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The Honorable Ricardo Martinez

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON,

NO. C04-2171RSM

Plaintiff,

STIPULATED JUDGMENT,
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
JUDGMENT AND DECREE AS
TO ARLENE SEDIQZAD A/K/A
ARELNET GRANT AND
ARLENE HUNZIKER, OWNER
AND MANAGER OF AVTECH
DIRECT

v.

AVTECH DIRECT, also doing business
as AVTECH COMPUTERS and
EDUCATIONAL PURCHASING
SERVICES; ARLENE SEDIQZAD, also
known as ARLENE GRANT and
ARLENE HUNZIKER, manager of
AVTECH DIRECT, individually and on
behalf of her marital community; and
GARY HUNZIKER, manager of
AVTECH DIRECT, individually and on
behalf of his marital community; MD&I
CORPORATION, a California for-profit
corporation; and MIN HUI ZHAO, also
known as MICHAEL ZHAO,
individually, and on behalf of his marital
community,

Defendants.

I. JUDGMENT SUMMARY

- | | | |
|-----|--------------------|--|
| 1.1 | Judgment Creditor: | State of Washington |
| 1.2 | Judgment Debtor: | Arlene Sediqzad a/k/a Arlene Grant and Arlene Hunziker |

1.3 Principal Judgment Amount:

- a. Costs and Fees: \$10,000.00 on a payment schedule
- b. Damages: \$30,000.00 suspended upon compliance
- c. Civil Penalties: \$150,000.00 suspended upon compliance
- d. Total Judgment: \$190,000.00

1.4 Post-Judgment Interest Rate: 12 percent per annum

1.5 Attorney for Judgment Creditor: Paula Selis, Senior Counsel; Katherine Tassi, Assistant Attorney General

Plaintiff, State of Washington, having commenced this action on October 21, 2004, pursuant to the Controlling the Assault of Non-Solicited Pornography and Marketing Act (“CAN-SPAM Act”), 15 U.S.C. § 7701, et seq.; RCW 19.86, the Unfair Business Practices – Consumer Protection Act (“CPA”); and RCW 19.190, the Unsolicited Commercial Electronic Mail Act (“UCE”), and Defendant Arlene Sediqzad having been personally served with copies of the Summons and Complaint on October 26, 2004;

Plaintiff having appeared by and through its attorneys, Rob McKenna, Attorney General; Paula Selis, Senior Counsel; and Katherine M. Tassi, Assistant Attorney General; and Defendant having appeared *pro se*;

Plaintiff and Defendant having agreed upon a basis for adjudication of the matters alleged in the Complaint, and to the entry of this Stipulated Judgment, Findings of Fact, Conclusions of Law, Judgment and Decree (hereinafter referred to as “Stipulated Judgment” or “Decree”) pursuant to FRCP 54; and

The Court having determined there is no just reason for delay in the entry of final judgment against Defendant, and being fully advised, the Court hereby makes and enters the following:

II. FINDINGS OF FACT

2.1. This action was commenced by the State of Washington pursuant to the Controlling the Assault of Non-Solicited Pornography and Marketing Act (“CAN-SPAM Act”), 15 U.S.C. § 7701, et seq.; Chapter 19.86 RCW, the Unfair Business Practices – Consumer Protection Act; and Chapter 19.190, the Unsolicited Commercial Electronic Mail Act on October 21, 2004.

2.2. Unless otherwise specified, the term “Defendant” as used in this document shall mean Arlene Sediqzad individually.

2.3. Defendant was served with a copy of the Summons and Complaint on October 26, 2004.

2.4. Defendant recognizes and states that this Stipulated Judgment is entered into voluntarily and that no promises or threats have been made by the Attorney General’s Office or any member, official, agent, or representative thereof to induce Defendant to enter into this Stipulated Judgment except as provided herein.

2.5. Defendant further agrees that she will not oppose the entry of this Stipulated Judgment on the grounds that it fails to comply with Rule 65(d) of the Rules of Civil Procedure and hereby waives any objections based thereon.

