

THE HONORABLE RICARDO MARTINEZ

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

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.

No. C04-2171 RSM

STIPULATION AND ORDER OF  
PERMANENT INJUNCTION AGAINST  
MD&I CORPORATION AND MIN HUI  
ZHAO A/K/A MICHAEL ZHAO

**I. STIPULATION**

1.1 Plaintiff, State of Washington (“State”), and MD&I Corporation (“MD&I”) and  
Min Hui Zhao, individually and on behalf of his marital community (collectively “Zhao”), have  
agreed on a basis for the settlement of the matters alleged in the Complaint, and to the entry of

1 this Stipulation and Order without the need for trial or adjudication of any issue of law or fact.  
2 Concurrent with the execution of this Stipulation and Order, the parties shall execute and file a  
3 Settlement Agreement and Release in the form attached hereto as **Exhibit A**. Exhibit A is  
4 incorporated into this Stipulation and Order by reference.

5  
6 1.2 The State, MD&I and Zhao hereby stipulate that upon execution of this  
7 Stipulation, MD&I and Zhao shall inform all successors, assigns, transferees, officers, agents,  
8 servants, employees, representatives, and all other persons or entities in active concert or  
9 participation with MD&I and/or Zhao of the terms and conditions of this Stipulation.

10 1.3 The State, MD&I and Zhao also hereby stipulate that MD&I and Zhao, along with  
11 their officers, agents, servants, employees, representatives, successors and assigns, and all those  
12 persons or entities acting in concert or participation with MD&I and/or Zhao, shall be and hereby  
13 are PERMANENTLY ENJOINED and restrained from directly and indirectly engaging in any of  
14 the following conduct within Washington State or directed to citizens of Washington:  
15

- 16 a. Advertising or marketing any of MD&I's products either directly or through a  
17 third party in a manner that violates the Controlling the Assault of Non-Solicited  
18 Pornography and Marketing Act ("CAN-SPAM Act"), 15 U.S.C. § 7701, et seq.;
- 19 b. Advertising or marketing any of MD&I's products either directly or through a  
20 third party in a manner that violates RCW 19.190, the Unsolicited Commercial  
21 Electronic Mail Act;
- 22 c. Advertising or marketing any of MD&I's products either directly or through a  
23 third party in a manner that violates RCW 19.86, the Unfair Business Practices –  
24 Consumer Protection Act;
- 25  
26

d. In the context of a business agreement with a third party to advertise and/or market MD&I's products, failing to reasonably ascertain in what manner the products are being advertised; failing to reasonably ensure that the products are being advertised legally; and failing to discontinue the business relationship if MD&I or Zhao discovers that the products are being advertised illegally; and

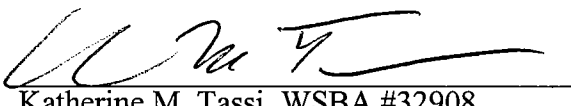
1.4 Compliance with section 1.3 may be demonstrated in part by maintaining records containing copies of advertisements of MD&I's products used by MD&I in its own advertising; and copies of advertisements used by third-party advertisers paid by MD&I to advertise its products.

**IT IS SO STIPULATED.**

Dated this 17<sup>th</sup> day of February, 2006.

ROB MCKENNA  
Attorney General

GROFF MURPHY TRACHTENBERG  
& EVERARD PLLC



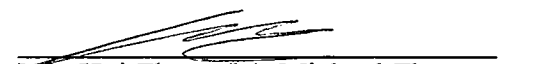
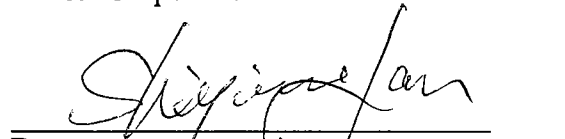
Katherine M. Tassi, WSBA #32908

Linda V. Chu, WSBA # 29584

*Assistant Attorney General  
Attorney for Plaintiff  
State of Washington*

*Attorneys for Defendants MD&I  
Corporation, Min Hui Zhao and his  
marital community*

MD&I Corporation

  
Min Hui Zhao a/k/a Michael Zhao,  
individually and on behalf of his marital  
community  
By: Shi-Qing Yan  
Its: President/Manager

II. ORDER

IT IS SO ORDERED.

