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ORIGINAL
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JUL 25 2003
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

7 Thomas J. Syta
8 Cal. Bar No. 116286
9 Federal Trade Commission
10 10877 Wilshire Blvd., Ste. 700
Los Angeles, CA 90024
(310) 824-4324
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11 ATTORNEYS FOR PLAINTIFF
12 FEDERAL TRADE COMMISSION

13 *[Signature]*
14 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

15 FEDERAL TRADE COMMISSION,

16 Plaintiff

17 v.

18 *[Redacted]* a minor, also

19 known as *[Redacted]*

20 by his parent *[Redacted]*,

21 Defendant.

03 - 5275

CV No.

GHK (RZX)

~~Proposed~~ STIPULATED
FINAL JUDGMENT AND
ORDER FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF

22 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed its
23 complaint for permanent injunction and other relief ("Complaint"), pursuant to
24 Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.
25 § 53(b), and Section 522(a) of the Gramm-Leach-Bliley Act ("GLB Act"), 15
26 U.S.C. § 6822(a), charging Defendant *[Redacted]*, also known as *[Redacted]*, a
27 minor, by his parent *[Redacted]*, with violations of Section 5(a) of the FTC Act,
28

5

1 15 U.S.C. § 45(a), and Section 521 of the GLB Act, 15 U.S.C. § 6821.

2 The parties have agreed to the entry of this Stipulated Final Judgment and
3 Order for Permanent Injunction and Other Equitable Relief ("Order") by this Court
4 to resolve all matters of dispute between them in this action. THEREFORE, on
5 the joint motion of Plaintiff and Defendant, **IT IS HEREBY ORDERED,**
6 **ADJUDGED, AND DECREED** as follows:

7 **FINDINGS**

8 1. This Court has jurisdiction over the subject matter and the parties.

9 2. Venue is proper as to all parties in the Central District of California
10 under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).

11 3. Defendant has been properly served.

12 4. The Complaint states a claim upon which relief may be granted
13 against Defendant under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C.
14 §§ 45(a) and 53(b), and Sections 521 and 522(a) of the GLB Act, 15 U.S.C.
15 §§ 6821 and 6822(a).

16 5. The activities of Defendant are in or affecting commerce, as
17 "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

18 6. Entry of this Order is in the public interest.

19 7. Defendant has entered into this Order freely and without coercion,
20 and both he and his parent [REDACTED], have read and understood the provisions
21 of this Order.

22 8. Defendant waives any and all rights concerning the prosecution of
23 this action that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412,
24 and Defendant further waives any and all rights to attorneys fees that may arise
25 under said provision of law.

26 9. The Commission and Defendant have agreed that the entry of this
27 Order resolves all matters of dispute between them arising from the Complaint in
28 this action, up to the date of entry of this Order.

1 10. The Commission and Defendant waive all rights to seek appellate
2 review or otherwise challenge or contest the validity of this Order, and Defendant
3 further waives and releases any claim against the Commission or its employees,
4 agents, or representatives.

5 11. This Order is for settlement purposes only and does not constitute,
6 and shall not be interpreted to constitute, an admission by Defendant that he has
7 engaged in violations of any law or regulation, including but not limited to
8 violations of the FTC Act; or, except as provided in Paragraph G of Section VI
9 below, that the facts alleged in the Complaint are true.

10 **ORDER**

11 **DEFINITIONS**

12 For the purposes of this Order, the following definitions shall apply:

13 1. "Defendant" means [REDACTED], also known as [REDACTED]

14 2. "Plaintiff" means the Federal Trade Commission.

15 3. "Person" means any natural person, organization, or other legal
16 entity, including but not limited to a corporation, partnership, proprietorship,
17 association, cooperative, or any other group or combination acting as an entity.

18 4. A "material fact" is any fact likely to affect a person's choice of, or
19 conduct regarding, the purchase of goods or services and/or the disclosure of
20 personal or financial information.

