

FILED \_\_\_\_\_ ENTERED \_\_\_\_\_  
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JAN 23 2001

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

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 DEFENDANT  
) PATRICK FARAH

JAN 23

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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, USAsurance 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). After holding a hearing on February 24 and 25, 2000, hearing testimony and receiving evidence, this Court entered a Preliminary Injunction as to Defendant Patrick Farah on February 25, 2000. The Commission and defendant Patrick Farah, 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 as to defendant Patrick Farah ("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 defendant Patrick Farah;
2. Venue in this district is proper;
3. The Commission's complaint states a claim upon which relief may be granted against defendant Patrick Farah under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);
4. Defendant Patrick Farah waives any claim he 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. Defendant Patrick Farah has waived all rights to seek judicial review or otherwise challenge or contest the validity of this Final Order, and further waives and releases any claim he may have arising from this law enforcement action against the FTC and the employees, agents, or representatives of the FTC;
6. Defendant Patrick Farah denies 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 the defendant Farah of any wrongdoing or a finding by the Court that the defendant Farah has 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. "Defendant" means Patrick Farah, whether acting 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 defendant or held for the benefit of the defendant, 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.

- 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 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 program, 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.

## **CONDUCT PROHIBITIONS**

### **I.**

**IT IS THEREFORE ORDERED** that the defendant, and those persons in active concert or participation with him 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.

### **II.**

**IT IS FURTHER ORDERED** that, in connection with the advertising, promoting, marketing, selling, offering for sale, or providing, or assisting others in the advertising, promoting, marketing, selling, offering for sale, or providing of any business opportunity, the defendant, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, are permanently restrained and enjoined from making, or assisting in the making of, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including, but not limited to:

- A. Misrepresentations about the amount of sales, income, profits or rewards that a person who acquires the business opportunity can reasonably expect to achieve;
- B. Misrepresentations about the amount of sales, income, profits, or rewards that a person who has acquired the business opportunity has actually achieved; and

- C. Misrepresentations that a person who acquires the business opportunity can reasonably expect to recoup his investment.

**III.**

**IT IS FURTHER ORDERED** that, in connection with the advertising, promoting, marketing, selling, offering for sale, or providing, or assisting others in the advertising, promoting, marketing, selling, offering for sale, or providing of any business opportunity, the defendant, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, are permanently restrained and enjoined from providing to others the means and instrumentalities with which to make, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact.

**IV.**

**IT IS FURTHER ORDERED** that the defendant, and those persons in active concert or participation with him 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 defendant may disclose

such identifying information to a law enforcement agency or as required by any law, regulation or court order.

V.

**IT IS FURTHER ORDERED** that, in connection with promoting, marketing, advertising, offering for sale, or selling, or assisting in any manner or in any capacity whatsoever in promoting, marketing, advertising, offering for sale, or selling, any business opportunity, the defendant, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, are permanently restrained and enjoined from:

- A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Paragraph II - IV of this Final Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following: (1) listening to the oral representations made by persons engaged in sales or other customer service functions; (2) establishing a procedure for receiving and responding to consumer complaints; and (3) ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved; provided that this Paragraph does not authorize or require the defendant to take any steps that violate any federal, state, or local laws;
- B. Failing promptly to investigate fully any consumer complaint received by any business to which this Paragraph applies; and

- C. Failing to take corrective action with respect to any sales or customer service person whom the defendant determines is not complying with this Final Order, which may include training, disciplining, and/or terminating the employment of such sales person.

**MONETARY RELIEF**

**VI.**

**IT IS FURTHER ORDERED** that Judgment in the amount of five hundred thousand dollars (\$500,000) is entered jointly and severally against the defendant, and the estate of the defendant, in the event of his death; provided, however, that upon payment by the defendant of \$25,000, the Commission will consider this Judgment satisfied as to the defendant; provided further that this Judgment shall be subject to the reopening conditions set forth in Paragraph VIII below.