2.6. The violations alleged herein at all time material to this lawsuit, have been carried out by Defendant wholly or in part in King County, State of Washington, and in the Western District of Washington, and may have occurred elsewhere in the State of Washington.

2.7. Plaintiff, State of Washington, as *parens patriae*, is authorized by 15 U.S.C. § 7706(f) to file federal district court actions to enjoin violations of the CAN-SPAM Act, to seek recovery for actual monetary loss or damages of up to \$250 per violation on behalf of the residents of the State of Washington, and to obtain such further and other relief as the court may deem appropriate, including treble damages and attorneys’ fees. Plaintiff is authorized by RCW

1 19.86.080 to enjoin violations of the Consumer Protection Act, to obtain restitution on behalf of
2 persons harmed by such violations, and to obtain such further and other relief as the court may
3 deem appropriate, including civil penalties up to the amount of \$2000 per violation and
4 attorneys' fees. Pursuant to RCW 19.190.030(2), a violation of RCW 19.190 et seq., the UCE
5 Act, constitutes a violation of the Consumer Protection Act and thereby gives rise to Plaintiff's
6 authorization to file actions enjoining violations of the UCE Act, and seek damages of \$500 per
7 violation of its provisions.

8 2.8 Defendant Arlene Sediqzad is or was the owner and manager of Avtech Direct,
9 a/k/a Avtech Computers, a California company in the business of marketing and selling
10 computers.

11 2.9 Defendant Arlene Sediqzad resides at 4798 Regalo Road, Woodland Hills, CA
12 91364. At all times material to this action, acting alone or in concert with others, Defendant
13 formulated, directed, controlled, or participated in the practices of Avtech Direct, including the
14 acts and practices set forth in the Complaint. All acts and practices undertaken by Arlene
15 Sediqzad were and are for her personal benefit. Defendant transacts or has transacted business in
16 this District.

17 2.10 Since at least 2003, Defendant promoted computers in unsolicited commercial
18 email that contained materially false and misleading header information. Defendant expected
19 and did receive economic benefit from the email promotions.

20 2.11 Defendant advertised computers to consumers in Washington and throughout the
21 United States through unsolicited commercial email ("email"). The emails were directed
22 towards specific nonprofit groups, such as employees of educational institutions or healthcare
23 workers. The emails, which purported to be from the email address
24 "administration@computeradmin.org", stated that "through a special arrangement" a "limited
25 allotment of brand new, top-of-the-line, name-brand desktop computers are being offered at more
26 than 50% MSRP" to all nonprofit "Members and Staff" who respond to the email before a

1 specified, short time frame. The computers were described as “fully equipped with 2004 next
2 generation technology, making them the best performing computers money can buy,” and are
3 purported to have “the latest Intel technology.” The emails were flagged as high priority to instill
4 a sense of urgency. The emails advertised the computers for sale at \$297 and promised a “100%
5 satisfaction” guarantee. The emails stated that the offer was available only to those who were
6 members, staff or associates of a nonprofit organization. Among other targets, Defendant
7 computers to the Seattle school district, blanketing its employees with 1,671 solicitations
8 between May and October 2004.

9 2.12 In numerous instances, the emails contained altered or concealed header
10 information, making it appear as though they originated from unassigned Internet protocol
11 addresses or addresses registered to domains belonging to Apple Computer, General Electric and
12 others. By altering the headers of the emails, AvTech initiated the transmission of commercial
13 electronic mail messages with materially misleading or materially false header information,
14 which impaired the ability of Plaintiff to identify and locate the initiator of the email.

15 2.13 The commercial email messages displayed various misleading subject lines,
16 including “Staff Bulletin,” which implied that the message was of high priority requiring
17 immediate attention. The subject line was likely to mislead a recipient, acting reasonably under
18 the circumstances, about a material fact regarding the contents or subject matter of the message.

19 2.14 The email solicitations included a hypertext link that purportedly permitted the
20 recipient to “unsubscribe” from the sender’s mailing list. Recipients clicked on the hypertext
21 link in the email messages attempting to opt out of receiving future solicitations. On some
22 occasions, despite recipients’ requests, Defendant continued to send email solicitations to them
23 advertising computers.