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

27 6. "Unsolicited commercial email" means an electronic mail message
28 that consists of or contains a communication advertising, promoting, soliciting,

1 offering, or offering to sell any product or service, or soliciting for consumers'
2 personal or financial information; and that is not requested by the addressee or
3 recipient or sent pursuant to a pre-existing business or personal relationship
4 between the sender and the addressee or recipient of the email.

5 7. "Customer information of a financial institution" is synonymous in
6 meaning and equal in scope to the usage of the term in Section 527(2) of the GLB
7 Act, 15 U.S.C. § 6827(2).

8 8. The words "and" and "or" shall be understood to have both
9 conjunctive and disjunctive meanings.

10 I.

11 **BAN REQUIREMENTS**

12 **IT IS THEREFORE ORDERED** that in connection with the solicitation
13 of consumers for personal or financial information or in the promotion,
14 advertising, marketing, sale, or offering for sale of any product or service,
15 Defendant is hereby permanently restrained and enjoined from the sending of
16 unsolicited commercial email.

17 II.

18 **INJUNCTION AGAINST MISREPRESENTATIONS**

19 **IT IS FURTHER ORDERED** that in connection with the solicitation of
20 consumers for personal or financial information or in the promotion, advertising,
21 marketing, sale, or offering for sale of any product or service, Defendant and his
22 agents, assigns, servants, employees, salespersons, and all other persons or entities
23 directly or indirectly under his control, and all other persons or entities in active
24 concert or participation with him who receive actual notice of this Order by
25 personal service or otherwise, whether acting directly or through any corporation,
26 subsidiary, division, or other device, are hereby permanently restrained and
27 enjoined from:

28 A. Making, or materially assisting in the making of, any statement or

1 representation of material fact that is false or misleading, whether directly or by
2 implication, orally or in writing, including, but not limited to, any false or
3 misleading representation that:

4 1. Defendant or his agents are affiliated with, are agents of, or are
5 authorized to act on behalf of any person or entity, including, but not limited to
6 any representation that Defendant or his agents are affiliated with, are agents of, or
7 are authorized to act on behalf of a consumer's Internet service provider, such as
8 America Online, Inc., or a provider of any Internet account, including any provider
9 of online payment services or online auction services, such as PayPal, Inc. and/or
10 Ebay, Inc.;

11 2. Defendant or his agents have any kind of pre-existing
12 relationship with a consumer;

13 3. A consumer's Internet service account or any other Internet
14 accounts held by a consumer may be terminated if the consumer does not respond
15 to a solicitation from Defendant or his agents;

16 4. A consumer must provide personal and/or financial information
17 to Defendant or his agents to avoid termination of the consumer's Internet service
18 account or any other Internet account;

19 5. Defendant or his agents have authorization to place orders for
20 goods or services using another person's credit card, debit card, and/or other
21 financial information; and

22 6. Defendant or his agents have authorization to establish credit
23 card or other accounts using another person's name.

24 B. Sending or causing to be sent any email or other electronic message
25 via the Internet that misrepresents the identity of the sender (*e.g.*, falsifying
26 information in the "from" line of an email) or the subject of the email or message
27 (*e.g.*, falsifying the information contained in the "subject" line of the email).

28 C. Creating, registering, promoting, operating, posting, and/or

1 maintaining any web page, website, chat room, Internet Relay Chat Channel, or
2 other source of information on the Internet that misrepresents the identity of its
3 host, sponsor, creator, or operator.

4 D. Using another person's personal and/or financial information to
5 purchase goods or services and/or establish credit card and/or other financial
6 accounts in a consumer's name without that person's express authorization.

7 **III.**

8 **INJUNCTION AGAINST GLB ACT VIOLATIONS**

9 **IT IS FURTHER ORDERED** that in connection with the solicitation of
10 consumers for personal or financial information or in the promotion, advertising,
11 marketing, sale, or offering for sale of any product or service, Defendant and his
12 agents, assigns, servants, employees, salespersons, and all other persons or entities
13 directly or indirectly under his control, and all other persons or entities in active
14 concert or participation with him who receive actual notice of this Order by
15 personal service or otherwise, whether acting directly or through any corporation,
16 subsidiary, division, or other device, are hereby permanently restrained and
17 enjoined from obtaining or attempting to obtain "customer information of a
18 financial institution" including, but not limited to, credit or debit card account
19 numbers, bank account numbers, bank routing numbers, personal identification
20 numbers ("PIN numbers"), and/or the three-digit card verification numbers on the
21 back of credit and debit cards ("civ/cvv numbers"), by making false, fictitious,
22 and/or fraudulent statements or representations to financial institutions or
23 customers of financial institutions.