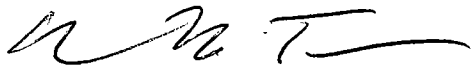
DATED this \_\_\_ day of \_\_\_\_\_, 2006.

THE HONORABLE RICARDO MARTINEZ

Presented by:

ROB MCKENNA  
Attorney General


GROFF MURPHY TRACHTENBERG  
& EVERARD PLLC

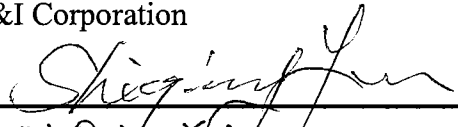
  
Katherine M. Tassi, WSBA # 32908

  
Linda Y. Chu, WSBA # 29584

*Assistant Attorney General  
Attorney for Plaintiff  
State of Washington*

*Attorneys for Defendants MD&I  
Corporation, Min Hui Zhao and his  
marital community*

  
Min Hui Zhao a/k/a Michael Zhao,  
individually and on behalf of his marital  
community

MD&I Corporation  
  
By: Shi-Quika Yan  
Its: President/Manager

**EXHIBIT A**

**SETTLEMENT AGREEMENT AND RELEASE**

This SETTLEMENT AGREEMENT is entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between the State of Washington ("State"), MD&I Corporation, a California corporation ("MD&I"), Min Hui Zhao, individually and on behalf of his marital community (collectively, "Zhao").

**RECITALS**

A. On or around October 20, 2004, the State commenced an action against, *inter alias*, MD&I and Min Hui Zhao in the United States District Court for Western District of Washington, Cause No. C04-2171RSM ("Lawsuit"), alleging that the Defendants named therein marketed the sale of desktop computers to consumers in Washington and throughout the United States through the sending of unsolicited commercial e-mails in violation of the Controlling the Assault of Non-Solicited Pornography and Marketing Act, 15 U.S.C. § 7701 *et seq.*; the Commercial Electronic Mail Act, Chapter 19.190 RCW; and the Unfair Business Practices-Consumer Protection Act, Chapter 19.86 RCW.

B. MD&I and Zhao deny the claims asserted by the State.

C. The State, MD&I and Zhao now desire to settle and compromise all pending and future claims relating to the alleged unsolicited commercial emails.

D. MD&I and Zhao recognize and state that this Agreement is entered into voluntarily and that no promises or threats have been made by the Attorney General's Office or any member, officer, agent, or representative thereof to induce MD&I and/or Zhao to enter into this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. **Payment to the State.** MD&I and Zhao shall pay the State the sum of TEN THOUSAND DOLLARS (\$10,000.00) within five days from mutual execution of this Agreement.

2. **Release.** For and in consideration of the payment of TEN THOUSAND DOLLARS (\$10,000.00), and the other covenants and promises contained herein, the State hereby releases and forever discharges MD&I and Zhao, their respective owners, shareholders, members, officers, directors, agents, attorneys, spouses, suppliers, consultants, subconsultants, engineers, parent corporations, subsidiaries, any and all affiliated or related entities, and each of them, from every claim, demand, and cause of action whatsoever, of every kind and nature, whether presently known or unknown, suspected or unsuspected, arising or alleged to have arisen or which shall arise hereafter as a result of or in connection with the sale by MD&I and/or Zhao of computers or computer components through the alleged unsolicited commercial emails referenced in the Complaint filed in the Lawsuit, including but not limited to all claims asserted or could have been asserted in the Lawsuit pending in the United States District Court for Western District of Washington, Cause No. C04-2171RSM, excepting only the obligations created by this Agreement itself. MD&I and Zhao understand and acknowledge that if hereinafter they, or any of them, engage in any activity which is prohibited under the Stipulated Permanent Injunction referenced in paragraph 3 below, the State may bring an action against MD&I and Zhao, or any of them, and seek all remedies available at law or in equity, including those remedies provided by RCW 19.86.140

3. **Stipulation to Permanent Injunction.** Concurrent with the execution of this Agreement, the parties shall execute and file a Stipulated Permanent Injunction.