- A. The Commission may apply any or all funds received by the defendant pursuant to this Final Order, and any interest received thereon, to a consumer redress program and to related administrative expenses; provided, however, that if the Commission determines that a consumer redress program is not feasible, the Commission may transfer these funds to the United States Treasury as disgorgement. The Commission shall have full and sole discretion to:
1. Determine the criteria for participation by individual claimants in any consumer redress program implemented pursuant to this Final Order;
  2. Determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs; and



3. Delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations; and pay the fees, salaries, and expenses incurred thereby from the payments made pursuant to this Final Order.
- B. The defendant expressly waives his rights to litigate the issue of disgorgement, and shall not have any right to contest any decision or action of the Commission concerning the disbursement or disposition of the funds. The defendant acknowledges and agrees that all money paid pursuant to this Final Order is irrevocably paid to the Commission for purposes of settlement between the Commission and the defendant.

#### **VII.**

**IT IS FURTHER ORDERED** that the defendant shall make the payment required by Paragraph VI within fourteen (14) days of the date of entry of this Final Order. The payment shall be made by electronic fund transfer in accordance with procedures specified by counsel for the Federal Trade Commission.

#### **RIGHT TO RE-OPEN VIII.**

**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 defendant's financial statement dated March 3, 2000, related documents that the defendant has submitted to the Federal Trade Commission, and the deposition testimony of the defendant taken on September 8, 2000 (hereinafter collectively referred to as "defendant's financial statements"). The defendant's

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 defendant's 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 five hundred thousand dollars (\$500,000), rendered immediately due and payable by the defendant; 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 defendant authorizes the Commission to verify all information provided on the defendant's financial statements with all appropriate third parties, including, but not limited, to financial institutions or credit reporting bureaus;
- C. The defendant agrees 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;
- D. The Commission's agreement to this Final Order is expressly contingent on the defendant's agreement to refrain, for ninety (90) days following the entry of this Final Order, from filing or causing to be filed a petition for protection under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq.; and

- E. 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.

**IX.**

**IT IS FURTHER ORDERED** that, within five (5) business days of entry of this Final Order, the defendant 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 executed by the defendant on March 3, 2000, related documents that the defendant has submitted to the Federal Trade Commission, and the deposition testimony of the defendant taken on September 8, 2000.

**COMPLIANCE REPORTING**

**X.**

**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 defendant shall notify the Commission in writing of the following:
1. Any changes in the defendant's residence, mailing addresses, and telephone numbers, within fifteen (15) days of the date of such change;
  2. Any changes in the defendant'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 any business entity owned or controlled by the defendant, 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 change in the corporation about which the defendant learns fewer than thirty (30) days prior to the date such action is to take place, the defendant shall notify the Commission as soon as practicable after learning of such proposed change;
4. Any filing by the defendant 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 defendant's creditors of a petition for relief under the United States Bankruptcy Code against the defendant, within five (5) days of receipt of notice of such petition;

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

1. The defendant's then-current residence address and telephone numbers;
  2. The defendant's then-current employment, business address and telephone numbers, a description of the business activities of each such employer, and the defendant's title and responsibilities for each employer;
  3. A copy of each acknowledgment of receipt of this Final Order obtained by the defendant pursuant to Paragraph XIV below; and
  4. A statement describing the manner in which the defendant has complied and is complying with this Final Order;
- C. Upon written request by a representative of the Commission, the defendant shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct subject to this Final Order;
- D. 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 defendant performs services as an employee, consultant, or independent contractor; and
- E. For purposes of the compliance reporting required by this Paragraph, the Commission shall communicate with defendant's counsel as set forth in Paragraph XVII.

**COMPLIANCE MONITORING**  
**XI.**

**IT IS FURTHER ORDERED** that the Commission is authorized to monitor the defendant's 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 defendant's 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 defendant, the defendant's employees, or any other entity managed or controlled in whole or in part by the defendant, 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 defendant has violated any provision of this Final Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

**ACCESS TO BUSINESS PREMISES  
XII.**

**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 defendant 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) the defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is engaged in the sale of business opportunities, appears to be engaged in multi-level marketing, or assists others engaged in these activities. In

providing such access, the defendant 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 defendant's business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Final Order.