24 **IV.**

25 **COOPERATION PROVISIONS**

26 **IT IS FURTHER ORDERED** that Defendant hereby agrees to cooperate
27 fully, truthfully, and completely with the Commission in the identification and
28 location of individuals or entities involved in the acts and practices alleged in the

1 Commission's Complaint. This cooperation includes, but is not limited to, the
2 production of such information and documents as will allow the Commission to
3 identify and locate those individuals or entities and to determine the extent of their
4 involvement.

5 V.

6 CUSTOMER INFORMATION

7 **IT IS FURTHER ORDERED** that:

8 A. Defendant, and his agents, assigns, servants, employees, salespersons,
9 and all other persons or entities directly or indirectly under his control, and all
10 other persons or entities in active concert or participation with him who receive
11 actual notice of this Order by personal service or otherwise, whether acting
12 directly or through any corporation, subsidiary, division, or other device, are
13 hereby permanently restrained and enjoined from directly or indirectly using,
14 selling, renting, leasing, transferring, or otherwise disclosing any personal or
15 financial information, including the name, address, telephone number, social
16 security number, date of birth, driver's license number, mother's maiden name,
17 credit or debit card account number, bank account number, bank routing number,
18 bank name, email address, PIN number, civ/cvv numbers, or password of any
19 person other than Defendant that was in Defendant's possession at any time prior
20 to the entry of this Order; **PROVIDED**, however, that Defendant shall transfer a
21 true, correct, and complete copy of all such personal or financial information in his
22 or his agents' possession to the Commission within five (5) business days after
23 receipt of this Order as entered by the Court; **PROVIDED FURTHER** that
24 nothing in this order shall prevent Defendant from transferring a true, correct, and
25 complete copy of such identifying information to other law enforcement agencies
26 as permitted or required by any law, regulation, judicial process, or court order.

27 B. Defendant shall destroy all originals and all copies in his or his
28 agents' possession of such personal or financial information described in

1 Paragraph A of this Section, no later than five (5) business days after receipt of
2 this Order as entered by the Court.

3 **VI.**

4 **EQUITABLE MONETARY RELIEF**

5 **IT IS FURTHER ORDERED** that

6 A. Judgment is hereby entered against Defendant and in favor of
7 Plaintiff in the amount of seven thousand nine hundred and thirty-two dollars and
8 eighty-three cents (\$7,932.83), for consumer redress pursuant to Section 13(b) of
9 the FTC Act, 15 U.S.C. § 53(b), and Section 522(a) of the GLB Act, 15 U.S.C.
10 § 6822(a). However, this judgment shall be stayed and the Commission shall
11 consider this judgment satisfied provided that Defendant pays the Commission
12 three thousand and five hundred dollars (\$3,500.00). Defendant hereby forfeits all
13 rights to and agrees to make no attempt to obtain the Sager laptop computer seized
14 from his residence at [REDACTED] on
15 December 19, 2002, by the Federal Bureau of Investigation. This forfeiture
16 thereby results in a \$2,100.00 credit toward the payment required to satisfy the
17 judgment, leaving a payment balance due of one thousand and four hundred
18 dollars (\$1,400.00) to the Commission.

19 B. Defendant has placed one thousand and four hundred dollars
20 (\$1,400.00) into a Trust Account at the Law Offices of Mark J. Werksman, 801
21 South Figueroa Street, 11th Floor, Los Angeles, CA 90017, to be held and
22 transferred to the Commission within three (3) days after entry of this Order in
23 satisfaction of the amount due stated above. Any additional payments required by
24 this Section shall be made in U.S. funds by certified or cashier's check, made
25 payable to the Federal Trade Commission, and delivered to the Associate Director
26 of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue
27 NW, Room 238, Washington, D.C. 20580.

