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Limited Corp., Rick Yang, and Peonie Pui Ting Chen*

19
20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**
22 **San Francisco Division**

23 FEDERAL TRADE COMMISSION, et al.
24 Plaintiffs,
25 – v. –
26 OPTIN GLOBAL, INC., et al.,
27 Defendants.

CV No. 05-1502-SC

**STIPULATION FOR ENTRY OF
FINAL JUDGMENT AND
PERMANENT INJUNCTION**

1 Plaintiffs Federal Trade Commission (“Commission” or “FTC”) and People of the State
2 of California filed their Complaint for Injunction, Damages, Civil Penalties, and Other Equitable
3 Relief in the above-captioned civil action against Defendants Optin Global, Inc., Vision Media
4 Limited Corp., Rick Yang, also known as Qing Kuang Yang, and Peonie Pui Ting Chen pursuant
5 to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b)
6 and 57b (2004); Sections 7(a), (d), and (f) of the Controlling the Assault of Non-Solicited
7 Pornography and Marketing Act of 2003 (“CAN-SPAM Act”), 15 U.S.C. § 7706(a), (d), and (f)
8 (2004); and Sections 17529.5, 17529.8, 17535, 17536, 17204, and 17206 of the California
9 Business and Professions Code, Cal. Bus. & Prof. Code §§ 17529.5, 17529.8, 17535, 17536,
10 17204, and 17206 (West 1997 & Supp. 2004). All of the parties in this case, desiring to settle
11 this litigation without the adjudication of any issue of fact or law, hereby stipulate as follows:
12

13 1. This Court has jurisdiction over the parties and subject matter of this case pursuant to
14 15 U.S.C. §§ 53(b), 57b, and 7706(a), (d), and (f) (2004); and 28 U.S.C. §§ 1331, 1337(a), and
15 1345 (2004). The Court has supplemental jurisdiction over the state law claims pursuant to 28
16 U.S.C. § 1367(a) (2004).

17 2. The Final Judgment and Permanent Injunction (hereafter “Judgment”), a copy of
18 which is attached hereto as Exhibit 1, may be entered without the taking of evidence, and without
19 trial or adjudication of any issue of fact or law, to resolve all matters of dispute among the parties
20 in this civil action.

21 3. Venue in this District is proper as to all Defendants under 15 U.S.C. § 53(b) and 28
22 U.S.C. § 1391(b), (c), and (d) (2004).

23 4. Defendants’ activities, as alleged in the Complaint, are in or affecting “commerce,” as
24 that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44 (2004).

25 5. The Complaint states claims upon which relief may be granted against Defendants
26 under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b (2004);
27 Sections 5(a), 7(a), (d), and (f) of the CAN-SPAM Act, 15 U.S.C. §§ 7704, 7706(a), (d), and (f)
28 (2004); and Sections 17203, 17204, 17206, 17529.5, 17535, and 17536 of the California

1 Business and Professions Code, Cal Bus. & Prof. Code §§ 17203, 17204, 17206, 17529.5, 17535,
2 and 17536 (West 1997 & Supp. 2004).

3 6. Defendants have entered into this Stipulation freely and without coercion.
4 Defendants further acknowledge that they have read and understand the provisions of the
5 Judgment and are prepared to abide by them.

6 7. The undersigned, individually and by and through their counsel and authorized
7 representatives, have agreed that the entry of the Judgment resolves all violations of the CAN-
8 SPAM Act and Section 17529.5 of the California Business & Professions Code alleged in the
9 Complaint in this action, up to the date of entry of the Judgment.

10 8. Defendants waive all rights to seek appellate review or otherwise challenge or
11 contest the validity of the Judgment. Defendants further waive and release any claims they may
12 have against the Commission, the State of California, their employees, representatives, or agents.

13 9. Defendants agree that the Judgment does not entitle Defendants to seek or to
14 obtain attorneys' fees as prevailing parties under the Equal Access to Justice Act, 28 U.S.C.
15 § 2412 (as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996)), and Defendants further
16 waive any right to attorneys' fees that may arise under said law or any other provision of state or
17 federal law.

18 10. The Judgment is in addition to, and not in lieu of, any other civil or criminal
19 remedies that may be provided by law.

20 11. Except as provided herein, no provision of this Stipulation or the Judgment shall
21 be construed as an admission that Defendants have engaged in violations of the FTC Act, the
22 CAN-SPAM Act, or the California Business and Professions Code.

23 12. Entry of this Stipulation and the Judgment is in the public interest.

24 13. Defendants will accept notice of entry of judgment entered in this action by
25 delivery to their counsel of record, and agree that such service will be deemed personal service
26 upon them for all purposes, including contempt.

27 //

28 //

CONSENT

The parties, individually and by and through their counsel and authorized representatives' signatures below, hereby consent to the entry of the Final Judgment and Permanent Injunction attached hereto as Exhibit 1.

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rmckewen@ftc.gov

COUNSEL FOR PLAINTIFF FEDERAL TRADE COMMISSION

Peonie Pui Ting Chen Date

Qing Kuang (Rick) Yang Date

For: Optin Global, Inc. Date

For: Vision Media Limited Corp. Date

/s/ April 6, 2006
Ian K. Sweedler (169969) Date
Deputy Attorney General
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COUNSEL FOR PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA

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COUNSEL FOR DEFENDANTS OPTIN GLOBAL, INC., VISION MEDIA LIMITED CORP., RICK YANG, and PEONIE PUI TING CHEN

CONSENT

The parties, individually and by and through their counsel and authorized representatives' signatures below, hereby consent to the entry of the Final Judgment and Permanent Injunction attached hereto as Exhibit 1.