24 2.15 In an effort to market and sell computers, Defendant was advertising the
25 computers through illegal email. Defendant’s email promotions made numerous
26 misrepresentations, including, but not limited to:

1 a. The emails misrepresented that “through a special arrangement” they were
2 able to offer a “limited allotment” of computers at “50% off MSRP.” The emails implied
3 that there were only a few computers available for sale, creating a false sense of urgency.
4 In fact, the “allotment” was not limited to an exhaustible, pre-ordained quantity, as
5 implied by the emails.

6 b. The emails misrepresented that in order to take advantage of the offer,
7 recipients had to respond by a designated time and date, usually within 24 or 48 hours of
8 receiving the message. By requiring a quick turnaround response time, the advertisement
9 created a false sense of urgency to their offer. In fact, neither AvTech Direct nor
10 Defendant required the recipient to contact them in the brief window of time represented;
11 consumers who contacted them after the prescribed deadline were able to make purchases.

12 c. The emails misrepresented that the purchaser had to be directly associated
13 with the targeted organization, e.g., a school or a nonprofit, in order to buy a computer. In
14 fact, Defendant would sell their computers to anyone, regardless of their affiliation with a
15 non-profit or educational organization.

16 d. The emails misrepresented that their computers were equipped with “2004
17 next generation technology, making (them) the best performing computers money can
18 buy.” In fact, they were neither equipped with “2004 next generation technology” nor
19 were they “the best performing computers money can buy.” Defendant’s computers were
20 extremely basic machines.

21 e. The emails misrepresented that their computers featured the “latest Intel
22 technology.” In fact, they did not. A common complaint received by MD&I’s customer
23 support staff was that the computer was not as fast as advertised. This was because
24 MD&I installed processors that were not the latest and fastest models. Nothing was done
25 to correct Defendant’s advertisement.
26

1 f. The emails misrepresented that a posted 800-number in their solicitations
 2 was a way of contacting them about making a purchase. Consumers called this number
 3 and requested to stop receiving further solicitations. Defendant represented that the
 4 consumers' requests would be honored and no future solicitations would be sent. In fact,
 5 in some instances, Defendant continued to send solicitations to the consumers.

6 2.16 In the context of the email solicitations, Defendant posted in the "from" line of the
 7 message itself the following email address as the originating sender:
 8 "administration@computeradmin.org." When the recipient was notified of the existence of the
 9 message in his or her inbox, the originating sender's email address was truncated and displayed as
 10 simply "Admin." This truncation is typical of the most commonly used email programs, such as
 11 Outlook.

12 2.17 The effect of the "Admin" posting in the recipient's mailbox was deceptive. The
 13 recipient believed that the email message originated from the administration of his or her
 14 organization and considered it to be official business. The misrepresentation greatly enhanced the
 15 chance that the email would be opened and read by the recipient. In fact, the message was not
 16 official business from the recipient's internal administration but rather a commercial solicitation
 17 received at the workplace.

18 Based on the foregoing Findings of Fact, the Court hereby makes the following:

19 **III. CONCLUSIONS OF LAW**

20 3.1 The Court has jurisdiction of the subject matter of this action and of the
 21 parties hereto pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367 and 15 U.S.C. § 7706, and
 22 Plaintiff's Complaint states claims upon which relief may be granted under the provisions of
 23 the Controlling the Assault of Non-Solicited Pornography and Marketing Act ("CAN-SPAM
 24 Act"), 15 U.S.C. § 7701, et seq.; and Chapter 19.86 RCW, the Unfair Business Practices-
 25 Consumer Protection Act, and RCW 19.190 the Unsolicited Commercial Electronic Mail
 26 Act. Venue in this district is proper under 28 U.S.C. § 1391 and 15 U.S.C. §. 7706. A

1 substantial portion of the acts complained of herein have occurred in King County and
2 elsewhere in the Western District of Washington.