28 C. All funds paid pursuant to this Section shall be deposited into a fund

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

11 D. The Commission's agreement to this Order providing that Defendant
12 not have to pay the judgment amount is expressly, reasonably, and materially
13 premised upon the truthfulness, accuracy, and completeness of the financial
14 statements submitted to the Commission and signed under penalty of perjury by
15 Defendant and [REDACTED] in his capacity as Defendant's father, dated June 10,
16 2003.

17 E. If, upon motion by the Commission, this Court finds that Defendant
18 has failed to disclose any material asset or materially misrepresented the value of
19 any asset, or has made any other material misrepresentation or omission, in the
20 financial statements described in this Section, or makes any attempt to obtain the
21 computer forfeited in this Section, the stay shall be lifted and Defendant shall
22 immediately pay the full redress amount of \$7,932.83, less any actual payments
23 made.

24 F. In accordance with 31 U.S.C. § 7701, Defendant is hereby required,
25 unless he has done so already, to furnish to the Commission all his taxpayer
26 identifying numbers, including his Social Security and employer identification
27 numbers, which shall be used for purposes of collecting and reporting on any
28 delinquent amount arising out of Defendant's relationship with the government.

1 G. Defendant agrees that the facts as alleged in the Complaint filed in
2 this action and the amount of consumer harm represented by the amount of the
3 consumer redress award in this Section shall be taken as true in any subsequent
4 litigation filed by the Commission to enforce its rights pursuant to this Order,
5 including but not limited to a non-dischargeability complaint arising in any
6 bankruptcy case to which Defendant is a party, and Defendant expressly waives
7 any and all rights to contest such allegations in such litigation.

8 H. Proceedings instituted under this Section are in addition to, and not in
9 lieu of, any other civil or criminal remedies that may be provided by law,
10 including any other proceedings that the Commission may initiate to enforce this
11 Order.

12 VII.

13 COMPLIANCE REPORTING BY DEFENDANT

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

16 A. For a period of five (5) years from the date of entry of this Order,
17 Defendant shall notify the Commission of the following:

18 1. Any changes in Defendant's residence, mailing addresses, and
19 telephone numbers, within ten (10) days of the date of such change;

20 2. Any changes in Defendant's employment status (including
21 self-employment) within ten (10) days of the date of such change. Such notice
22 shall include the name and address of each business that Defendant is affiliated
23 with, employed by, or performs services for; a statement of the nature of the
24 business; and a statement of Defendant's duties and responsibilities in connection
25 with the business; and

26 3. Any changes in Defendant's name or use of any aliases or
27 fictitious names;

28 B. One hundred eighty (180) days after the date of entry of this Order,

1 Defendant shall provide a written report to the FTC, sworn to under penalty of
2 perjury, setting forth in detail the manner and form in which he has complied and
3 is complying with this Order. This report shall include, but not be limited to:

4 1. Any changes required to be reported pursuant to Paragraph A
5 above;

6 2. A copy of each acknowledgment of receipt of this Order
7 obtained by Defendant pursuant to Section IX;

8 3. A list of all electronic mail or instant message addresses he has
9 created, registered, or used since the entry of the Order and all websites and/or
10 domain names he has registered, created, posted or maintained since the entry of
11 the Order;

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

15 Associate Director
16 Division of Marketing Practices
17 Federal Trade Commission
18 600 Pennsylvania Avenue, N.W., H-238
19 Washington, D.C. 20580
20 RE: FTC v. [REDACTED]

21 D. For purposes of the compliance reporting required by this Section, the
22 Commission is authorized to communicate directly with Defendant.

