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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY

BY

05-CV-01979-STIP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff

v.

MATTHEW OLSON and JENNIFER LeROY,

Defendants.

Case No. C05-1979 JCC

**STIPULATED FINAL
JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION**

Plaintiff Federal Trade Commission ("Commission or FTC"), commenced this action on November 29, 2005, by filing its Complaint for Injunctive Relief and Other Equitable Relief ("Complaint") pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM Act"), 15 U.S.C. § 7706(a), charging that defendants Matthew Olson and Jennifer LeRoy were engaged in deceptive acts and practices in violation of CAN-SPAM, 15 U.S.C. § 7701 *et seq.*, in connection with the sending of commercial email messages whose primary purpose was the advertisement of goods and services or promotion of Internet Web sites.

The Commission, having been represented by counsel and acting by and through such counsel, and the defendants have consented to this Stipulated Final Judgment and Order for Permanent Injunction ("Order") without a trial or adjudication of any issue of law or fact herein.

FEDERAL TRADE COMMISSION
915 Second Ave., Su. 2896
Seattle, Washington 98174
(206) 220-6350

1 NOW, THEREFORE, the Commission and the defendants having requested the Court to enter
2 this Order,

3 **IT IS ORDERED, ADJUDGED, AND DECREED** as follows:

4 **FINDINGS**

5 1. This is an action by the Commission instituted under Sections 13(b) and 19 of the FTC
6 Act, 15 U.S.C. §§ 53(b) and 57b. Pursuant to this section, the Commission has the authority to seek
7 the relief contained herein.

8 2. The Commission's Complaint states a claim upon which relief may be granted against
9 the defendants under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53 (b), and 57b.

10 3. This Court has jurisdiction over the subject matter of the case and all parties hereto.
11 Venue lies properly with this Court.

12 4. The alleged activities of the defendants are in or affecting commerce, as defined in
13 Section 4 of the FTC Act, 15 U.S.C. § 44.

14 5. The parties shall each bear their own costs and attorney's fees incurred in this action and
15 have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek
16 judicial review, or otherwise to challenge the validity of this Order.

17 6. This Order does not constitute, and shall not be interpreted to constitute, either an
18 admission by the defendants or a finding by the Court that the defendants' acts or practices violated
19 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the CAN-SPAM Act, 15 U.S.C. § 7706(a), or any other
20 law or regulation.

21 7. The Stipulated Preliminary Injunction entered by this Court on December 8, 2005, is
22 hereby vacated and superseded by this Order.

23 8. Entry of this Order is in the public interest.

24 **ORDER**

25 **Definitions**

26 1. "**Header Information**" is defined in 15 U.S.C. § 7702(8) and means the source,
27 destination, and routing information attached to an electronic mail message, including the originating
28 domain name and originating electronic mail address, and any other information that appears in the line

1 identifying, or purporting to identify, a person initiating the message.

2 2. "Initiating" or "Initiate" is defined in 15 U.S.C. § 7702(9) and means to originate or
3 transmit a commercial electronic mail message or to procure the origination or transmission of such
4 message, but does not include actions that constitute routine conveyance of such message. For
5 purposes of this definition, "procure," as defined in 15 U.S.C. § 7702(12), means intentionally to pay
6 or provide other consideration to, or induce, another person to initiate such a commercial electronic
7 mail message on one's behalf.

8 3. "Person" means a natural person, an organization or other legal entity, including a
9 corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any
10 other group or combination acting as an entity.

11 4. "Protected computer" is defined in 15 U.S.C. § 7702(13) and 18 U.S.C.
12 § 1030(e)(2)(B) and means a computer which is used in interstate or foreign commerce or
13 communication, including a computer located outside the United States that is used in a manner that
14 affects interstate or foreign commerce or communication of the United States.

15 **I. PROHIBITED BUSINESS ACTIVITIES**

16 **IT IS THEREFORE ORDERED** that the defendants, and their officers, agents, servants,
17 employees, attorneys, and all other persons or entities in active concert or participation with them who
18 receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly
19 or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby
20 permanently restrained and enjoined from violating the provisions contained in Sections 5 and 6 of the
21 CAN-SPAM Act, 15 U.S.C. §§ 7704 and 7705, as currently promulgated or as they may hereafter be
22 amended, or any rule, regulation, or requirement adopted pursuant thereto, including, but not limited to,
23 by initiating the transmission, to protected computers, of a commercial email message that:

24 A. Contains, or is accompanied by, header information that is materially false or
25 misleading in violation of Section 5(a)(1) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(1), including,
26 but not limited to, a message with header information that is misleading because the person initiating
27 the message knowingly uses another protected computer to relay or retransmit the message or inserts a
28 false connecting host for purposes of disguising its origin;

1 B. Contains subject headings that are likely to mislead a recipient, acting reasonably under
2 the circumstances, about a material fact regarding the contents or subject matter of the message, in
3 violation of Section 5(a)(2) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(2);

4 C. Fails to include a clear and conspicuous notice of the recipient's
5 opportunity to decline to receive further electronic mail messages from the sender, in violation of
6 Section 5(a)(5)(A)(ii) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(A)(ii);