3/29/06

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Date

Peonie Pui Ting Chen

Date

Qing Kuang (Rick) Yang

Date

For: Optin Global, Inc.

Date

COUNSEL FOR PLAINTIFF FEDERAL
TRADE COMMISSION

For: Vision Media Limited Corp.

Date

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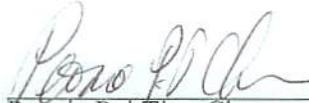
COUNSEL FOR PLAINTIFF THE PEOPLE
OF THE STATE OF CALIFORNIA

COUNSEL FOR DEFENDANTS OPTIN
GLOBAL, INC., VISION MEDIA LIMITED
CORP., RICK YANG, and PEONIE PUI
TING CHEN

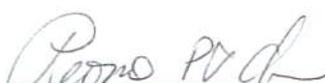
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CONSENT

The parties, individually and by and through their counsel and authorized representatives' signatures below, hereby consent to the entry of the Final Judgment and Permanent Injunction attached hereto as Exhibit 1.

Quisaira A. Whitney	Date		2/10/06
Richard McKewen		Peonie Pui Ting Chen	Date

Federal Trade Commission 600 Pennsylvania Avenue, NW, H-238 Washington, DC 20580	Date		2/10/06
Phone: (202) 326-2351 (Whitney) (202) 326-3071 (McKewen)		Qing Kuang (Rick) Yang	Date

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		For: Optin Global, Inc.	Date

COUNSEL FOR PLAINTIFF FEDERAL TRADE COMMISSION

	Date	2/10/06
		For: Vision Media Limited Corp.

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COUNSEL FOR PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA

COUNSEL FOR DEFENDANTS OPTIN GLOBAL, INC., VISION MEDIA LIMITED CORP., RICK YANG, and PEONIE PUI TING CHEN

EXHIBIT 1

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20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**
22 **San Francisco Division**

23 FEDERAL TRADE COMMISSION, et al.
24 Plaintiffs,
25 – v. –
26 OPTIN GLOBAL, INC., et al.,
27 Defendants.

CV No. 05-1502-SC

[PROPOSED]
FINAL JUDGMENT AND
PERMANENT INJUNCTION

1 Plaintiffs Federal Trade Commission (“Commission” or “FTC”) and People of the State
2 of California filed their Complaint for Injunction, Damages, Civil Penalties, and Other Equitable
3 Relief in the above-captioned civil action against Defendants Optin Global, Inc., Vision Media
4 Limited Corp., Rick Yang, also known as Qing Kuang Yang, and Peonie Pui Ting Chen pursuant
5 to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b)
6 and 57b (2004); Sections 7(a), (d), and (f) of the Controlling the Assault of Non-Solicited
7 Pornography and Marketing Act of 2003 (“CAN-SPAM Act”), 15 U.S.C. § 7706(a), (d), and (f)
8 (2004); and Sections 17529.5, 17529.8, 17535, 17536, 17204, and 17206 of the California
9 Business and Professions Code, Cal. Bus. & Prof. Code §§ 17529.5, 17529.8, 17535, 17536,
10 17204, and 17206 (West 1997 & Supp. 2004). All of the parties in this case, desiring to settle
11 this litigation without the adjudication of any issue of fact or law, having stipulated that this Final
12 Judgment and Permanent Injunction (“Judgment”) may be entered without the taking of
13 evidence, and without trial or adjudication of any issue of fact or law, and good cause appearing,

14 **NOW, THEREFORE**, upon the joint motion of the parties, it is hereby **ORDERED**,
15 **ADJUDGED, AND DECREED** as follows:

16 **FINDINGS**

17 1. This Court has jurisdiction over the parties and subject matter of this case pursuant to
18 15 U.S.C. §§ 53(b), 57b, and 7706(a), (d), and (f) (2004); and 28 U.S.C. §§ 1331, 1337(a), and
19 1345 (2004). The Court has supplemental jurisdiction over the state law claims pursuant to 28
20 U.S.C. § 1367(a) (2004).

21 2. Venue in this District is proper as to all Defendants under 15 U.S.C. § 53(b) and 28
22 U.S.C. §§ 1391(b), (c), and (d) (2004).

23 3. Defendants’ activities, as alleged in the Complaint, are in or affecting “commerce,” as
24 that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44 (2004).

25 4. The Complaint states claims upon which relief may be granted against Defendants
26 under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b (2004);
27 Sections 5(a), 7(a), (d), and (f) of the CAN-SPAM Act, 15 U.S.C. §§ 7704, 7706(a), (d), and (f)
28

1 (2004); and Sections 17203, 17204, 17206, 17529.5, 17535, and 17536 of the California
2 Business and Professions Code, Cal. Bus. & Prof. Code §§ 17203, 17204, 17206, 17529.5,
3 17535, and 17536 (West 1997 & Supp. 2004).

4 5. Defendants have stipulated to the entry of this Judgment freely and without coercion.
5 Defendants acknowledge that they have read and understand the provisions of this Judgment and
6 are prepared to abide by them.

