IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

STATE OF TEXAS,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	A07CA465 SS
	§	Civil Action No._____
ALONZO VILLANUEVA	§	
	§	
Defendant.	§	

STIPULATED FINAL JUDGMENT AND ORDER FOR A PERMANENT INJUNCTION

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

On this date, came on for hearing the above-entitled and numbered cause in which the STATE OF TEXAS ("State"), acting by and through Attorney General of Texas, GREG ABBOTT, ("Plaintiff"), and ALONZO VILLANUEVA ("Defendant.") Plaintiff and Defendant agree to the entry of this STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION ("ORDER").

I.
FINDINGS

The Court, by stipulation of the Parties makes the following findings:

1.1. The State has filed its complaint pursuant to the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. § 7701 *et seq.* ("Can Spam Act"), the Texas Electronic Mail Solicitation Act, Tex. Bus. & Com. Code § 46.001 *et seq.* (Vernon Supp. 2006), and the Deceptive Trade Practices - Consumer Protection Act, Tex. Bus. & Com. Code § 17.41 *et seq.* (Vernon 2002 & Supp. 2006) ("DTPA"), and such complaint states claims upon which relief may be granted against Defendant;

1.2. Defendant is an individual who resides at 1318 Gardina Dr., Allen, Collin County, Texas 75002.

1.3. The parties have compromised and settled the State's claim for civil penalties and damages, investigative costs and attorneys fees, and injunctive relief;

1.4. The State and Defendant agree to and do not contest the entry of this Order against Defendant without the need for trial or adjudication of any issue of law or fact. Consent of the parties to this Judgment is neither an admission of liability by Defendant nor a concession by the State that its claims are not well founded. The State and Defendant enter into this Order freely and without coercion, and acknowledge that they understand the provisions of this Order and are prepared to abide by them;

1.5. Defendant has read the Order and agrees to the entry of same;

1.6. This Court has jurisdiction over the subject matter of this case and over Defendant Villanueva;

1.7. Venue in this district is proper under 28 U.S.C. §1391(b) and 47 U.S.C. § 227(f)(4);

1.8. Defendant waives any right that he may have to appeal from this Order;

1.9. Defendant agrees that he will not oppose entry of this Order on the grounds that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objections;

1.10. This Order in no way affects any individual's right of action under the CAN-SPAM Act, the DTPA, or any other law.

1.11. The Court has read the pleadings and stipulations of the parties, and it appears to

the Court that all parties agree to the entry of this judgment and that they have approved its entry as indicated by the signatures of the parties and their attorneys below.

II.
DEFINITIONS

2.1. **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that, as used in this Judgment, the following definitions shall apply:

A. "Internet Service Provider" or "ISP" means any person or entity which acts as an intermediary in sending or receiving electronic mail and which provides an end user of an electronic mail service the ability to send or receive electronic mail;

B. "Zombie" means a computer that, without the knowledge and consent of the computer's owner or operator, has been compromised to give access or control to a program or person other than the computer's owner or operator; and

C. "Botnet" means a collection of Zombies;

III.
PROHIBITED CONDUCT

A. "SPAM"

3.1. **IT IS ORDERED, ADJUDGED AND DECREED** that Defendant and his officers, agents, servants, employees, attorneys, and any other persons or entities in active concert or participation with Defendant, shall be permanently enjoined from directly or indirectly:

A. Creating, registering, or maintaining any e-mail account, Internet Protocol ("IP") address, web site, or Internet domain by providing false or misleading information to any provider of such services, or to any domain-name or IP address registering authority or entity;

B. Sending or transmitting, or directing, aiding, facilitating, offering, or conspiring with another to send or transmit any commercial e-mail or commercial electronic

communication bearing false, fraudulent, anonymous, inactive, deceptive, incomplete, missing, or invalid header information, including without limitation use of the names of fictitious persons in the "from" or "reply to" lines of the header, false IP addresses or other false routing information;

C. Sending or transmitting, or directing, aiding, facilitating, offering, or conspiring with another to send or transmit any commercial e-mail or other commercial electronic communication of any kind, to or through an ISP in a manner designed to evade such an ISP's anti-spam filtering and blocking processes, or to obscure Defendant's connections to the transmission or to the products or services advertised or promoted therein;

D. Sending or transmitting, or directing, aiding, facilitating, offering, or conspiring with another to send or transmit any commercial e-mail or commercial electronic communication without providing within the body of the message a legal (not fictional) name of the actual sender of the e-mail or communication, or the person or entity directing, soliciting, contracting, or otherwise paying for the distribution of the commercial e-mail or electronic communication;