7 D. Fails to include a functioning return electronic mail address or other Internet-based
8 mechanism, clearly and conspicuously displayed, that a recipient may use to submit a reply electronic
9 mail message or other form of Internet-based communication requesting not to receive future
10 commercial electronic mail messages, from that sender, at the electronic mail address where the
11 message was received, and that remains capable of receiving such replies for no less than thirty (30)
12 days after the transmission of the original message, in violation of Section 5(a)(3)(A) of the
13 CAN-SPAM Act, 15 U.S.C. § 7704(a)(3)(A);

14 E. Advertises or promotes products or services but fails to include clear and conspicuous
15 identification that the message is an advertisement or solicitation, in violation of Section 5(a)(5)(A)(i)
16 of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(A)(i); and

17 F. Advertises or promotes products or services but fails to include a valid physical postal
18 address of the sender in violation of Section 5(a)(5)(A)(iii) of the CAN-SPAM Act, 15 U.S.C.
19 § 7704(a)(5)(A)(iii).

20 **II. MONETARY RELIEF**

21 **IT IS FURTHER ORDERED** that Judgment is entered against the defendants jointly and
22 severally in the amount of \$45,000. The judgment, however, shall be suspended subject to Paragraph
23 III of this Order.

24 A The Commission and the defendants acknowledge and agree that no portion of this
25 judgment for equitable monetary relief shall be deemed a fine, penalty, punitive assessment, or
26 forfeiture;

27 B. The defendants agree that the facts as alleged in the Complaint filed in this action shall
28 be taken as true for purposes of any subsequent proceedings to enforce payments required by this

1 Paragraph, including, but not limited to, a non-dischargeability complaint filed in a bankruptcy
2 proceeding; and

3 C. In accordance with 31 U.S.C. § 7701, the defendants are hereby required, unless they
4 have done so already, to furnish the Commission their tax identification numbers, which shall be used
5 for purposes of collecting and reporting on any delinquent amounts arising out of this Order.

6 III. RIGHT TO REOPEN

7 **IT IS FURTHER ORDERED** that, by agreeing to this Order, the defendants reaffirm and
8 attest to the truthfulness, accuracy, and completeness of the financial statements that were prepared by
9 the defendants and transmitted to the Commission on November 27, 2005, and November 28, 2005,
10 (hereafter the "Financial Statements"). The plaintiff's agreement to this Order is expressly premised
11 upon the truthfulness, accuracy, and completeness of the defendants' financial condition as represented
12 in the Financial Statements referenced above, which contain material information upon which the
13 plaintiff relied in negotiating and agreeing to the terms of this Order. If, upon motion by the plaintiff,
14 this Court finds that any defendant failed to disclose any material asset, or materially misrepresented
15 the value of any asset, or made any other material misrepresentation in or omission from the Financial
16 Statements, the Court shall enter a judgment against such defendant in favor of the Commission in the
17 amount of \$45,000 and the entire amount shall become immediately due and payable. Provided,
18 however, that in all other respects, this Order shall remain in full force and effect unless otherwise
19 ordered by this Court; and provided further that proceedings instituted under this Paragraph are in
20 addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law,
21 including any other proceedings the plaintiff may initiate to enforce this Order.

22 IV. DISSOLUTION OF ASSET FREEZE

23 **IT IS FURTHER ORDERED** that, upon entry of this Order, the freeze against the defendants'
24 assets pursuant to the Stipulated Preliminary Injunction entered by the Court on December 8, 2005,
25 shall be dissolved.

1 **V. ACKNOWLEDGMENT OF RECEIPT OR ORDER BY**
2 **DEFENDANTS**

3 **IT IS FURTHER ORDERED** that each defendant, within five (5) business days of receipt of
4 this Order as entered by the Court, must submit to the Commission a truthful sworn statement
5 acknowledging receipt of this Order.

6 **VI. DISTRIBUTION OF ORDER BY DEFENDANTS**

7 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this
8 Order, the defendants shall deliver copies of this Order as directed below:

9 A. For any business that either defendant controls, directly or indirectly, or in which either
10 defendant has a majority ownership interest, such defendant must deliver a copy of this Order to all
11 principals, officers, directors, and managers of that business, and to all employees, agents, and
12 representatives of that business who engage in conduct related to the subject matter of the Order;

13 B. For any business in which either defendant does not control or have an ownership
14 interest but otherwise engages in conduct related to the subject matter of this Order, such defendant
15 must deliver a copy of this Order to all principals and managers of such business before engaging in
16 such conduct; and

17 C. The defendants must secure a signed and dated statement acknowledging receipt of the
18 Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to this
19 Paragraph.

