business days after receipt by the defendants of this Final Order as entered by the Court, the defendants shall submit to counsel for the Commission a truthful sworn statement, in the form shown on the Appendix to this Final Order, that shall acknowledge receipt of this Final Order.

**NOTIFICATION**  
**XI.**

**IT IS FURTHER ORDERED** that for purposes of this Final Order, all correspondence and notifications that the defendants are required by this Final Order to provide to the Commission shall reference the case name and number of this matter, and shall be sent to:

Associate Director, Division of Marketing Practices  
Federal Trade Commission, H-238  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**LIFTING OF PRIOR ORDERS**  
**XII.**

**IT IS FURTHER ORDERED** that all prior orders of this Court concerning these defendants shall be lifted after the entry of this Final Order by this Court.

**RETENTION OF JURISDICTION AND ENTRY OF JUDGMENT  
XIII.**

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

**XIV.**

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


**SO ORDERED**, this 23 day of July, 2000 at Baltimore, Maryland.

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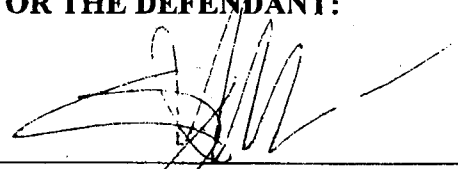
  
\_\_\_\_\_  
J. Frederick Motz  
United States District Judge

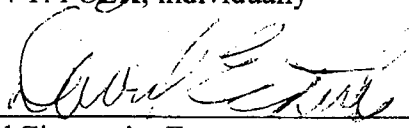
The parties hereby consent to the terms and conditions of the Final Order as set forth above and consent to entry thereof.

**FOR THE COMMISSION:**

  
\_\_\_\_\_  
DAVID M. TOROK  
STEPHEN GURWITZ  
Federal Trade Commission  
600 Pennsylvania Ave., N.W., Room 238  
Washington, D.C. 20580  
(202) 326-3075 (Torok)  
(202) 326-3395 (fax)

**FOR THE DEFENDANT:**

  
\_\_\_\_\_  
JOHN T. POLK, individually

  
\_\_\_\_\_  
David Eisenstein, Esq.  
8129 N. 87<sup>th</sup> Place  
Scottsdale, AZ 85258  
(480) 443-8389  
(480) 443-4771 (fax)

**Appendix**  
UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
NORTHERN DIVISION

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FEDERAL TRADE COMMISSION,	)	
Plaintiff,	)	
v.	)	CIVIL NO. JFM99CV3679
JOHN T. POLK,	)	AFFIDAVIT
PATRICK FARAH, and	)	OF DEFENDANT
PETER HIRSCH, et al.	)	JOHN T. POLK
Defendants.	)	

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I, John T. Polk, being duly sworn, hereby state and affirm as follows:

1. My name is John T. Polk. I am currently incarcerated at \_\_\_\_\_.

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 FTC v. John T. Polk, et al. (United States District Court for the District of Maryland).

3. On \_\_\_\_\_ [date], I received a copy of the Stipulated Final Judgment and Order For Permanent Injunction As to Defendants John T. Polk and AFEW, Inc., which was signed by the Honorable J. Frederick Motz and entered by the Court on \_\_\_\_\_ [date of entry of Order]. A true and correct copy of the Order I received is appended to this Affidavit.

4. The information contained in the financial statement dated March 3, 2000, filed with the Court on March 10, 2000, and supplemented on April 13, 2000, was true, accurate, and complete at such time.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on \_\_\_\_\_ [date], at \_\_\_\_\_ [city and state].

\_\_\_\_\_  
John T. Polk

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
\_\_\_\_\_