### **RECORD KEEPING PROVISIONS**

#### **XIII.**

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Final Order, the defendant, and defendant's agents, employees, officers and servants, corporations, successors and assigns, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, in connection with any business where (1) the defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business engages in the sale of business opportunities, appears to be engaged

in multi-level marketing, or assists others engaged in these activities, are hereby restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

- A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable. The businesses subject to this Paragraph shall retain such records for any terminated employee for a period of two (2) years following the date of termination;
- C. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, for all consumers to whom such business has sold, invoiced or shipped any goods or services, or from whom such business accepted money or other items of value;
- D. Records that reflect, for every consumer complaint or refund request, whether received directly or indirectly or through any third party:
  - 1. the consumer's name, address, telephone number and the dollar amount paid by the consumer;



2. the written complaint or refund request, if any, and the date of the complaint or refund request;
  3. the basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
  4. each response and the date of the response;
  5. any final resolution and the date of the resolution; and
  6. in the event of a denial of a refund request, the reason for the denial; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; provided that copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for three (3) years after the last date of dissemination of any such materials.

**DISTRIBUTION OF ORDER BY DEFENDANT  
XIV.**

**IT IS FURTHER ORDERED** that the defendant shall:

- A. For a period of five (5) years from the date of entry of this Final Order, provide a copy of this Final Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where (1) the defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is

engaged in the sale of business opportunities, appears to be engaged in multi-level marketing, or assists others engaged in these activities; and

- B. Maintain for a period of three (3) years after creation, and upon reasonable notice make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Final Order, as required in Subsection (A) of this Paragraph.

**SERVICE OF ORDER  
XV.**

**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 defendant, 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  
XVI.**

**IT IS FURTHER ORDERED** that, within five (5) business days after receipt by the defendant of this Final Order as entered by the Court, the defendant 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**

**XVII.**

**IT IS FURTHER ORDERED** that for purposes of this Final Order, all correspondence and notifications that the defendant is 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

All communications with defendant Farah shall be conducted through his attorney at the following address:

David Eisenstein, Esq.  
8129 North 87<sup>th</sup> Place  
Scottsdale, AZ 85258

or through any other legal representative which defendant Farah may from time to time designate in writing to the Federal Trade Commission for that purpose.

**LIFTING OF PRIOR ORDERS**

**XVIII.**

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

**RETENTION OF JURISDICTION AND ENTRY OF JUDGMENT**

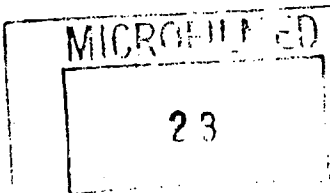
**XIX.**

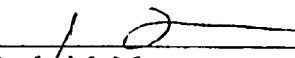
**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all purposes.

XX.

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.

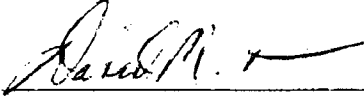
SO ORDERED, this 23 day of July, 2000 at Baltimore, Maryland.



  
\_\_\_\_\_  
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:**



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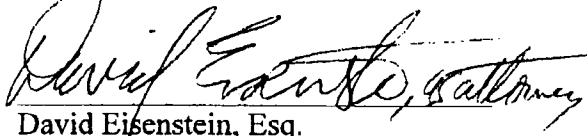
DAVID M. TOROK  
STEPHEN GURWITZ  
Federal Trade Commission  
600 Pennsylvania Ave., N.W., Room 238  
Washington, D.C. 20580  
(202) 326-3075 (Torok)  
(202) 326-3395 (fax)

**FOR THE DEFENDANT:**



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PATRICK FARAH, individually



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



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].

\_\_\_\_\_  
Patrick Farah

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

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