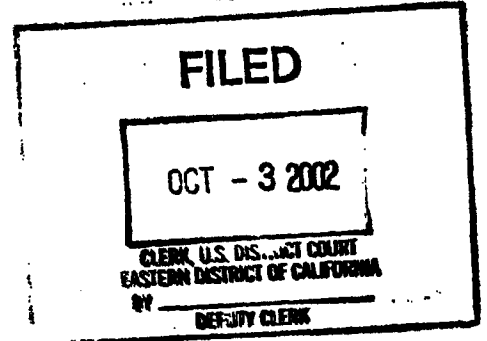


For Plaintiff Federal Trade Commission  
Craig Tregillus and Jennifer Mandigo Brennan  
Federal Trade Commission  
600 Pennsylvania Ave. N.W. - Rm. H-238  
Washington, DC 20580  
(202) 332-0291



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

v.

**RICHARD JON SCOTT, individually, and  
d/b/a CYBER DATA,**

**Defendant.**

~~0148-02-2720 LKK DAD~~

**LODGED**

SEP 27 2002

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_  
DEPUTY CLERK

**STIPULATED JUDGMENT AND  
ORDER FOR PERMANENT INJUNCTION**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), commenced this action by filing its Complaint for a permanent injunction and other relief pursuant to Sections 5 and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45, 53(b), charging that the Defendant engaged in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the sale of a marketing program providing email address lists and software that purports to enable the purchaser to send bulk email to millions of email addresses. The Commission and the Defendant, as hereinafter defined, hereby stipulate to the entry of this Stipulated Judgment and Order for Permanent Injunction ("Order") to resolve all matters of dispute between them in this action without trial.

THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331 and 1337(a), and 15 U.S.C. § 53(b).
2. Venue is proper as to all parties in the Eastern District of California.
3. The activities of the Defendant are or were in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against the Defendant, under Sections 5(a)(1) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b).
5. Defendant does not admit liability based on the allegations included in the Complaint.
6. Defendant acknowledges that he has read the provisions of this Order and is prepared to abide by them.
7. Plaintiff and Defendant, by and through their counsel, have agreed that the entry of this Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Order.
8. The parties have agreed to the entry of this Order in resolution of their disputes in order to avoid the time and cost associated with litigation.
9. Defendant waives all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendant further waives and releases any claim he may have against the Commission, its employees, representatives or agents.

**STIPULATED JUDGMENT AND ORDER**

10. Defendant has agreed that this Order does not entitle him to seek or obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and Defendant further waives any rights to attorneys' fees that may arise under said provision of law.

11. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

### **DEFINITIONS**

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

1. "Asset" means any legal or equitable interest in, or right or claim to, any real and personal property, including without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

2. "Bulk email" means an electronic mail ("email") message, of a commercial nature, that is distributed to multiple recipients, regardless of whether the message is sent at the request of or with the consent of the recipients, or whether the sender has a prior business or personal relationship with the recipients.

3. "Business Opportunity" means any written or oral business arrangement, however denominated, whether or not covered by the Commission's Franchise Rule, 16 C.F.R. § 436, which consists of the payment of any consideration for: (1) the right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and (2) the promise or provision of assistance to any person in connection with or incident to the establishment, maintenance, or operation of a new

**STIPULATED JUDGMENT AND ORDER**

business, or the entry by an existing business into a new line or type of business, including, without limitation, a home-based business or work-at-home opportunity.

4. "Defendant" means Richard Jon Scott, individually and d/b/a Cyber Data, a/k/a Cyber Firepower.

5. "Person" means a natural person, organization or other legal entity, including a corporation, partnership, proprietorship, association, or cooperative, or any other group or combination acting as an entity.