7 6. All of the parties to this action have agreed that the entry of this Judgment resolves all
8 matters of dispute among them arising from the Complaint in this action, up to the date of entry
9 of this Judgment.

10 7. Defendants have waived all rights to seek appellate review or otherwise challenge or
11 contest the validity of this Judgment. Defendants have further waived and released any claims
12 they may have against the Commission, the State of California, their employees, representatives,
13 or agents.

14 8. Defendants are not entitled to seek or to obtain attorneys' fees as prevailing parties
15 under the Equal Access to Justice Act, 28 U.S.C. § 2412 (as amended by Pub. L. 104-121, 110
16 Stat. 847, 863-64 (1996)), and Defendants have waived any right to attorneys' fees that may arise
17 under said law or any other provision of state or federal law.

18 9. This Judgment is in addition to, and not in lieu of, any other civil or criminal remedies
19 that may be provided by law.

20 10. Except as provided herein, no provision of this Judgment shall be construed as an
21 admission that Defendants have engaged in violations of the FTC Act, the CAN-SPAM Act, or
22 the California Business and Professions Code.

23 11. Entry of this Judgment is in the public interest, and there being no just reason for
24 delay, the Clerk is directed to enter judgment immediately.

25 **DEFINITIONS**

26 1. **"Affiliate Program"** means any arrangement whereby any person through hyperlinks
27 on the World Wide Web, hyperlinks in commercial email messages, or any other Internet-based
28

1 mechanism, provides Defendants with, or refers to Defendants, potential or actual customers.

2 2. “**Affirmative Consent**” with respect to a commercial email message, means that “the
3 recipient expressly consented to receive the message, either in response to a clear and
4 conspicuous request for such consent or at the recipient’s own initiative”; and “if the message is
5 from a party other than the party to which the recipient communicated such consent, the recipient
6 was given clear and conspicuous notice at the time the consent was communicated that the
7 recipient’s electronic mail address could be transferred to such other party for the purposes of
8 initiating commercial electronic mail messages.” 15 U.S.C. § 7702(1)(2004).

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

14 4. “**California electronic mail address**” (or “**California email address**”) means any of
15 the following:

- 16 a. an email address furnished by an electronic mail service provider that sends bills
17 for furnishing and maintaining that email address to a mailing address in
18 California;
- 19 b. an email address ordinarily accessed from a computer located in California; or
- 20 c. an email address furnished to a resident of California.

21 5. “**Clear and conspicuous**” or “**clearly and conspicuously**,” with regard to the display
22 of a notice, means that the information shall be presented in writing, in a type size, color, and
23 location sufficient for an ordinary consumer to read and comprehend it, and shall be disclosed in
24 a manner that would be easily recognizable and understandable in language and syntax to an
25 ordinary consumer. If the information is contained in a multi-page print document, the disclosure
26 shall appear on the first page.

27 6. “**Commercial electronic mail message**” (or “**commercial email**”) “means any
28 electronic mail message the primary purpose of which is the commercial advertisement or

1 promotion of a commercial product or service (including content on an Internet website operated
2 for a commercial purpose).” 15 U.S.C. § 7702(2) (A) (2004).

3 7. “**Customer**” means a potential or actual customer of Defendants, or a potential or
4 actual customer referred by Defendants to a third party and for which Defendants receive
5 payment or other consideration.

6 8. “**Customer lead**” means personal identifying information of a customer or potential
7 customer, including but not limited to that individual’s name, address, telephone number, or
8 electronic mail address.

9 9. “**Defendants**” means Optin Global, Inc., Vision Media Limited Corp., Rick Yang,
10 also known as Qing Kuang Yang, and Peonie Pui Ting Chen, together, in any combination, or
11 individually.

12 10. “**Document**” is synonymous in meaning and equal in scope to the usage of the term in
13 Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,
14 photographs, audio and video recordings, computer records including email, Internet sites, Web
15 pages, Web sites, Instant Messaging, ICQ, or other electronic communications, and other data
16 compilations from which information can be obtained and translated, if necessary, through
17 detection devices into reasonably usable form. A draft or non-identical copy is a separate
18 document within the meaning of the term. Any document provided by one party to another
19 pursuant to this Judgment shall be provided in a format that is accessible to the receiving party.

20 11. “**Electronic mail address**” (or “email address”) means a destination, commonly
21 expressed as a string of characters, consisting of a unique user name or mailbox (commonly
22 referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the
23 “domain part”), whether or not displayed, to which an electronic mail message can be sent or
24 delivered.

25 12. “**Electronic mail message**” (or “email”) means a message sent to a unique electronic
26 mail address.

27 13. “**Header information**” “means the source, destination, and routing information
28 attached to an electronic mail message, including the originating domain name and originating

1 electronic mail address, and any other information that appears in the line identifying, or
2 purporting to identify, a person initiating the message.” 15 U.S.C. § 7702(8) (2004).

3 14. “**Hyperlink**” means a string of text, an image, or a region of an image that will
4 automatically direct a user to an Internet website when the user selects it with a mouse-click.

5 15. “**Initiate**” “when used with respect to a commercial email message, means to
6 originate or transmit such message or to procure the origination or transmission of such
7 message.” 15 U.S.C. § 7702(9) (2004).

8 16. “**Plaintiffs**” mean the Federal Trade Commission and the People of the State of
9 California.

