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 ACTING ATTORNEY GENERAL OF NEW JERSEY
 Division of Law
 124 Halsey Street – 5th Floor
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 Newark, New Jersey 07101
 Attorney for Division of Consumer Affairs

FILED
 MAY 26 2015
Division of Consumer Affairs

By: Glenn T. Graham
 Deputy Attorney General

STATE OF NEW JERSEY
 DEPARTMENT OF LAW AND PUBLIC SAFETY
 DIVISION OF CONSUMER AFFAIRS

_____	:	
In the Matter of	:	
	:	
JEREMY RUBIN d/b/a TIDBIT	:	Administrative Action
	:	
	:	
	:	
	:	<u>CONSENT ORDER</u>
	:	
Respondent.	:	
_____	:	

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation to ascertain whether violations of the New Jersey Computer-Related Offenses Act, N.J.S.A. 2A:38A-1 et seq. (“CROA”), and the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), have been or are being committed by Jeremy Rubin d/b/a Tidbit (“Respondent”) (hereinafter referred to as the “Investigation”);

WHEREAS Respondent is a Massachusetts resident who developed bitcoin mining software code to be embedded on websites (“Tidbit Code”);

WHEREAS the Division has found that Respondent engaged in the Advertisement and/or distribution of the Tidbit Code to Persons in New Jersey and elsewhere through a website previously located at <http://www.tidbit.co.in> (“Tidbit Website”);

WHEREAS the Division has found that the Tidbit Code Accessed the Computers of Persons in New Jersey without their knowledge or consent;

WHEREAS the Division has found that Respondent did not review the privacy policies of websites that utilized the Tidbit Code;

WHEREAS the Division had found that Respondent did not have any control, compliance or review mechanism in place before allowing users to download the Tidbit Code;

WHEREAS Respondent has provided the Division with a list of all New Jersey-based websites utilizing the Tidbit Code;

WHEREAS, Respondent has shut down the Tidbit Website;

WHEREAS as a result of the Investigation, the Division alleges that Respondent has violated the CROA and the CFA by, inter alia, the distribution and deployment of the Tidbit Code and by Accessing the Computers of Persons in New Jersey and elsewhere without providing notice to, and obtaining consent from, such Persons; and

WHEREAS the Division and Respondent (collectively, “Parties”) have reached an amicable agreement hereby resolving the issues in controversy and concluding the Investigation without the need for further action, and Respondent has voluntarily cooperated with the Investigation and consented to the entry of the herein order (“Consent Order”) and for good cause shown:

IT IS ORDERED AND AGREED as follows:

1. EFFECTIVE DATE

1.1 This Consent Order shall be effective on the date that it is filed with the Division (“Effective Date”).

2. DEFINITIONS

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 “Access” shall mean to instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a Computer, Computer system or Computer network. This definition applies to other forms of the word “Access” including, without limitation, “Accessed” and “Accessing.”

2.2 “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(a). This definition applies to other forms of the word “Advertisement” including, without limitation, “Advertises” and “Advertising.”

2.3 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.4 “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such type, size, color, contrast, duration, location and audibility, compared to other information with which it is presented, that it is readily apparent and understandable and in language and terms used in accordance with their common or ordinary

usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies and in a manner that is readily apparent and understandable.

2.5 “Computer” shall mean an electronic device or another similar device capable of executing a computer program, including arithmetic, logic, memory or input-output operations, by the manipulation of electronic or magnetic impulses and includes all computer equipment connected to such device in a computer system or network.

2.6 “Division” or “Division of Consumer Affairs” shall refer to the New Jersey Division of Consumer Affairs.

2.7 “New Jersey” and “State” shall refer to the State of New Jersey.

2.8 “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d).

3. REQUIRED AND PROHIBITED PRACTICES

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of any business in the State and shall comply with such State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended, including, but not limited to, the CROA and CFA.

3.2 Respondent shall not Access or attempt to Access the Computers of Persons in New Jersey through the Tidbit Code without Clearly and Conspicuously providing notice of such Access or attempted Access and obtaining verifiable consent from all Person permitting such Access.

3.3 Respondent shall not Access or attempt to Access the Computers of Persons in New Jersey through any means without Clearly and Conspicuously providing notice of such

Access or attempted Access and obtaining verifiable consent from all Persons permitting such Access.

