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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **WESTERN DIVISION**

14 **FEDERAL TRADE COMMISSION,**

15 **Plaintiff,**

16 **PATRICK CELLA, et al.,**

17 **Defendants.**

18 CV 03-3202 GAF (SHSx)

19 **STIPULATED JUDGMENT AND**
20 **ORDER FOR PERMANENT**
21 **INJUNCTION AS TO**
22 **DEFENDANT PATRICK CELLA**

23 Plaintiff Federal Trade Commission ("Commission" or "FTC") filed its
24 complaint for a permanent injunction and other relief in this matter, pursuant to
25 Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b)
26 on May 7, 2003, and moved *ex parte* for a Temporary Restraining Order ("TRO")
27 pursuant to Rule 65 of the Federal Rules of Civil Procedure and C.D. Cal. L.R. 7-
28 19.2. That same day, this Court, having considered the complaint, memorandum of
law, declarations, and other exhibits filed in support of Plaintiff's motion, issued an
ex parte TRO including an asset freeze. On May 28, 2003, the FTC, and Defendants
Patrick Cella, Irene Herrera, James Zezula and Vincent Zezula consented to a

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WESTERN DIVISION
LOS ANGELES
BY

1 Preliminary Injunction that provided for a continuation of all of the relief in the TRO.
2 Upon stipulation of the parties to an order allowing Plaintiff to amend the complaint
3 to add David Herrera as a Defendant, the Court Clerk filed Plaintiff's First Amended
4 Complaint on July 14, 2003. Now Plaintiff FTC and Defendant Patrick Cella hereby
5 stipulate to the entry of and request the Court to enter this Stipulated Judgment and
6 Order for Permanent Injunction ("Final Order") to resolve all matters of dispute
7 between them in this action.

8 **IT IS THEREFORE STIPULATED, AGREED, AND ORDERED** as follows:

9 **FINDINGS**

10 1. This Court has jurisdiction over the subject matter and the parties pursuant
11 to 15 U.S.C. §§ 45(a), 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

12 2. Venue is proper as to all parties in the Central District of California
13 pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

14 3. The activities of Defendant are in or affecting commerce, as defined in
15 Section 4 of the FTC Act, 15 U.S.C. § 44.

16 4. The complaint states a claim upon which relief may be granted against
17 Defendants under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and
18 53(b).

19 5. Defendant has entered into this Final Order freely and without coercion.
20 Defendant further acknowledges that he has read the provisions of this Final Order
21 and is prepared to abide by them.

22 6. The Plaintiff and Defendant have agreed that the entry of this Final Order
23 resolves all matters of dispute between them arising from the complaint in this action,
24 up to the date of entry of this Final Order.

25 7. Defendant waives all rights to seek appellate review or otherwise challenge
26 or contest the validity of this Final Order. Defendant further waives and releases any
27 claim he may have against the Commission, its employees, representatives, or agents.

28 8. Defendant agrees that this Final Order does not entitle Defendant to seek or

1 to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act,
2 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996) and
3 Defendant further waives any rights to attorneys' fees that may arise under said
4 provision of law.

5 9. Entry of this Final Order is in the public interest.

6 **ORDER**

7 **Definitions**

8 A. "Assets" means any legal or equitable interest in, right to, or claim to,
9 any real and personal property, including but not limited to chattel, goods,
10 instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises,
11 contracts, mail or other deliveries, shares of stock, lists of consumer names,
12 inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever
13 located.

14 B. "Defendant" means Patrick Cella, individually and d/b/a Quik Cash, U-
15 Mail, Innovative Services, Central Solutions, Parallax Business Services, and Ace
16 Distributing Center; any other d/b/a names associated with this individual; and his
17 officers, agents, servants, employees, and all persons or entities in active concert or
18 participation with him who receive notice of this Final Order by personal service or
19 otherwise.

20 C. "Document" is synonymous in meaning and equal in scope to the usage
21 of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings,
22 graphs, charts, photographs, audio and video recordings, computer records, and other
23 data compilations from which information can be obtained and translated, if
24 necessary, into reasonably usable form through detection devices. A draft or non-
25 identical copy is a separate document within the meaning of the term.