6. "Representatives" means the Defendant's successors, assigns, officers, agents, servants and employees, as well as those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

## **ORDER**

### **I. PROHIBITED REPRESENTATIONS**

IT IS ORDERED that, in connection with the advertising, marketing, offering for sale, licensing, contracting, sale, distribution or other promotion of any bulk email list, bulk email software, bulk email product, bulk email service or bulk email marketing program, or any other Business Opportunity, the Defendant and his Representatives are hereby permanently restrained and enjoined from making, or assisting in the making, directly or indirectly through any corporation, subsidiary, division, or other device, of:

A. Any statement or representation of material fact that is false, misleading or deceptive, whether expressly or by implication, orally or in writing, including, but not limited to, any false, misleading or deceptive statement or representation about:

1. The actual or potential income, profit, or sales volume that a purchaser is likely to achieve;
2. The income, profit or sales volume actually achieved by prior purchasers;
3. The length of time that it is likely to take a purchaser to recoup the entire purchase price or investment; and

B. Any statement or representation of material fact about Defendant's software, products, services or marketing programs, that is false, misleading or deceptive, whether expressly or by implication, orally or in writing, including, without limitation, any false, misleading or deceptive statement or representation about:

1. Defendant's email address lists or databases containing no duplicate email addresses; and
2. Defendant's email address lists or databases containing nearly every person on the Internet today;

*unless*, at the time the statement or representation is made, Defendant or his Representatives possess and rely upon competent and reliable evidence that substantiates the statement or representation.

## II. MONETARY JUDGMENT

IT IS FURTHER ORDERED that judgment is hereby entered against Defendant for disgorgement of profits in the amount of \$201,789.00 (Two Hundred-One Thousand Seven Hundred and Eighty-Nine Dollars). Provided, however, that all of this amount except for Twenty Thousand Dollars (\$20,000.00) in U.S. currency shall be suspended, and provided further that this judgment shall be subject to the conditions set forth in Section III below. Defendant shall

STIPULATED JUDGMENT AND ORDER

make the required payment of Twenty Thousand Dollars (\$20,000) in U.S. currency by certified or cashier's check to the Commission no later than ten (10) business days after entry of this Order.

A. All funds paid pursuant to this Section shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that redress to purchasers is wholly or partially impracticable, or any funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendant's practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendant shall have no right to contest the Commission's choice of remedies under this Section.

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

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

D. Defendant agrees that the facts as alleged in the Complaint filed in this action shall be taken as true in any subsequent nondischargeability complaint in any bankruptcy proceeding.

E. The Proceedings resulting in this Order are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

### **III. RIGHT TO REOPEN**

IT IS FURTHER ORDERED that:

A. Plaintiff's and the Commission's agreement to and the Court's approval of this Order is expressly premised upon the truthfulness, accuracy, and completeness of the financial information signed and provided by the Defendant to the Plaintiff, namely, bankruptcy schedules provided to the Commission on or about March 8, 2002, and the Liquidity Summary (including update) provided to the Commission on or about April 2, 2002, which contain material information relied upon by the Plaintiff in negotiating and agreeing to the terms of this Order.

B. If, upon motion by the Commission, this Court should find that the Defendant made a material misrepresentation or omitted material information concerning his assets, income, liabilities, net worth, or financial condition, then the Court shall enter a judgment against the Defendant in the amount of \$201,789.00 (Two Hundred One Thousand Seven Hundred and Eighty Nine Dollars), and make an express determination that there is no just reason for delay of entry of judgment, provided, however, that if judgment is entered as provided in this Section, Defendant shall receive credit toward such judgment in the amount previously paid by Defendant as required under Section II; and shall:

1. Permit Plaintiff to execute upon such judgment immediately and engage in discovery in aid of execution; and

2. Permit Plaintiff to reopen this matter to demonstrate to the Court that additional relief, including additional equitable monetary relief, consumer redress or disgorgement of ill-gotten gains, should be entered by the Court against Defendant. Plaintiff shall have the right to engage in reasonable discovery for this purpose, and Defendant shall have the right to engage in reasonable discovery to respond to Plaintiff's efforts in this regard.

C. In the event this matter is reopened pursuant to this Section, Defendant shall have no right to seek modification or abrogation of this Stipulated Judgment and Order for Permanent Injunction.

D. Any proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Order. In the event this matter is reopened pursuant to this Section, all other Sections of this agreement shall remain in full force and effect unless otherwise ordered by this Court.

