

1 1.6 Attorney for Defendant: Edward Odesser
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3 Plaintiff, State of Washington, having commenced this action on January 24, 2006,
4 pursuant to the Controlling the Assault of Non-Solicited Pornography and Marketing Act
5 (“CAN-SPAM Act”), 15 U.S.C. § 7701, et seq.; RCW 19.86, the Unfair Business Practices –
6 Consumer Protection Act (“CPA”); RCW 19.190, the Unsolicited Commercial Electronic
7 Mail Act (“UCE”); and RCW 19.270, the Computer Spyware Act; and Defendant Gary Preston
8 having been personally served with copies of the Summons and Complaint on February 10,
9 2006;

10 Plaintiff having appeared by and through its attorneys, Rob McKenna, Attorney
11 General; Paula Selis, Senior Counsel; and Katherine M. Tassi, Assistant Attorney General;
12 and Defendant having appeared through his counsel, Edward Odesser;

13 Plaintiff and Defendant having agreed on a basis for the settlement of the matters
14 alleged in the Complaint, and to the entry of this Consent Decree (hereinafter referred to as
15 “Decree”) against Defendant without the need for trial or adjudication of any issue of law or
16 fact; and

17 Defendant recognizes and states that this Decree is entered into voluntarily and that no
18 promises or threats have been made by the Attorney General’s Office or any member, officer,
19 agent or representative thereof to induce them to enter into this Consent Decree, except as
20 provided herein; and

21 Defendant further agrees that it will not oppose the entry of this Consent Decree on the
22 grounds the Consent Decree fails to comply with Rule 65(d) of the Federal Rules of Civil
23 Procedure, and hereby waives any objections based thereon; and

24 Defendant waives any right it may have to appeal from this Consent Decree; and
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1 Plaintiff and Defendant having agreed that this Consent Decree does not constitute
2 evidence or an admission regarding the existence or non-existence of any issue, fact, or violation
3 of any law alleged by Plaintiff; and

4 Defendant further agrees that this Court shall retain jurisdiction of this action for the
5 purpose of implementing and enforcing the terms and conditions of the Consent Decree and for
6 all other purposes; and

7 The Court having determined there is no just reason for delay in the entry of this
8 Decree against Defendant, and being fully advised,

9
10 **NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED** as
11 follows:

12 **II. GENERAL**

13 2.1 The Court has jurisdiction of the subject matter of this action and of the parties
14 hereto pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367, and Plaintiff’s Complaint states
15 claims upon which relief may be granted under the provisions of Chapter 19.270 RCW, the
16 Computer Spyware Act and Chapter 19.86 RCW, the Unfair Business Practices-Consumer
17 Protection Act. Venue in this district is proper under 28 U.S.C. § 1391. A substantial portion of
18 the acts complained of herein have occurred in King County and elsewhere in the Western
19 District of Washington.

20 2.2 Unless otherwise specified, the term “Defendant” as used in this document
21 shall mean Gary Preston individually.

22 2.3 Defendant was served with a copy of the Summons and Complaint on February
23 10, 2006.

24 **III. INJUNCTIONS**

25 3.1 The injunctive provisions of this Consent Decree shall apply to the Defendant, and
26 the Defendant’s successors, assigns, officers, agents, servants, employees, representatives, and all

1 other persons or entities in active concert or participation with the Defendant that the Defendant
2 controls or directs.

3 3.2 Defendant shall immediately inform all successors, assigns, transferees, officers,
4 agents, servants, employees, representatives, attorneys and all other persons or entities in active
5 concert or participation with defendant or with the corporations named as Defendant in the
6 Complaint of the terms and conditions of this Consent Decree.

7
8 3.3 Defendant and all successors, assigns, transferees, officers, agents, servants,
9 employees, representatives, attorneys and all other persons or entities in active concert or
10 participation with Defendant that are in the control of Defendant are hereby permanently enjoined
11 and restrained from directly or indirectly engaging in the following acts or practices:

12
13 1. Engaging in any conduct that violates RCW 19.86, the Unfair Business
14 Practices – Consumer Protection Act; and

15 2. Assisting another person or entity in disguising its identity from
16 consumers, businesses, the public, and/or law enforcement by means of permitting
17 another person or entity use of Defendant’s name or of Defendant’s credit card, or of
18 any other financial instrument, or by any other means, in the course of that person’s or
19 entity’s business.