26 D. "Material" means likely to affect a person's choice of, or conduct
27 regarding, goods or services.

28 E. "Plaintiff" means the Federal Trade Commission ("Commission").

1 F. "Relate to" means refer to, concern, regard, reflect, discuss, constitute,
2 mention, pertain to, allude to or associate with. "Relating to" means referring to
3 concerning, regarding, reflecting, discussing, constituting, mentioning, pertaining to,
4 alluding to or associated with.

5 G. "Unsolicited commercial email" means an electronic mail message that
6 consists of or contains a communication advertising, promoting, soliciting, offering,
7 or offering to sell any product or service, and that is not requested by the addressee or
8 recipient or sent pursuant to a pre-existing business or personal relationship between
9 the sender and the addressee or recipient of the email.

10 H. "Work-At-Home Opportunity" means any program, plan, product or
11 service that enables a participant or purchaser to earn money by working at home.

12 I. BAN REQUIREMENTS

13 **IT IS THEREFORE ORDERED** that Defendant is hereby permanently
14 restrained and enjoined from engaging, participating in, or assisting in any manner or
15 in any capacity whatsoever, whether directly or indirectly, in concert with others, or
16 through any intermediary, third party, business entity, or device, in the marketing,
17 advertising, promotion, or sending of unsolicited commercial email.

18 II. INJUNCTION AGAINST MISREPRESENTATIONS

19 **IT IS FURTHER ORDERED** that in connection with the advertising,
20 promotion, offering or sale of goods or services in or affecting commerce, Defendant
21 is hereby permanently restrained and enjoined from making, or assisting others in
22 making, any express or implied representation or omission of material fact that is
23 false or misleading, in any manner, directly or indirectly, to any consumer or entity,
24 including, but not limited to, the following:

25 A. Representing that consumers are likely to earn a substantial amount of
26 money from Defendant's Work-At-Home Opportunity;

27 B. Representing that Defendant will provide consumers with pamphlets for
28 mailing with pre-addressed, pre-stamped envelopes to stuff;

1 C. Representing that Defendant will pay consumers for each envelope they
2 stuff and mail;

3 D. Representing that Defendant will fully refund consumers' payments;

4 E. Representing that Defendant is affiliated with Internet-related businesses,
5 including, but not limited to, Hotmail, MSN or Pacific Bell, or a company affiliated
6 with these businesses;

7 F. Representing the nature of any Work-At-Home Opportunity offered or
8 sold;

9 G. Representing that Defendant or any other person can improve any
10 consumers' credit record, credit history, credit rating or any other such credit
11 information by removing or obtaining removal of negative information that is
12 accurate and not obsolete from such credit record, credit history, credit rating or any
13 other such credit information; and

14 H. Representing any material term, condition, or limitation of the
15 transaction or about the use of any offered good or service.

16 **III. INJUNCTION AGAINST PROVIDING OTHERS WITH**
17 **THE MEANS AND INSTRUMENTALITIES TO**
18 **VIOLATE SECTION 5 OF THE FTC ACT**

19 **IT IS FURTHER ORDERED** that in connection with the offering for sale or
20 sale of goods or services in or affecting commerce, Defendant is hereby permanently
21 restrained and enjoined from providing to others the means and instrumentalities with
22 which to make, expressly or by implication, orally or in writing, any false or
23 misleading statement or representation of material fact, including, but not limited to:

24 A. Any statement regarding any fact material to a consumer's decision to
25 purchase Defendant's services or products;

26 B. Any statement that anyone can substantially improve consumers' credit
27 reports or profiles by effectuating permanent lawful removal of bankruptcies,
28 foreclosures, slow payments, court judgments, liens, or other negative information

1 from consumers' credit reports where such information is accurate and not obsolete;
2 and

3 C. Any statement that consumers' credit reports or profiles can be
4 substantially improved by effectuating permanent lawful removal of bankruptcies,
5 foreclosures, slow payments, court judgments, liens, or other negative information
6 from consumers' credit reports where such information is accurate and not obsolete.