20 **VII. MONITORING COMPLIANCE OF SALES PERSONNEL**

21 **IT IS FURTHER ORDERED** that the defendants, in connection with any business where: (1)
22 any defendant is the majority owner of the business or directly or indirectly manages or controls the
23 business; and (2) the business engages in conduct related to the subject matter of the Order, are hereby
24 permanently restrained and enjoined from:

25 A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and
26 independent contractors engaged in conduct related to the subject matter of the Order comply with
27 Paragraph I of this Order. Such steps shall include adequate monitoring of all emails or other
28 communications with customers, and shall also include, at a minimum, the following: (1) reviewing the

1 content of all commercial emails sent to customers; (2) establishing a procedure for receiving and
2 responding to consumer complaints; and (3) ascertaining the number and nature of consumer
3 complaints regarding transactions in which each employee or independent contractor is involved;

4 B. Failing to investigate fully any consumer complaint received by any business to which
5 this Paragraph applies; and

6 C. Failing to take corrective action with respect to any employee or independent contractor
7 who the defendants determine is not complying with this Order, which may include training,
8 disciplining, and/or terminating such employee or independent contractor.

9 **VIII. RECORDKEEPING**

10 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this
11 Order, the defendants, in connection with any business where: (1) any defendant is the majority owner
12 of the business or directly or indirectly manages or controls the business; and (2) the business is
13 *engaged in, or assists others in engaging in, conduct related to the subject matter of the Order, are*
14 hereby restrained and enjoined from failing to create and retain the following records:

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

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

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

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

26 E. Copies of the content of all commercial emails transmitted, training materials,
27 advertisements, or other marketing materials; and

28 F. All records and documents necessary to demonstrate full compliance with each provision

1 of this Order, including but not limited to copies of acknowledgments of receipt of this Order, as
2 required by Paragraph VI, and all reports submitted to the FTC pursuant to Paragraph IX.

3 **IX. COMPLIANCE REPORTING BY THE DEFENDANTS**

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

6 A. For a period of five (5) years from the date of entry of this Order, each defendant shall
7 notify the Commission of the following:

- 8 1. Any changes in residence, mailing addresses, and telephone numbers, within ten
9 (10) days of the date of such change;
- 10 2. Any changes in employment status (including self-employment), and any change
11 of the defendant's ownership in any business entity, within ten (10) days of the
12 date of such change. Such notice shall include the name and address of each
13 business that the defendant is affiliated with, employed by, creates or forms, or
14 performs services for; a statement of the nature of the business; and a statement
15 of the defendant's duties and responsibilities in connection with the business or
16 employment; and
- 17 3. Any changes in the defendant's name or use of any alias or fictitious name;

18 B. One hundred eighty (180) days after the date of entry of this Order, each defendant shall
19 provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner
20 and form in which they have complied and are complying with this Order. This report shall include, but
21 not be limited to:

- 22 1. The defendants' then-current residence address, mailing addresses, and telephone
23 numbers;
- 24 2. The defendants' then-current employment and business addresses and telephone
25 numbers, a description of the business activities of each such employer or
26 business, and the title and responsibilities of each defendant, for each such
27 employer or business;
- 28 3. Any other changes required to be reported under subparagraph A of this

Paragraph; and

4. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph V.

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

Associate Director of Enforcement
Federal Trade Commission
601 New Jersey Ave., N.W.
Washington, DC 20001

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D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with the defendants.

X. COMPLIANCE MONITORING

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

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

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

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. posing as consumers to the defendants, the defendants' employees, or any other entity managed or controlled in whole or in part by the defendants, without the necessity of identification or prior notice; and

C. The defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed

1 may have counsel present.

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

6 **XI. COOPERATION WITH FTC COUNSEL**

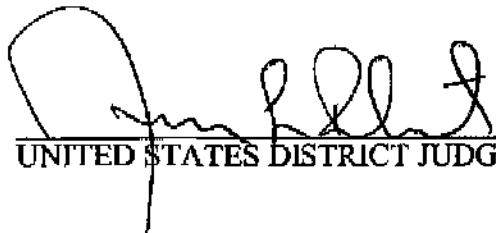
7 **IT IS FURTHER ORDERED** that the defendants shall, in connection with this action or any
8 subsequent investigations related to or associated with the transactions or the occurrences that are the
9 subject of the FTC's Complaint, cooperate in good faith with the FTC and appear at such places and
10 times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial
11 discovery, review of documents, and for such other matters as may be reasonably requested by the FTC.
12 If requested in writing by the FTC, the defendants shall appear and provide truthful testimony in any
13 trial, deposition, or other proceeding related to or associated with the transactions or the occurrences
14 that are the subject of the Complaint, without the service of a subpoena.

XII. RETENTION OF JURISDICTION

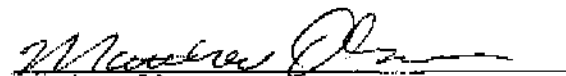
IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

The Commission and the defendants hereby stipulate and agree to entry of the forgoing Order, which shall constitute a final judgment in this action.

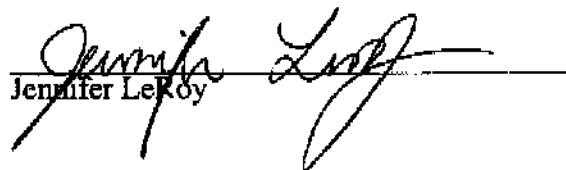
Dated this 27th day of March, 2006.


UNITED STATES DISTRICT JUDGE

Stipulated by:


Matthew Olson

Dated: 1/27/06


Jennifer LeRoy

Dated: 1/27/06



Dated: 3/23/06

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