10 17. “**Procure**” “when used with respect to the initiation of a commercial email message,
11 means intentionally to pay or provide other consideration to, or induce, another person to initiate
12 such a message on one’s behalf.” 15 U.S.C. § 7702(12) (2004).

13 18. “**Protected computer**” means a computer that is used in interstate or foreign
14 commerce or communication, including a computer located outside the United States that is used
15 in a manner that affects interstate or foreign commerce or communication of the United States.
16 15 U.S.C. § 7702(13) (2004); 18 U.S.C. § 1030(e)(2)(B) (2004).

17 19. “**Sender**” “when used with respect to a commercial electronic mail message, means a
18 person who initiates such a message and whose product, service, or Internet website is advertised
19 or promoted by the message.” 15 U.S.C. § 7702(16)(B) (2004).

20 20. “**Valid physical postal address**” means a sender’s current street address within the
21 United States, a Post Office box a sender has registered with the United States Postal Service, or
22 a private mailbox a sender has registered with a commercial mail receiving agency that is
23 established pursuant to United States Postal Service regulations; *provided, however*, that if and
24 when the Commission, pursuant to the CAN-SPAM Act, promulgates any regulation that
25 defines “valid physical postal address,” the definition contained in that regulation shall be the
26 definition of “valid physical postal address” for purposes of this Judgment.

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1 **ORDER**

2 **I.**

3 **PROHIBITIONS AGAINST VIOLATING CAN-SPAM ACT**

4 **IT IS THEREFORE ORDERED** that Defendants and their officers, agents, servants,
5 employees, and attorneys, and those persons in active concert or participation with them who
6 receive actual notice of this Judgment by personal service or otherwise, are hereby permanently
7 restrained and enjoined from violating the CAN-SPAM Act by, among other things, initiating a
8 commercial email that:

9 A. Contains, or is accompanied by, materially false or materially misleading header
10 information, including but not limited to:

- 11 1. an originating electronic mail address, domain name, or Internet Protocol address
12 the access to which, for purposes of originating the message, was obtained by
13 means of false or fraudulent pretenses or representations; or
14 2. a “from” line (the line identifying or purporting to identify the person initiating
15 the messages) that does not accurately identify any person who initiated the
16 message;

17 B. Contains a subject heading likely to mislead recipients, acting reasonably under the
18 circumstances, about material facts regarding the contents or subject matter of the
19 message, including a message subject heading that falsely suggests that the recipient
20 has already submitted a mortgage application, made some inquiry, has an account, or
21 that otherwise suggests that the sender, or any person or entity already has a
22 relationship with the recipient;

23 C. Does not: (1) include a clear and conspicuous notice of the recipient’s opportunity to
24 decline to receive further commercial electronic mail messages from the sender at the
25 recipient’s electronic mail address; and (2) begin with the language “To stop receiving
26 commercial email from us . . . ,” and followed by a description of the means by which
27 the recipient can decline to receive future commercial email messages from the
28 sender;

- 1 D. Does not include a functioning return electronic mail address or other Internet-based
- 2 mechanism, clearly and conspicuously displayed, that a recipient can use to submit a
- 3 reply electronic mail message or other form of Internet-based communication
- 4 requesting not to receive future commercial electronic mail messages from the sender
- 5 at the electronic mail address where the message was received, and that remains
- 6 capable of receiving such messages or communications for no less than 30 days after
- 7 the transmission of the original message;
- 8 E. Does not include the sender's valid physical postal address;
- 9 F. Is sent to a recipient's email address more than 10 business days (or such lesser time
- 10 established by future Commission rule) after the sender receives a request from that
- 11 email recipient not to receive future commercial electronic mail messages from the
- 12 sender at the recipient's electronic mail address; and
- 13 G. Fails to provide clear and conspicuous identification that the message is an
- 14 advertisement or solicitation. This prohibition, however, does not apply to
- 15 commercial email messages transmitted only to recipients from whom Defendants
- 16 have obtained Affirmative Consent.

17 **II.**

18 **PROHIBITION AGAINST VIOLATING SECTION 17529.5**

19 **OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE**

20 **IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants,

21 employees, and attorneys, and those persons in active concert or participation with them who

22 receive actual notice of this Judgment by personal service or otherwise, are hereby permanently

23 restrained and enjoined from violating Section 17529.5 of the California Business and

24 Professions Code, Cal. Bus. & Prof. Code § 17529.5, including but not limited to initiating the

25 transmission of a commercial email message either sent from California or sent to a California

26 email address under any of the following circumstances:

- 27 A. The commercial email message contains or is accompanied by falsified,
- 28 misrepresented, or forged header information; or

1 B. The commercial email message has a subject line that a person knows would be likely
2 to mislead a recipient, acting reasonably under the circumstances, about a material
3 fact regarding the contents or subject matter of the message.