7 **IV. MONITORING COMPLIANCE OF SALES PERSONNEL**

8 **IT IS FURTHER ORDERED** that Defendant, in connection with any
9 business where Defendant is the majority owner of the business or directly or
10 indirectly manages or controls the business, is hereby permanently restrained and
11 enjoined from:

12 A. Failing to take reasonable steps sufficient to monitor and ensure that all
13 employees and independent contractors engaged in sales or other customer service
14 functions in connection with any work-at-home opportunity comply with Paragraphs
15 II and III of this Final Order. Such steps shall include adequate monitoring of calls
16 with customers, and shall also include, at a minimum, the following: (1) establishing
17 a procedure for receiving and responding to consumer complaints; and (2)
18 ascertaining the number and nature of consumer complaints regarding transactions in
19 which each employee or independent contractor is involved;

20 B. Failing promptly to investigate fully any consumer complaint received
21 by any business to which this Paragraph applies; and

22 C. Failing to take corrective action with respect to any sales person whom
23 Defendant determines is not complying with this Final Order, which may include
24 training, disciplining, and/or terminating such sales person.

25 **V. PROHIBITIONS INVOLVING CONSUMER LISTS**

26 **IT IS FURTHER ORDERED** that Defendant is hereby permanently
27 restrained and enjoined from:

28 A. Selling, renting, leasing, transferring, or otherwise disclosing the name,

1 address, telephone number, credit card number, bank account number, date of birth,
2 email address, or other identifying information of any person who submitted such
3 information to Defendant at any time prior to entry of this Final Order, in connection
4 with the advertising, promotion, offering for sale, or sale of any goods or services in
5 commerce; and

6 B. Benefitting from or using the name, address, telephone number, credit
7 card number, bank account number, date of birth, email address, or other identifying
8 or financial information of any person who submitted such information to Defendant
9 as a result of, derived from, or otherwise related to the activities alleged in the
10 Commission's complaint.

11 *Provided however*, that Defendant may disclose such identifying information to
12 a law enforcement agency, or as required by any law, regulation or court order.

13 VI. MONETARY JUDGMENT

14 IT IS FURTHER ORDERED that:

15 A. Judgment in the amount of \$536,412 (five hundred thirty-six thousand
16 four hundred twelve dollars) is hereby entered against Defendant.

17 B. Judgment shall be partially satisfied by the release by Patrick Cella to the
18 Commission, upon entry of this Final Order, of all dominion, title and control to all
19 funds or assets listed in Appendix A.

20 C. Upon release provided in this Paragraph, the remainder of the judgment
21 shall be suspended subject to the conditions set forth in Subparagraph D of this
22 Paragraph.

23 D. The Commission's agreement to this Final Order is expressly premised
24 upon the truthfulness, accuracy and completeness of Defendant's sworn financial
25 statement and supporting documents submitted to the Commission on May 13, 2003
26 which provide the basis for the assets listed in Appendix A to this Final Order, and
27 which include material information upon which the Commission relied in negotiating
28 and agreeing to this Final Order. If, upon motion by the Commission, this Court finds

1 that Defendant has failed to disclose any material asset or materially misstated the
2 value of any asset in the financial statement and related documents described above,
3 or has made any other material misstatement or omission in the financial statement
4 and related documents described above, then this Final Order shall be reopened and
5 suspension of the judgment shall be lifted for the purpose of requiring payment of
6 monetary relief in the amount of the judgment set forth in Subparagraph A of this
7 Paragraph, less the sum of any amounts paid to the Commission pursuant to
8 Subparagraph B of this Paragraph. *Provided, however,* that in all other respects this
9 Final Order shall remain in full force and effect, unless otherwise ordered by the
10 Court.

11 E. In accordance with 31 U.S.C. § 7701, Defendant is hereby required,
12 unless he has done so already, to furnish to the Commission his respective taxpayer
13 identifying number (social security number or employer identification number) which
14 shall be used for purposes of collecting and reporting on any delinquent amount
15 arising out of Defendant's relationship with the government.

16 F. Defendant is further required, unless he has done so already, to provide
17 the Commission with clear, legible and full-size photocopies of all valid driver's
18 licenses he possesses, which will be used for reporting and compliance purposes.

19 G. Defendant agrees that the facts as alleged in the Complaint filed in this
20 action shall be taken as true for the purpose of a nondischargeability complaint in any
21 bankruptcy proceeding.

22 H. Proceedings instituted under this Paragraph are in addition to, and not in
23 lieu of, any other civil or criminal remedies that may be provided by law, including
24 any other proceedings the Commission may initiate to enforce this Final Order.