23 VIII.

24 RECORD-KEEPING PROVISIONS

25 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the
26 date of entry of this Order, Defendant, when acting in an individual capacity, or in
27 connection with any entity in which Defendant has an ownership interest, or is a
28 director, officer (or comparable position with a non-corporate entity), or is a
person who formulates policies or procedures, in connection with the offering for
sale, sale, promotion, or marketing of any product or service or the solicitation of

1 information from consumers, is hereby restrained and enjoined from failing to
2 create and retain the following records:

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

5 B. Personnel records accurately reflecting: the name, address, and
6 telephone number of each person employed in any capacity, including as an
7 independent contractor, that person's job title or position, the date upon which the
8 person commenced work, and the date and reason for the person's termination, if
9 applicable;

10 C. Records containing the names, addresses, phone numbers, any dollar
11 amounts paid, the quantity of any items or services purchased, and a description of
12 items or services purchased, to the extent such information is obtained in the
13 ordinary course of business;

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

16 E. Domain registration and website and/or web page registration records
17 accurately reflecting: all domain names and websites and/or web pages registered
18 or maintained, and the name and address of the Domain Name Registrars and/or
19 the companies hosting such websites and/or pages;

20 F. Records relating to all ventures undertaken that involve the sale of
21 goods or services on the Internet and/or the solicitation of consumers for personal
22 and/or financial information on the Internet, including, but not limited to, copies
23 of all contracts or agreements with any sales company, Internet service provider,
24 web hosting company, telephone company, or other person or entity that advertises
25 or promotes goods or services, as well as copies of all advertisements, web pages,
26 websites, commercial electronic mail, or promotional materials utilized in such
27 ventures.

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1 IX.

2 **DISTRIBUTION OF ORDER BY DEFENDANT**

3 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the
4 date of entry of this Order, Defendant shall deliver a copy of this Order to, and
5 obtain a signed and dated acknowledgment of receipt of the Order from i) his
6 supervisor and/or manager, and/or ii) each agent or employee under Defendant's
7 control, for any business that employs or contracts with Defendant where such
8 employment or contractual relationship permits Defendant to have access to any
9 customer information, whether personal or financial. Defendant shall secure from
10 each such person a signed and dated statement acknowledging receipt of the Order
11 within thirty (30) days after the date of service of the Order or the commencement
12 of the employment relationship. Defendant shall maintain for a period of five (5)
13 years after creation, and upon reasonable notice make available to representatives
14 of the Commission, the original signed and dated acknowledgments of receipt of
15 copies of this Order, as required in this Section.

16 X.

17 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

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

21 XI.

22 **COMPLIANCE MONITORING**

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

25 A. Within ten (10) days of receipt of written notice from a representative
26 of the Commission, Defendant shall submit additional written reports, sworn to
27 under penalty of perjury; produce documents for inspection and copying; appear
28 for deposition; and provide entry during normal business hours to any business

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

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

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

8 2. Posing as consumers and suppliers to: Defendant, Defendant's
9 employees, or any other entity managed or controlled in whole or in part by
10 Defendant, without the necessity of identification or prior notice;

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

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

20 **XII.**

21 **AFFECT OF EXPIRATION OF PARTS OF THE ORDER**

22 **IT IS FURTHER ORDERED** that the expiration of any requirement
23 imposed by this Order shall not affect any other obligation arising under this
24 Order.

25 **XIII.**

26 **RETENTION OF JURISDICTION**

27 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of
28 this matter for the purposes of construction, modification and enforcement of this

3003

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07/21/03 09:22:44PM

1 Order.

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3 SO ORDERED, this 21st day of July, 2003, at Los Angeles, Ca.

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United States District Judge

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The parties hereby stipulate and agree to the terms and conditions of the Order, as set forth above, and consent to the entry thereof.

10

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Dated: 7/23/03

FOR THE COMMISSION

Eric A. Wenger

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Patricia Poss
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Dated: 07-03-03

FOR DEFENDANT

[Redacted signature block] 7/21/03

by his parent

Dated: 07-03-03

[Redacted signature block] 07/02/03

Defendant

7/18/03

1 Dated:

6/27/03

Steve Meister, Esq.
Law Offices of Mark J. Werksman
801 South Figueroa Street, 11th Floor
Los Angeles, CA 90017
Telephone: 213-688-0460
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Attorney for Defendant

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