4 **III.**

5 **MONITORING OF AFFILIATES BY DEFENDANTS FOR COMPLIANCE**

6 **IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants,
7 employees, and attorneys, and those persons in active concert or participation with them who
8 receive actual notice of this Judgment by personal service or otherwise, are hereby permanently
9 restrained and enjoined from initiating a commercial email or operating any affiliate program
10 without taking the following steps to ensure compliance with Parts I and II of this Judgment:

11 A. Prior to any person's participation in an affiliate program operated by Defendants,
12 Defendants shall require each prospective participant to provide identifying
13 information to Defendants, including, but not limited to:

- 14 1. the name, physical address, and a working telephone number for each prospective
15 participant. In the event that the prospective participant is not a natural person,
16 but is a corporation, partnership, proprietorship, limited liability company, or
17 other organization or legal entity, including an association, cooperative, agency, or
18 other group or combination acting as an entity, Defendants shall also require from
19 that prospective participant the name(s), address(es), and working telephone
20 number(s) of the natural person(s) who owns, manages, or controls that
21 prospective participant;
- 22 2. if the natural person(s) listed in Paragraph A.1 of this Part resides in the United
23 States, a photocopy of that person's driver's license or other State-issued
24 identification card; and
- 25 3. if the natural person(s) listed in Paragraph A.1 of this Part resides outside of the
26 United States, a photocopy of a government-issued identification for such person;

27 B. Defendant shall require each person who participates in any of Defendants' affiliate
28

1 programs to provide identifying information to Defendants concerning that
2 participant's sub-affiliates, employees, agents, or sub-contractors who initiate
3 commercial email messages on Defendants' behalf. Such identifying information
4 shall include the same types of information as required by Paragraph A of this Part
5 and shall be required prior to that person's participation in any of Defendants' affiliate
6 programs or immediately after any change to that participant's sub-affiliates,
7 employees, agents, or sub-contractors;

8 C. Prior to any person's participation in any of Defendants' affiliate programs,
9 Defendants shall provide each such person with a copy of this Judgment;

10 D. Prior to any person's participation in any of Defendants' affiliate programs,
11 Defendants shall obtain from each such person an express written agreement to
12 comply with this Judgment, the CAN-SPAM Act, and Section 17529.5 of the
13 California Business and Professions Code, as well as an acknowledgment of receipt
14 of a copy of this Judgment;

15 E. Defendants shall require each person who initiates commercial email messages on
16 Defendants' behalf to submit to Defendants, at least seven (7) days prior to the start of
17 an email campaign on Defendants' behalf, the following information:

- 18 1. the subject line, body, and source code for each email message in the proposed
19 email campaign;
- 20 2. the email address(es) from which each proposed campaign will be sent; and
- 21 3. the proposed dates that the email messages in the campaign will be sent;

22 F. At least three (3) days prior to the start of an email campaign that has been submitted
23 to Defendants under Paragraph E of this Part, Defendants shall review that email
24 campaign for compliance with the CAN-SPAM Act, Section 17529.5 of the
25 California Business and Professions Code, and this Judgment. If, after reviewing
26 such email campaign, Defendants determine that the campaign is in compliance with
27 the CAN-SPAM Act, Section 17529.5 of the California Business and Professions
28 Code, and this Judgment, Defendants shall provide to the person who submitted that

1 email campaign a written acknowledgment of Defendants' approval of such email
2 campaign. If at any time Defendants determine that the campaign is not in
3 compliance with the CAN-SPAM Act, Section 17529.5 of the California Business
4 and Professions Code, or this Judgment, Defendants shall immediately take all
5 reasonable steps to ensure that such email campaign is not initiated on the
6 Defendants' behalf or, if ongoing, that the campaign is terminated immediately;

7 G. Defendants shall establish, implement, and maintain a functioning email address or
8 other Internet-based mechanism that recipients of commercial email messages
9 initiated on Defendants' behalf may use to submit directly to Defendants a reply email
10 message or other form of Internet-based communication requesting not to receive
11 future commercial email messages from the sender of that message at the electronic
12 mail address where the message was received. Such functioning email address or
13 other Internet-based mechanism shall remain capable of receiving such reply
14 messages or communications for no less than 30 days after the transmission of the
15 original message;

16 H. Defendants shall require each person who initiates any commercial email message on
17 Defendants' behalf to include in such message a functioning hyperlink or other
18 Internet-based mechanism, clearly and conspicuously displayed, that a recipient can
19 use to access the email address or other Internet-based mechanism established by
20 Defendants pursuant to Paragraph G of this Part;

21 I. Defendants shall require each person who initiates commercial email messages on
22 Defendants' behalf to stop initiating commercial email messages on Defendants'
23 behalf to any recipient within ten (10) business days of Defendants' receipt of a reply
24 email message or other form of Internet-based communication from that recipient
25 pursuant to the procedures established under Paragraph G of this Part;

26 J. Defendants shall require every tenth new customer, prior to that customer first
27 accessing the content of Defendants' web sites and prior to that customer submitting
28 any personal or payment information, to indicate whether or not the customer had

1 IV.B of this Judgment, the payment requirements of this Judgment shall be suspended
2 subject to the conditions set forth in Paragraphs IV.C and IV.D of this Judgment;

3 B. In partial satisfaction of the monetary judgment awarded Plaintiffs in Paragraph IV.A
4 of this Judgment, Defendants shall pay to Plaintiffs the amounts specified in
5 subparagraphs (1) - (6) of this Paragraph. All payments shall be made by certified
6 check, cashiers check, or wire transfer made payable to the California Department of
7 Justice. If payment is made by certified or cashier's check, the check shall be
8 delivered to Ian K. Sweedler, Consumer Law Section, Office of the Attorney General,
9 455 Golden Gate Ave., Suite 11000, San Francisco, CA 94102, and the cover letter
10 accompanying the check shall include the title of this litigation and a reference to FTC
11 v. Optin Global, Inc., Case No. CV-05-1502-SC (N.D. Cal.). If payment is made by
12 wire transfer, Plaintiffs shall contact Ian K. Sweedler for wire transfer instructions.