25 **VII. COMMISSION'S USE OF MONETARY JUDGMENT**

26 **IT IS FURTHER ORDERED** that all funds paid pursuant to Paragraph VI of
27 this Final Order shall be deposited into a fund administered by the Commission or its
28 agent to be used for equitable relief, including, but not limited to, consumer redress

1 and any attendant expenses for the administration of any redress fund. In the event
2 that direct redress to consumers is wholly or partially impracticable or funds remain
3 after redress is completed, the Commission may apply any remaining funds for such
4 other equitable relief (including consumer information remedies) as it determines to
5 be reasonably related to Defendant's practices alleged in the complaint. Any funds
6 not used for such equitable relief shall be deposited to the United States Treasury as
7 disgorgement. Defendant shall have no right to challenge the Commission's choice
8 of remedies under this Paragraph.

9 VIII. ASSET FREEZE

10 **IT IS FURTHER ORDERED** that, the freeze against the assets of Defendant
11 pursuant to Paragraph IV of the Stipulated Preliminary Injunction Order entered by
12 this Court on May 28, 2003 ("Preliminary Injunction"), shall be lifted for the sole
13 purpose of transferring funds to the FTC pursuant to Paragraph VI of this Final Order,
14 and shall be dissolved upon transfer of all such funds.

15 IX. WITHHELD MAIL

16 **IT IS FURTHER ORDERED** that the Commission may retain, open and/or
17 dispose of any mail forwarded to it from commercial mail receiving agencies pursuant
18 to Paragraph XIII of the Preliminary Injunction. In its discretion, the Commission
19 may return any of the retained mail back to consumers, forward the mail to the
20 Defendant or destroy the mail as it deems appropriate. Defendant shall have no right
21 to challenge the Commission's actions under this Paragraph.

22 X. COMPLIANCE MONITORING

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

25 A. Within twenty (20) days of receipt of written notice from a representative
26 of the Commission, Patrick Cella shall submit additional written reports, sworn to
27 under penalty of perjury; produce documents for inspection and copying; appear for
28 deposition; and/or provide entry during normal business hours to any business

1 location in Defendant's possession or direct or indirect control to inspect the business
2 operation.

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

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

8 2. posing as consumers to Patrick Cella, Patrick Cella's employees,
9 or any other entity managed or controlled in whole or in part by Patrick Cella,
10 without the necessity of identification or prior notice;

11 *Provided* that nothing in this Final Order shall limit the Commission's lawful
12 use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C.
13 §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or
14 information relevant to unfair or deceptive acts or practices in or affecting commerce
15 (within the meaning of 15 U.S.C. § 45(a)(1)).

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

20 XI. COMPLIANCE REPORTING BY DEFENDANT

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

23 A. For a period of five (5) years from the date of entry of this Final Order,
24 Patrick Cella shall notify the Commission of the following:

25 1. Any changes in Defendant's residences, mailing addresses,
26 and telephone numbers, within twenty (20) days of the date of such change;

27 2. Any changes in Defendant's employment status (including
28

1 self-employment) within twenty (20) days of the date of such change. Such notice
2 shall include the name and address of each business that Defendant is affiliated with,
3 employed by, or performs services for; a statement of the nature of the business; and a
4 statement of Defendant's duties and responsibilities in connection with the business;
5 and

6 3. Any changes in Defendant's name or use of any aliases or
7 fictitious names.

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

12 1. Any changes required to be reported pursuant to subparagraph (A)
13 of this Paragraph; and

14 2. A copy of each acknowledgment of receipt of this Final Order
15 obtained by Defendant pursuant to Paragraph XIV of this Final Order.

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

19 Associate Director, Division of Marketing Practices
20 Federal Trade Commission
21 600 Pennsylvania Ave. NW
Washington, DC 20580
Re: FTC v. Patrick Cella, et al., Civil Action No. CV 03-3202

22 D. For purposes of the compliance reporting required by this Paragraph, the
23 Commission is authorized to communicate directly with Defendant Patrick Cella.