4. **Dismissal of Lawsuit with Prejudice.** The parties shall also execute a Stipulation and Order for Dismissal with prejudice and without the assessment of costs or fees against either party.. Upon receipt of payment in full referenced in Paragraph 1 above, counsel for the State shall file the executed Stipulation and Order for Dismissal with the United States District Court for Western District of Washington.

5. **Jurisdiction to Enforce this Agreement and the Stipulated Permanent Injunction.** The parties agree that the United States District Court for the Western District of Washington shall have jurisdiction over MD&I and Zhao to the extent necessary to enforce this Agreement and the Stipulated Permanent Injunction referenced in paragraph 3 above.

6. **Warranties.**

6.1 Each of the individuals signing this Agreement on behalf of a party warrants that he or she has the authority to sign the agreement and thereby to bind the party on whose behalf he or she signs.

6.2 Each party hereby warrants that it has not assigned or transferred any claim or part or portion of a claim released herein. Each party further warrants that if such assignment or transfer has occurred, it will defend, indemnify and hold harmless the others from and against any claim based or arising out of any such assignment or transfer purported or claimed. This obligation is to pay reasonable attorneys' fees, expenses and costs actually incurred, including attorneys' fees, expenses and costs on appeal, whether or not litigation is commenced.

7. **Parties Bound.** This Agreement shall be binding on the heirs, successors, and assigns of the parties.

8. **Purpose of Agreement.** This Agreement is designed strictly for the purpose of comprising a disputed claim and avoiding the expense and risks of litigation. It is not, and shall not be construed or characterized as, an admission of liability or wrongdoing on the party or any party. Nor shall the Agreement be construed or characterized as a victory for one party or the other.

9. **Cooperation.** Each of the parties agrees to execute from time to time all documents that may be necessary to carry out the terms of this Agreement or to effect its purposes. The obligation imposed by this paragraph shall be specifically enforceable.

10. **Integration.** This written Agreement contains the entire understanding between the parties in connection with the subject matter, and it supersedes and replaces all prior negotiations, agreements, or representations, whether oral or written. Each party acknowledges that no other party, or any agent or attorney of any party, has made any promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce it to execute this document, and each party acknowledges that it has not executed this document in reliance on any such promise, representation, or warranty not contained herein.

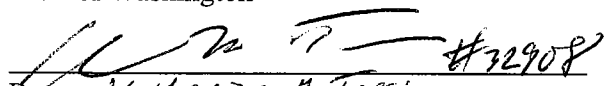
11. **Choice of Law.** The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Washington.

12. **Construction of Agreement.** This Agreement has been jointly drafted by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, and not for or against either party.

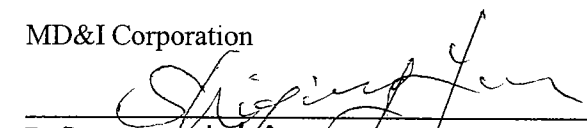
13. **Attorneys' Fees.** In the event it is necessary for any party hereto, or its authorized representative, successor or assign, to institute suit or begin arbitration proceedings in connection with this Agreement or the Stipulated Permanent Injunction or the breach thereof, the prevailing party in such suit or proceeding shall be entitled to reimbursement for its reasonable costs, expenses, and attorneys' fees incurred, including costs, expenses and attorneys' fees incurred on appeal.

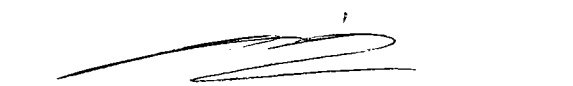
14. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed a single document.

State of Washington

  
By Katherine M. Tass  
Its Attorney for Plaintiff  
State of Washington

MD&I Corporation

  
By President/Manager  
Its Shi-Quing Yan

  
Min Hui Zhao, individually and on  
behalf of his marital community