13 1. Within five (5) days of entry of this Judgment, Defendants shall pay attorneys'
14 fees of one hundred thousand dollars (\$100,000), from funds held in accounts
15 frozen pursuant to the Preliminary Injunction Order entered by this Court on June
16 21, 2005;

17 2. Within five (5) days of entry of this Judgment, Defendants shall pay as civil
18 penalties the remaining cash balance of all bank accounts frozen pursuant to the
19 Preliminary Injunction entered by this Court on June 21, 2005, less any superior
20 or priority liens or encumbrances. In no event shall this sum be less than two
21 hundred seventy-seven thousand dollars (\$277,000).

22 3. Within five (5) days of the entry of this Judgment, Defendant Chen shall execute a
23 nonrecourse promissory note in the amount of five hundred thousand dollars
24 (\$500,000) payable to Plaintiffs and secured by a deed of trust on the real property
25 located at 3591 April Spring Street, Las Vegas, Nevada (the "Las Vegas
26 Property"), said note due and payable one hundred eighty (180) days after entry of
27 this Judgment.

28 4. Within five (5) days of the entry of this Judgment, Defendant Chen shall execute a

1 nonrecourse promissory note in the amount of five hundred thousand dollars
2 (\$500,000) payable to Plaintiffs and secured by a mortgage on the real property
3 located at 3 Grant Street, Adams, Massachusetts, (the “Adams Property”), said
4 note due and payable one hundred eighty (180) days after entry of this Judgment.

5 5. Defendant Chen shall cooperate fully with Plaintiffs and be responsible for
6 preparing, executing and recording the necessary documents and doing whatever
7 else Plaintiffs deem reasonably necessary or desirable to perfect, evidence, and
8 effectuate its liens and security interests granted against the Las Vegas and Adams
9 Properties. Defendant Chen shall be responsible for paying all fees and costs
10 required in connection with the liens granted herein, including all fees (including
11 attorneys’ fees, if any) and costs related to the preparation, execution, delivery,
12 filing, continuation, and termination of such liens and security interests, and to
13 carry out the purposes of this Judgment. Furthermore, Defendant Chen releases
14 and waives in favor of Plaintiffs any statutory, common law, or other exemption
15 that may apply to the Las Vegas and Adams Properties.

16 6. Defendant Chen shall then offer the Las Vegas Property and the Adams Property
17 for sale on the open market, using real estate agents approved by Plaintiffs, and at
18 sale prices approved by Plaintiffs. The sale of each property shall be transacted in
19 a fair, open, and arms-length, manner. Within five (5) days of the closing of each
20 sale, Defendant Chen will transfer the net proceeds of each sale to the California
21 Department of Justice as a civil penalty, in full satisfaction of Plaintiffs’
22 promissory note on each such property. “Net proceeds” means the sale price of
23 the property less any taxes, agent fees, closing costs, assessments, and any other
24 liens or security interests on the property.

25 C. In the event of any default in payment of the amount required by Paragraph IV.B,
26 which default continues for ten (10) days beyond the due date of payment, the entire
27 unpaid monetary judgment of \$2.4 million dollars, together with interest, as computed
28 pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall

1 immediately become due and payable, and in that event, Plaintiffs are hereby
2 authorized to execute judgment for such amount against Defendants;

3 D. Plaintiffs' agreement to this Judgment is expressly premised upon the truthfulness,
4 accuracy, and completeness of Defendants' sworn financial statements and supporting
5 documents, as well as the sworn deposition testimony given by Defendants on August
6 17-18, 2005, all of which include material information upon which Plaintiffs have
7 relied in negotiating and agreeing to this Judgment. If, upon motion by Plaintiffs, this
8 Court finds that Defendants have failed to disclose any material asset or materially
9 misstated the value of any asset in the financial statements, related documents, or
10 testimony described above, or have made any other material misstatement or omission
11 in the financial statements, related documents, or testimony described above, then the
12 Court shall lift the suspension of the judgment and require payment of the full amount
13 of the judgment described in Paragraph IV.A, less the sum of all payments paid
14 pursuant to Paragraph IV.B of this Judgment. *Provided, however,* that in all other
15 respects this Judgment shall remain in full force and effect, unless otherwise ordered
16 by the Court;

17 E. Defendants agree that the facts as alleged in the Complaint filed in this action shall be
18 taken as true for the purpose of an action to collect the judgment, including but not
19 limited to a nondischargeability complaint in any bankruptcy proceeding; and

20 F. Any proceedings instituted under this Part are in addition to, and not in lieu of, any
21 other civil or criminal remedies that may be provided by law, including any other
22 proceedings Plaintiffs may initiate to enforce this Judgment.

23 **V.**

24 **LIFTING OF THE ASSET FREEZE**

25 **IT IS FURTHER ORDERED** that the freeze of Defendants' assets pursuant to the
26 Preliminary Injunction Order entered by this Court on June 21, 2005, shall be lifted to the extent
27 necessary to transfer funds to the California Department of Justice as required by Paragraphs
28

1 IV.B.1 and IV.B.2 of this Judgment. The asset freeze on the Las Vegas Property and the Adams
2 Property shall also be lifted to the extent necessary to sell those properties and transfer the
3 proceeds of each sale as required by Paragraph IV.B.6 of this Judgment. The asset freeze on
4 Defendant Chen's property located at 6466 Livia Avenue, Temple City, California, shall be lifted
5 upon the transfer to the California Department of Justice of the funds described in Paragraphs
6 IV.B.1 and IV.B.2 of this Judgment.