24 XII. RECORD KEEPING PROVISIONS

25 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the
26 date of entry of this Final Order, Patrick Cella, in connection with the advertising,
27 promotion, offering or sale of goods or services in or affecting commerce, is hereby
28 permanently restrained and enjoined from failing to create and retain the following

SCANNED

1 records:

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

4 B. Personnel records accurately reflecting: the name, address, and
5 telephone number of each person employed in any capacity by such business,
6 including as an independent contractor; that person's job title or position; the date
7 upon which the person commenced work; and the date and reason for the person's
8 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
11 services purchased, to the extent such information is obtained in the ordinary course
12 of business;

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

15 E. Copies of all sales scripts, training materials, advertisements, or other
16 marketing materials.

17 **XIII. DISTRIBUTION OF ORDER BY DEFENDANT**

18 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the
19 date of entry of this Final Order,

20 A. Patrick Cella shall deliver a copy of this Final Order to all principals,
21 officers, directors, managers, employees, agents, and representatives having
22 responsibilities with respect to the subject matter of this Final Order, and shall secure
23 from each such person a signed and dated statement acknowledging receipt of the
24 Final Order. Patrick Cella shall deliver this Final Order to current personnel within
25 thirty (30) days after the date of service of this Final Order, and to new personnel
26 within thirty (30) days after the person assumes such position or responsibilities.

27 B. Patrick Cella shall deliver a copy of this Final Order to the principals,
28 officers, directors, managers and employees under Patrick Cella's control for any

1 business that (a) employs or contracts for personal services from Patrick Cella and (b)
2 has responsibilities with respect to the subject matter of this Final Order. Patrick
3 Cella shall secure from each such person a signed and dated statement acknowledging
4 receipt of the Final Order within thirty (30) days after the date of service of the Final
5 Order or the commencement of the employment relationship.

6 **XIV. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

7 **IT IS FURTHER ORDERED** that Defendant, within five (5) business days of
8 receipt of this Final Order as entered by the Court, must submit to the Commission at
9 the address provided in Subparagraph C of Paragraph XI of this Final Order, a
10 truthful sworn statement acknowledging receipt of this Final Order.

11 **XV. RETENTION OF JURISDICTION**

12 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this
13 matter for purposes of construction, modification and enforcement of this Final
14 Order.

15 **XVI. FEES AND COSTS**

16 **IT IS FURTHER ORDERED** that each party to this Final Order hereby
17 agrees to bear its own costs and attorneys' fees incurred in connection with this
18 action.

19 **XVII. ENTRY OF THIS JUDGMENT**

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

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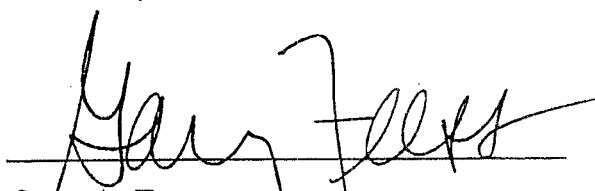
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1 **XVIII. COMPLETE SETTLEMENT**

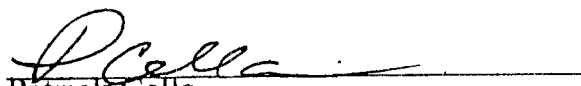
2 The parties hereby consent to entry of the foregoing Final Order which shall
3 constitute a final judgment and order in this matter. The parties further stipulate and
4 agree that the entry of the foregoing Final Order shall constitute a full, complete, and
5 final settlement of this action.

6
7 IT IS SO ORDERED, this 20th day of November 2003.

8
9
10 
11 Gary A. Feess
12 United States District Judge

13 STIPULATED AND AGREED AS FOLLOWS:

14 FOR THE PLAINTIFF:
15 DATED: 11/18/03
16 
17 Michael J. Davis, Esq.
18 Colleen B. Robbins, Esq.
19 Federal Trade Commission
20 600 Pennsylvania Ave., NW, H-238
Washington, D.C. 20580
(202) 326-2458
(202) 326-3395 facsimile

FOR THE DEFENDANT:
DATED: 9-5-03

Patrick Cella
Pro Per

21 *Attorney for Plaintiff*

Appendix A

SCANNED

All assets or funds held in any bank, brokerage or trust account and which are held or titled in the name of or on behalf of Patrick Cella, including but not limited to the following:

| Account Location | Account Name and Number |
|-------------------|-----------------------------------|
| Washington Mutual | Patrick Cella 8714476286 |
| Washington Mutual | Patrick Cella 8736057650 |
| Bank of America | Express Management 0528809390 |
| Bank of America | Executive Worldwide 2440912511 |

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