#### **IV. TRANSFER OF CUSTOMER LISTS**

IT IS FURTHER ORDERED that the Defendant and his Representatives are hereby permanently restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person Defendant knows or should have known paid any money to Defendant at any time prior to entry of this Order, in connection with the advertising, promotion, offering for sale or sale of any bulk email software, bulk email product, bulk email service or bulk email marketing program, or any other Business Opportunity;



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

**V. ACKNOWLEDGMENT OF RECEIPT  
OF ORDER BY DEFENDANT**

IT IS FURTHER ORDERED that within ten (10) business days of receipt of this Order as entered by the Court, Defendant shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order.

**VI. DISTRIBUTION OF ORDER BY DEFENDANT**

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendant shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer and director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, within five (5) business days after receipt of this Order, and thereafter immediately upon employing any such person, for any business that Defendant directly or indirectly manages, controls, or has a majority ownership interest in, that is engaged in the sale or distribution of any bulk email software, bulk email product, bulk email service or bulk email marketing program, or any other Business Opportunity, or assisting others engaged in these activities; and

B. Maintain for a period of three (3) years after creation, and upon reasonable notice make available to representatives of the Commission, the original signed and dated

acknowledgments of receipt of copies of this Order, as required in Subsection A of this Section

VI.

### VII. COMPLIANCE REPORTING BY DEFENDANT

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

A. For a period of three (3) years after the date of entry of this Order, the Defendant shall notify the Commission in writing of the following:

1. Any changes in the residence, mailing addresses and telephone numbers of the Defendant, within thirty (30) days of the date of such change;
2. Any changes in the employment status (including self-employment) of the Defendant, within thirty (30) days of such change. Such notice shall include the name and address of each business of the nature covered by this Order that the Defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of the Defendant's duties and responsibilities in connection with the business or employment;
3. Any proposed change in the structure of any business entity of the nature covered by this Order that the Defendant directly or indirectly manages, controls or has a majority ownership interest in, such as creation, incorporation, dissolution, assignment, sale, creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this Order, thirty (30) days after the effective date of any such change;

B. One hundred eighty (180) days after the date of entry of this Order, Defendant shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which the Defendant has complied and is complying with this Order. This report shall include:

1. Defendant's then current residence address, mailing addresses and telephone numbers;
2. Defendant's then current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and the Defendant's title and responsibilities for each such employer or business;
3. A copy of each acknowledgment of receipt of this Order obtained by the Defendant pursuant to Section VI; and
4. A statement describing the manner in which the Defendant has complied and is complying with Section I of this Order;

C. Upon written request by a representative of the Commission, for a period of three (3) years from the date of this Order, Defendant shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct that is subject to this Order;

D. For the purposes of this Order, Defendant shall, unless otherwise directed by a representative of the Commission, identify all written notifications to the FTC as provided in reference to Richard Jon Scott, Eastern District of California, [Case No. FTC 0223031] and mail them to:

Eileen Harrington, Associate Director  
Federal Trade Commission

600 Pennsylvania Ave. N.W - Rm. H-238  
Washington, DC 20580

E. For the purposes of this Section, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom the Defendant performs services as an employee, consultant, or independent contractor; and

F. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with Defendant, subject to the Commission's simultaneous provision of any communication with Defendant to Defendant's counsel identified below.

#### **VIII. MONITORING COMPLIANCE OF SALES PERSONNEL**

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of this Order, in connection with any business that Defendant directly or indirectly manages, controls or has a majority ownership interest in, that is engaged in the sale or distribution of any bulk email software, bulk email product, bulk email service or bulk email marketing program, or any other Business Opportunity, or assisting others engaged in these activities, Defendant and his Representatives are hereby restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Section I of this Order. Such steps shall include random monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following:

1. Listening to the oral representations made by persons engaged in sales or other customer service functions;
  2. Establishing or continuing a procedure for receiving and responding to consumer complaints; and
  3. Ascertaining or continuing to ascertain the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;
- B. Failing promptly to investigate fully any consumer complaint received by any business to which this Section applies; and
- C. Failing to take corrective action with respect to any sales person whom the Defendant or his Representative determines is not complying with this Order, which may include training, disciplining, and/or terminating such sales person;

*Provided, however,* that this Section VIII does not authorize or require Defendant to take any action that violates any federal, state, or local law.