7
8 **VI.**

9 **COMPLIANCE MONITORING**

10 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating
11 compliance with any provision of this Judgment:

- 12 A. Within ten (10) days of receipt of written notice from a representative of either
13 Plaintiff, Defendants shall submit additional written reports, sworn to under penalty
14 of perjury; produce documents for inspection and copying; appear for deposition;
15 and/or provide entry during normal business hours to any business location in
16 Defendants' possession, or direct or indirect control, to inspect the business operation;
- 17 B. In addition, Plaintiffs are authorized to monitor compliance with this Judgment by all
18 other lawful means, including but not limited to the following:
- 19 1. obtaining discovery from any person, without further leave of court, using the
20 procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and
 - 21 2. posing as consumers and suppliers to Defendants, to any of Defendants'
22 employees, or to any other entity managed or controlled in whole or in part by
23 Defendants, without the necessity of identification or prior notice; and
- 24 C. Defendants shall permit representatives of Plaintiffs to interview any employer,
25 consultant, independent contractor, representative, agent, or employee who has agreed
26 to such an interview, relating in any way to any conduct subject to this Judgment.
27 The person interviewed may have counsel present.

28 *Provided, however,* that nothing in this Judgment shall limit Plaintiff Federal Trade

1 Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act,
2 15 U.S.C. §§ 49 and 57b-1, to obtain any documentary material, tangible things, testimony, or
3 information relevant to unfair or deceptive acts or practices in or affecting commerce (within the
4 meaning of 15 U.S.C. § 45(a)(1)), or to limit the use by the Attorney General of California of any
5 compulsory or other process authorized by California law.

6
7 **VII.**

8 **COMPLIANCE REPORTING BY DEFENDANTS**

9 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this
10 Judgment may be monitored:

- 11 A. For a period of five (5) years from the date of entry of this Judgment, each individual
12 Defendant shall notify Plaintiffs in writing of any of the following:
- 13 1. any changes in residence, mailing addresses and telephone numbers of the
14 Defendant, within ten (10) days of the date of such change;
 - 15 2. any change in employment status (including self-employment) of the Defendant,
16 and any change in the ownership interest of the Defendant in any business entity
17 engaged in commercial email, within ten (10) days of such change. Such notice
18 shall include the name and address of each business that the Defendant is
19 affiliated with, employed by, or performs services for, a statement of the nature of
20 the business, and a statement of the Defendant's duties and responsibilities in
21 connection with the business or employment; and
 - 22 3. any changes in the Defendant's name or use of any aliases or fictitious names;
- 23 B. Each Defendant shall notify Plaintiffs of any changes in the structure of any business
24 entity that the Defendant directly or indirectly controls, or has an ownership interest
25 in, that may affect compliance obligations arising under this Judgment, including but
26 not limited to a dissolution, assignment, sale, merger, or other action that would result
27 in the emergence of a successor corporation; the creation or dissolution of a
28 subsidiary, parent, or affiliate that engages in any acts or practices subject to this

1 Judgment; the filing of a bankruptcy petition; or a change in the corporate name or
2 address, at least thirty (30) days prior to such change, *provided that*, with respect to
3 any proposed change in the business entity about which the Defendant learns less than
4 thirty (30) days prior to the date such action is to take place, the Defendant shall
5 notify Plaintiffs as soon as is practicable after obtaining such knowledge;

- 6 C. One hundred and eighty (180) days after the date of entry of this Judgment,
7 Defendants shall provide a written report to Plaintiffs, sworn to under penalty of
8 perjury, setting forth in detail the manner and form in which they have complied and
9 are complying with this Judgment. This report shall include, but not be limited to:
- 10 1. a copy of each acknowledgment of receipt of this Judgment, obtained pursuant to
11 Paragraph III.D or Part IX of this Judgment;
 - 12 2. a description of any changes required to be reported pursuant to Paragraph A or B
13 of this Part;
 - 14 3. a list that identifies every person who is a participant in any affiliate program of
15 Defendants, or who is marketing or promoting, through commercial email
16 messages, any goods or services of Defendants since entry of this Judgment;
 - 17 4. a list of all names under which Defendants did or currently do business since entry
18 of this Judgment;
 - 19 5. a list of all domain names and web page addresses Defendants have registered or
20 used since entry of this Judgment; and
 - 21 6. any other changes required to be reported under Paragraph VII.A of this
22 Judgment.

- 23 D. For the purposes of this Judgment, Defendants shall, unless otherwise directed by
24 representatives of Plaintiffs, identify all written notifications to Plaintiffs as being in
25 reference to *FTC v. Optin Global, Inc.*, Case No. CV-05-1502-SC (N.D. Cal.), and
26 mail an original signed version of each notification to each of the following:

27 //

28 //

1 Associate Director
2 Division of Enforcement
3 Federal Trade Commission
4 600 Pennsylvania Ave., NW, NJ-2119
5 Washington, DC 20580

6 Ian K. Sweedler
7 Consumer Law Section
8 Office of the Attorney General
9 455 Golden Gate Ave., Suite 11000
10 San Francisco, CA 94102; and

11 E. For purposes of the compliance reporting and monitoring required by this Judgment,
12 if undersigned counsel no longer represents a Defendant, Plaintiffs' representatives
13 are authorized to communicate directly with Defendants and their officers and
14 managers.