E. Sending or transmitting, or directing, aiding, facilitating, offering, or conspiring with another to send or transmit any commercial e-mail, or commercial electronic communication, without providing within the body of the message a "valid physical postal address," meaning either (a) the geographic street address where the sender conducts its actual business operations (e.g., principal place of business); or (b) as to a corporation, the corporation's designated address for

accepting service of process;

F. Sending or transmitting, or directing, aiding, facilitating, offering, or conspiring with another to send or transmit any commercial e-mail or electronic communication with false or misleading subject lines;

G. Sending or transmitting, or directing, aiding, facilitating, offering, or conspiring with another to send or transmit any commercial e-mail or electronic communications without a valid "reply to" e-mail address or other Internet-based mechanism, clearly and conspicuously displayed, that a recipient could use to submit a request not to receive future commercial electronic mail messages;

H. Sending or transmitting, or directing, aiding, facilitating, offering, or conspiring with another to send or transmit any commercial e-mail or electronic communication without the clear and conspicuous disclosure that such e-mail or electronic communication is an advertisement or solicitation;

I. Sending or transmitting, or directing, aiding, facilitating, offering, or conspiring with another to send or transmit any electronic communication of any kind, to or through an ISP in a manner that does not fully comply with all then-publicly available e-mail policies published by such ISP;

J. Using or directing, aiding, facilitating, offering, or conspiring with another to use another computer (e.g. "proxy" or "open-relay") to hide, mask, change, evade, or obscure an IP address or other network information in connection with the transmission or sending of a commercial e-mail or an electronic communication; and

K. Using, transmitting, selling, leasing, or trading, or offering to do the same, any e-mail address belonging to a person who has previously elected to opt-out of receiving future commercial e-mail messages or electronic communications.

B. "BOTNETS"

3.2. **IT IS FURTHER ORDERED** that Defendant, and his officers, agents, servants, employees, attorneys, and any other persons or entities in active concert or participation with Defendant, shall be permanently enjoined from directly or indirectly:

A. Sending or transmitting, directing, aiding, facilitating, offering, or conspiring with another to copy and execute, or cause the copying and execution of, a computer software component to another's computer without that person's full knowledge and consent;

B. Causing or directing, aiding, facilitating offering, or conspiring with another to cause a computer to become a zombie or part of a botnet;

C. Selling, leasing, offering to sell or lease, or otherwise provide to another person access to or use of a zombie or botnet;

D. Using or directing, aiding, facilitating, offering, or conspiring with another to use a zombie or botnet for any purpose, including to:

(i) send an unsolicited commercial electronic mail message;

(ii) attack another computer, computers, or computer network that causes a loss of service to users;

(iii) distribute or forward computer software designed to damage or disrupt another computer or system;

(iv) collect personally identifiable information;

(v) manipulate online polls, games, or advertisements.

C. TEMPORARY SUSPENSION OF INJUNCTIVE TERMS FOR PURPOSES OF ASSISTING LAW ENFORCEMENT EXCEPTION

3.3. The above injunctive terms do not apply in the limited instance where the Defendant is acting as an agent and under the express direction of law enforcement in an undercover capacity for a specific duration, scope, and limited purpose. In such cases, the Defendant shall obtain written proof from law enforcement detailing the duration, scope, and limited purpose of such an undercover detail. All other injunctive terms, not directly related to the duties of the Defendant as an agent and under the express direction of law enforcement in an undercover capacity, apply.

IV.
MONETARY JUDGMENT

4.1. **IT IS FURTHER ORDERED** that Judgment is entered in favor of Plaintiff in the amount of Five Thousand and No/100 Dollars ($5,000.00) as reimbursement of Plaintiff's investigative costs and attorneys' fees. The Defendant may make the monetary payment in one thousand dollar ($1,000) installments in the five months following the signing of this Order. Each installment payment shall be paid no later than the last day of each respective month. Defendant shall make such payments by cashier's checks or certified money orders which shall bear the Attorney General case number 052216629 on their face, and shall be sent to the Office of the Attorney General, Consumer Protection Division, Post Office Box 12548, Austin, Texas 78711-2548.

4.2. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the

penalties owed by Defendant are payable to and for the benefit of a governmental unit and they are not compensation for actual pecuniary loss.

4.3 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that all costs herein shall be assessed to the parties who have previously paid them.

4.4. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that all relief not granted herein is hereby denied.

SIGNED AND ENTERED this _____ day of _____, 2007.

_____
UNITED STATES DISTRICT JUDGE

AGREED this _____day of _____, 2007.

GREG ABBOTT
Attorney General of Texas

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First Assistant Attorney General

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