20 **IV. ATTORNEY COSTS AND FEES**

21 4.1 Pursuant to RCW 19.86.090, Plaintiff shall recover and Defendant shall pay
22 costs and attorneys’ fees incurred in pursuing this matter in the amount of \$7,200.00. Interest
23 on any unpaid balance of this amount shall accrue in the amount of 12% per annum.

24 4.2 Defendant shall bear Plaintiff’s reasonable costs, including reasonable
25 attorneys’ fees, for enforcing this Decree in any successful action to enforce any of its
26 provisions.

1 4.3 All payments shall be made by cashier's check, made payable to the Attorney
2 General—State of Washington, and shall be delivered to the Office of the Attorney General,
3 900 Fourth Avenue, Suite 2000, Seattle, Washington 98164, to the attention of Cynthia
4 Lockridge.

5 **V. ENFORCEMENT**

6 5.1 Pursuant to RCW 19.86.140, any violation of the terms of this Decree may
7 form the basis for further enforcement proceedings.

8 5.2 The violation of any of the terms of this Decree shall constitute a violation of
9 the Consumer Protection Act, RCW 19.86 et seq.

10 5.3 Jurisdiction is retained for the purpose of enabling any party to this Decree,
11 with or without the prior consent or approval of the other party, to apply to the Court at any
12 time for the enforcement of compliance therewith, the punishment of violations thereof, or
13 the modification or clarification thereof.

14 5.4 Nothing in this Decree shall be construed as to limit or to bar any other
15 governmental entity or any other consumer in the pursuit of additional remedies against
16 Defendant.

17 5.5 Representatives of the Office of Attorney General shall be permitted, upon 10
18 days' notice to Defendant, to access, inspect, and/or copy all business records or documents
19 under the control of Defendant, in order to monitor compliance with the injunctive provisions
20 of this Decree.

21 5.6 Under no circumstances shall this Decree or the names of the State of
22 Washington or the Office of the Attorney General, Consumer Protection Division, or any of
23 its employees or representatives be used by Defendant's agents or employees in connection
24 with the promotion of any product or service or an endorsement or approval of Defendant's
25 practices.

26 **VI. DISMISSAL AND WAIVER OF CLAIMS**

1 6.1 Upon entry of this Consent Decree, all claims in this matter, not otherwise
2 addressed by this Consent Decree are dismissed with prejudice.

3 The Court finding no just reason for delay, hereby expressly directs entry of this
4 Decree.

5 SO ORDERED this 4th day of May, 2006.

6 

7 RICARDO S. MARTINEZ
8 UNITED STATES DISTRICT JUDGE

9 Presented by

10 ROB MCKENNA
11 Attorney General

12 _____
13 PAULA SELIS, WSBA #12823
14 Senior Counsel
15 paulas@atg.wa.gov

16 _____
17 KATHERINE M. TASSI #32908
18 Assistant Attorney General
19 katherinet@atg.wa.gov

20 Attorneys for Plaintiff, State of Washington
21 Office of the Attorney General of Washington
22 Consumer Protection Division
23 900 Fourth Avenue, Suite 2000
24 Seattle, Washington 98164-012
25 Phone: 206.464.7744
26 Facsimile: 206.587.5636

Agreed to, Approved for Entry
Notice of Presentation Waived:

23 _____
24 GARY PRESTON
25 Defendant

26 _____
EDWARD ODESSER
Attorney for Defendant

1 5.7 Pursuant to RCW 6.17.020, the provisions of this Consent Decree shall remain
2 in full force and effect for a ten-year period following its entry.

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6 addressed by this Consent Decree are dismissed with prejudice.

7 The Court finding no just reason for delay, hereby expressly directs entry of this
8 Decree.

9 SO ORDERED this ____ day of _____, 2006.

10
11 _____
12 JUDGE RICARDO S. MARTINEZ

13 Presented by

14 ROB MCKENNA
15 Attorney General

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17 PAULA SELIS, WSBA #12823
18 Senior Counsel
19 paulas@atg.wa.gov

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21 KATHERINE M. TASSI #32908
22 Assistant Attorney General
23 katherinet@atg.wa.gov

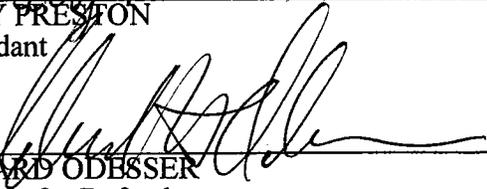
24 Attorneys for Plaintiff, State of Washington
25 Office of the Attorney General of Washington
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GARY PRESTON
Defendant



EDWARD ODESSER
Attorney for Defendant