15 **VIII.**

16 **RECORD KEEPING PROVISIONS**

17 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry
18 of this Judgment, Defendants are hereby restrained and enjoined from engaging in the marketing,
19 advertising, promotion, offering for sale, or sale of goods or services via commercial email
20 messages or other Internet-based mechanisms unless Defendants create and retain the following
21 records:

- 22 A. Accounting records that reflect the cost of goods or services sold, revenues generated,
23 and the disbursement of such revenues;
- 24 B. Records accurately reflecting: the name, physical address, and telephone number of
25 each person employed in any capacity by such business, including as an independent
26 contractor or affiliate; that person's job title or position; the date upon which the
27 person commenced work; and the date and reason for the person's termination, if
28 applicable;
- C. Customer files containing the names, addresses, phone numbers of all of Defendants'
customers, together with descriptions, quantities, and costs of items, services, or
information purchased, to the extent such information is obtained in the ordinary

1 course of business;

2 D. Records accurately reflecting any customer leads provided by Defendants to third
3 parties, the amount and nature of payment or consideration received by Defendants
4 for those leads, and any agreements between Defendants and those third parties
5 regarding the furnishing of customer leads;

6 E. Records that reflect, for every written or oral consumer complaint received by
7 Defendants, whether directly or indirectly or through any third party, including
8 affiliates: (1) the consumer's name, address, and telephone number; (2) the written
9 complaint or request, if any; (3) the basis of the complaint or request; (4) the nature
10 and result of any investigation conducted concerning the complaint or request; (5)
11 each response and the date of such response to the complaint or request; (6) any final
12 resolution of the complaint or request, and the date of such resolution; and (7) in the
13 event of a denial of any resolution, the reason for the denial;

14 F. Copies of all information obtained, pursuant to Part III of this Judgment, from each
15 person who participates in Defendants' affiliate programs; and

16 G. All other records and documents necessary to demonstrate full compliance with each
17 provision of this Judgment, including but not limited to, all documents obtained,
18 created, generated or which in any way relate to the requirements, provisions or terms
19 of this Judgment, identifying information obtained pursuant to Paragraphs III.A and
20 III.B of this Judgment, copies of signed and dated acknowledgments of receipt of this
21 Judgment required by Paragraph III.D and Part IX of this Judgment, and all reports
22 submitted to Plaintiffs pursuant to this Judgment.

23 **IX.**

24 **DISTRIBUTION OF ORDER BY DEFENDANTS**

25 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry
26 of this Judgment, Defendants shall deliver copies of this Judgment as directed below:

27 A. Defendants must deliver a copy of this Judgment to all of their officers, directors, and
28

1 managers. Defendants must also deliver copies of this Judgment to all of their
2 employees, agents, independent contractors, and persons who engage in conduct
3 related to the subject matter of this Judgment. For current personnel, delivery shall be
4 within five (5) days of service of this Judgment. For new personnel, delivery shall
5 occur prior to them assuming their responsibilities; and

6 B. Defendants must secure a signed and dated written or electronic statement (which
7 signature may be obtained electronically provided that the signature would comply
8 with the signature requirements of the Electronic Signatures in Global and National
9 Commerce Act, 15 U.S.C. §§ 7001 *et seq.*), acknowledging receipt of this Judgment,
10 within thirty (30) days of delivery, from all persons receiving a copy of this Judgment
11 pursuant to this Part.

12 **X.**

13 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

14 **IT IS FURTHER ORDERED** that each Defendant, within five (5) business days of
15 receipt of this Judgment as entered by the Court, must submit to Plaintiffs a truthful sworn
16 statement acknowledging having received and read this Judgment.

17 **XI.**

18 **FEES AND COSTS**

19 **IT IS FURTHER ORDERED** that, except as provided in Paragraph IV.B.1, each party
20 to this Judgment shall bear his, her, or its own costs and attorneys' fees incurred in connection
21 with this action.

22 **XII.**

23 **DUTY TO COOPERATE**

24 **IT IS FURTHER ORDERED** that Defendants shall cooperate fully, truthfully and
25 completely with Plaintiffs in any litigation related to this matter. This cooperation includes, but
26 is not limited to, maintaining all documents relevant to the litigation and assisting in the
27
28

1 preparation of testimony and testifying fully, truthfully and completely at any trial related to this
2 matter, if called upon to do so.

3
4 **XIII.**

5 **SEVERABILITY**

6 **IT IS FURTHER ORDERED** that the provisions of this Judgment are separate and
7 severable from one another. If any provision is stayed or determined to be invalid, the remaining
8 provisions shall remain in full force and effect.

9 **XIV.**

10 **RETENTION OF JURISDICTION**

11 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for
12 purposes of construction, modification, and enforcement of this Judgment.

13 **XV.**

14 **ENTRY OF JUDGMENT**

15 **JUDGMENT IS THEREFORE ENTERED** in favor of Plaintiffs and against
16 Defendants, pursuant to all the terms and conditions recited above.

17
18 **SO ORDERED.**

19
20 Dated: _____

21 _____
22 SAMUEL CONTI
23 UNITED STATES DISTRICT JUDGE
24
25
26
27
28