3 3.2 Defendant's conduct as described in Findings of Fact number 2.10 through 2.14,
4 and 2.16 and 2.17 constitutes violation of the Controlling the Assault of Non-Solicited
5 Pornography and Marketing Act ("CAN-SPAM Act"), 15 U.S.C. § 7701, et seq.

6 3.3 Defendant's conduct as described in Findings of Fact numbers 2.10 through
7 2.17 constitutes violations of RCW 19.86.020.

8 3.4 Defendant's conduct as described in Findings of Fact numbers 2.12 to 2.14
9 and 2.16 and 2.17 constitutes violations of RCW Chapter 19.190, the Unsolicited
10 Commercial Electronic Mail Act.

11 3.5 Plaintiff is entitled to a Decree enjoining and restraining Defendant and any
12 and all persons in active concert or participation with Defendant from engaging in the future
13 in the acts or practices described in Findings of Fact 2.10 through 2.17.

14 3.6 Plaintiff is entitled to a Decree ordering Defendant to pay Plaintiff's costs and
15 fees of \$10,000.00 incurred by Plaintiff in pursuing this action. Said payment shall be in
16 addition to and exclusive of any costs or fees which may be incurred by Plaintiff in enforcing
17 the provisions of this Decree, including the costs of any collection actions. Plaintiff's request
18 for costs and fees of \$10,000.00 is reasonable, and Plaintiff is entitled to a Decree ordering
19 Defendant to pay the requested amount.

20 3.7 Plaintiff is entitled to a Decree ordering Defendant to comply with the
21 injunctive provisions described below.

22 3.8 Plaintiff is entitled to a Decree ordering Defendant to pay civil penalties as
23 described below.

24 Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby
25 makes the following:
26

IV. JUDGMENT AND DECREE

It is hereby ADJUDGED, ORDERED, and DECREED as follows:

4.1 Defendants shall immediately inform all successors, assigns, transferees, officers, agents, servants, employees, representatives, and all other persons or entities in active concert or participation with Defendants of the terms and conditions of this Judgment and Decree.

4.2 Defendant and all successors, assigns, transferees, officers, agents, servants, employees, representatives, and all other persons or entities in active concert or participation with Defendant are hereby enjoined and permanently restrained in the State of Washington from directly or indirectly engaging in any of the following conduct:

1. Using false or misleading information in the subject line of a commercial electronic mail message.
2. Initiating the transmission of a commercial electronic mail message with false or misleading header information.
3. Misrepresenting the identity of the sender or the point of origin of a commercial electronic mail message.
4. Engaging in any conduct in violation of the Controlling the Assault of Non-Solicited Pornography and Marketing Act (“CAN-SPAM Act”), 15 U.S.C. § 7701, et seq.
5. Making any misrepresentations in the context of any advertising of products or services.
6. Creating a false sense of urgency, exclusivity, or a restriction on available products or services in the context of any advertising of services or products.
7. Failing to stop sending unsolicited electronic mail messages to any consumer who, by any means whatsoever, has requested to not receive future such messages from Defendant.

1 8. Falsely implying directly or indirectly that a commercial electronic mail
2 solicitation is official, administrative in nature, or originates from the recipients' place
3 of business.

4 9. Engaging in any conduct which violates RCW 19.86, the Unfair
5 Business Practices – Consumer Protection Act.

6 10. Engaging in the practices described 2.10 through 2.17 of the Findings
7 of Fact herein.

8 4.3 Pursuant to 19.86.140, Plaintiff shall recover and Defendant shall pay civil
9 penalties in the amount of \$150,000.00. Upon compliance with all the terms of the Judgment
10 and Decree, the entire civil penalty of \$150,000.00 is suspended.

11 4.4 Pursuant to 15 USC § 7706(f)(1)(B), Plaintiff shall recover and Defendant shall
12 pay statutory damages in the amount of \$30,000.00. Upon condition of compliance with all
13 the terms of the Judgment and Decree, the entire such statutory damages of \$30,000.00 is
14 suspended.