#### **IX. RECORD-KEEPING PROVISIONS**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, in connection with any business that Defendant directly or indirectly manages, controls or has a majority ownership interest in, that is engaged in the sale or distribution of any bulk email software, bulk email product, bulk email service or bulk email marketing program, or any other Business Opportunity, or assisting others engaged in these activities, Defendant and his Representatives are hereby restrained and enjoined from ceasing or failing to create and maintain for a period of three (3) years following the date of their creation, unless otherwise specified:

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

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

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

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

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

#### **X. ACCESS TO BUSINESS PREMISES**

IT IS FURTHER ORDERED that for a period of three (3) years from the date of entry of this Order, for the purposes of determining or securing compliance with its provisions, the Defendant and his Representatives shall grant to representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any business space (not including any space that is used by Defendant or his family primarily as residential living quarters) where documents are stored of any business that the Defendant directly or indirectly manages, controls, or has a majority ownership interest in, that is engaged in the sale or distribution of any bulk

email list, bulk email software, bulk email product, bulk email service or bulk email marketing program, or any other Business Opportunity, or assisting others engaged in such activities. In providing such access, Defendant shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit representatives of the Commission to remove such documents for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

B. The opportunity to interview, without restraint or interference, officers, directors, employees, contractors, and agents, including all personnel involved in responding to consumer complaints or inquiries and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subsection A of this Section applies, regarding compliance with the provisions of this Order. Any person interviewed may have counsel present.

*Provided, however,* that the foregoing does not restrict the Commission from seeking additional relief from the Court in connection with this Order for good cause shown.

#### **XI. AUTHORITY TO MONITOR COMPLIANCE**

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

A. The Commission is authorized, without further leave of Court, to obtain discovery from any person (including Defendant) in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendant's compliance with any provision of this Order.

B. The Commission is authorized to use representatives posing as consumers or suppliers to Defendant, Defendant's employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice; and

C. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate whether Defendant has violated any provision herein or Section 5 of the FTC Act, 15 U.S.C. § 45, or any applicable rule or regulation promulgated and enforced by the Commission.

#### **XII. FEES AND COSTS**

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

#### **XIII. RETENTION OF JURISDICTION**

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders and directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith, or for the punishment of violations thereof.



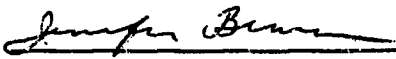
**XIV. COMPLETE SETTLEMENT**

The parties, by their respective counsel, hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of this action.

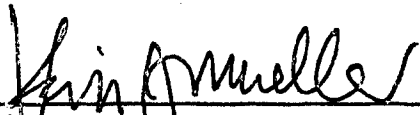
FOR THE PLAINTIFF:

William E. Kovacic  
General Counsel

FOR THE DEFENDANT:

  
Jennifer Mandigo Brennan, Attorney  
Federal Trade Commission  
600 Pennsylvania Ave. N.W. - Rm. 238  
Washington, D.C. 20580

Dated: September 26, 2002

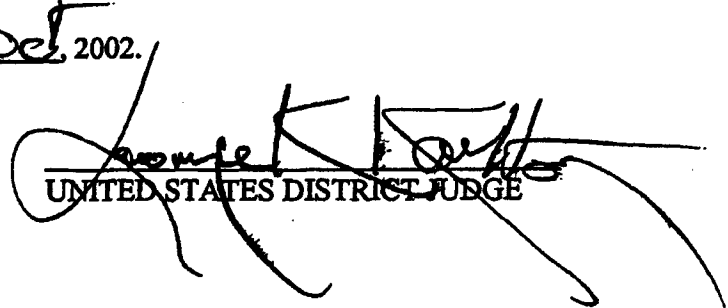
  
Kim J. Mueller  
Counsel for defendant Richard Jon Scott

Dated: May 10, 2002

  
Richard Jon Scott

Dated: May 10, 2002

SO ORDERED this 2 day of Oct, 2002.

  
UNITED STATES DISTRICT JUDGE