15 4.5 Pursuant to 15 U.S.C. § 7706(f)(4) and RCW 19.86.090, Plaintiff shall recover
16 and Defendant shall pay costs and attorney's fees incurred in pursuing this matter in the
17 amount of \$10,000.00. Interest on any unpaid balance of this amount shall accrue in the
18 amount of 12% per annum.

19 4.6 Defendant and the State have agreed to payment of the \$10,000 on the
20 following schedule and term of quarterly payments:

21 a. On or before March 1, 2006, \$2,500.00 shall be due and owing to the
22 State of Washington;

23 b. On or before June 1, 2006, \$2,500.00 shall be due and owing to the
24 State of Washington;

25 c. On or before September 1, 2006, \$2,500.00 shall be due and owing to
26 the State of Washington;

1 d. On or before December 1, 2006, \$2,500.00 shall be due and owing to
2 the State of Washington.

3 4.7 Defendant shall bear Plaintiff's reasonable costs, including reasonable
4 attorneys' fees, for enforcing this Judgment in any successful action to enforce any of its
5 provisions.

6 4.8 All payments shall be made by cashier's check, made payable to the Attorney
7 General—State of Washington, and shall be delivered to the Office of the Attorney General,
8 900 Fourth Avenue, Suite 2000, Seattle, Washington 98164, to the attention of Cynthia
9 Lockridge.

10 **V. ENFORCEMENT**

11 5.1 Pursuant to RCW 19.86.140, any violation of the terms of this Judgment may
12 form the basis for further enforcement proceedings. Should Defendant fail to fully and
13 timely comply with all terms of this Judgment, she shall be deemed in default of this
14 Judgment. If Defendant defaults, the Attorney General shall be entitled to move for
15 revocation of the suspension of the civil penalties and statutory damages set forth in
16 paragraph 4.3 and 4.4. In a successful action to impose civil penalties and statutory damages,
17 interest will accrue on the unsuspended amount, beginning on the date the civil penalties and
18 statutory damages are unsuspended, at a rate of: 12% or 4 percentage points above the
19 equivalent coupon yield (as published by the Federal Reserve) of the average bill rate for 26
20 week Treasury bills as determined at the first bill market auction conducted during the
21 calendar month immediately preceding the revocation of the Civil Penalty suspension, and
22 statutory damages is whichever is higher.

23 5.2 The violation of any of the terms of this Judgment shall constitute a violation
24 of the Consumer Protection Act, RCW 19.86 et seq.

25 5.3 Jurisdiction is retained for the purpose of enabling any party to this Judgment,
26 with or without the prior consent or approval of the other party, to apply to the Court at any

1 time for the enforcement of compliance therewith, the punishment of violations thereof, or
2 the modification or clarification thereof.

3 5.4 Nothing in this Judgment shall be construed as to limit or to bar any other
4 governmental entity or any other consumer in the pursuit of additional remedies against
5 Defendant.

6 5.5 Representatives of the Office of Attorney General shall be permitted, upon 10
7 days' notice to Defendant, to access, inspect, and/or copy all business records or documents
8 under the control of Defendant, in order to monitor compliance with the injunctive provisions
9 of this Judgment.

10 5.6 Under no circumstances shall this Judgment or the names of the State of
11 Washington or the Office of the Attorney General, Consumer Protection Division, or any of
12 its employees or representatives be used by Defendant's agents or employees in connection
13 with the promotion of any product or service or an endorsement or approval of Defendant's
14 practices.

15 5.7 The Court finding no just reason for delay, hereby expressly directs entry of
16 this Judgment.

17 SO ORDERED this _22_ day of March 2006.

18 

19 RICARDO S. MARTINEZ
20 UNITED STATES DISTRICT JUDGE

21 Presented by

22 ROB MCKENNA
23 Attorney General

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25 _____
26 PAULA SELIS, WSBA #12823
Senior Counsel
paulas@atg.wa.gov

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Consumer Protection Division
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Agreed to, Approved for Entry
Notice of Presentation Waived:

ARLENE SEDIQZAD a/k/s ARLENE GRANT
and ARLENE HUNZIKER, individually,
as Owner and Manger of Avtech Direct