4. MONETARY SETTLEMENT

4.1 The Parties have agreed to a monetary settlement in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) (“Monetary Settlement”) pursuant to N.J.S.A. 56:8-19.

4.2 The Monetary Settlement Amount payment shall be suspended and automatically vacated within two (2) years of the Effective Date (“Suspended Amount”), provided:

- a. Respondent complies with the restraints and conditions set forth in this Consent Order; and
- b. Respondent does not engage in any acts or practices in violation of the CFA and/ or CROA.

4.3 In the event Respondent fails to comply with the provisions contained in Section 3 of this Consent Order, the entire Suspended Amount shall be immediately due and payable upon written notice by the Division, with interest and with the Division’s cost of collections. In any notice, however, the Division shall provide Respondent with the specific details of Respondent’s alleged noncompliance and Respondent shall be afforded a thirty (30) day period within which to cure any noncompliance. Failure by Respondent to cure any noncompliance shall be considered an event of default entitling the Division to enter an Order directing the payment of the Suspended Amount and to arrange for the filing of the Order, as a docketed judgment, with the Superior Court Clerk. In addition to the relief provided for in this Section, a default shall entitle the Division to make an application to the Superior Court of New Jersey, Essex County – Chancery Division, for an order directing compliance and any other relief in aid

of litigant's rights, including an award of attorneys' fees.

4.4 Any payments in satisfaction of the Suspended Amount shall be made by certified or cashier's check, money order, wire transfer or credit card made payable to the "New Jersey Division of Consumer Affairs" and forwarded to:

Van Mallett, Case Tracking Management
Division of Consumer Affairs
124 Halsey Street, 7th Floor
P.O. Box 45025
Newark, New Jersey 07102

4.5 Upon making the any payments in satisfaction of the Suspended Amount, Respondent shall immediately be fully divested on any interest in, or ownership of, the amounts paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

4.6 The Suspended Amount, if required to be paid pursuant to Section 4.3 above, shall be used at the sole discretion of the Division for the promotion of consumer privacy programs, including consumer advocacy, employee training and the retention of technologists, consultants, and experts or for other investigatory or enforcement efforts related to the Division's statutory mission of protecting the public from fraudulent, unfair and deceptive practices.

5. GENERAL PROVISIONS

5.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

5.2 This Consent Order shall be governed by, and construed and enforced in accordance with the laws of the State.

5.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

5.4 This Consent Order contains the entire agreement between the Parties. Except as otherwise provided herein, this Consent Order shall be modified hereafter only by a written instrument signed by or on behalf of the Parties.

5.5 Except as otherwise explicitly provided in this Consent Order, nothing in this Consent Order shall be construed to limit the authority of the Attorney General to protect the interests or the people of the State.

5.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

5.7 This Consent Order shall be binding upon Respondent as well as his agents, employees, representatives, successors and assigns, and any entity or device through which he may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct Respondent's business.

5.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order be used to avoid compliance with this Consent Order.

5.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Respondent; and (b) an

admission by Respondent that any of his acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA and/or the CROA.

5.10 The Parties represent and warrant that an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to legally bind the respective Party.

5.11 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

6. RELEASE

6.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order, the Division hereby agrees to release Respondent from any and all civil claims or consumer-related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondent for violations of the CFA and/or the CROA, arising out of the Investigation as well as the matters specifically addressed in this Consent Order (“Released Claims”).

6.2 Notwithstanding any term of this Consent Order, the following do not comprise Released claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

7. PENALTIES FOR FAILURE TO COMPLY

7.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Order or to seek sanctions for violations hereof or both.

8. JURISDICTION

8.1 The Superior Court of New Jersey, Essex County – Chancery Division, shall have jurisdiction over the Parties in this matter for purposes of enforcing the provisions of this Consent Order. Respondent does not waive its objections to personal jurisdiction as to those matters not contained within the terms of this Consent Order.

9. COMPLIANCE WITH ALL LAWS

9.1 Except as provided in this Consent Order, no provision herein shall be construed as:

- (a) Relieving Respondent of his obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

10. NOTICES UNDER THIS CONSENT ORDER

10.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides tracking services and identification of Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Glenn T. Graham, Deputy Attorney General
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street -- 5th Floor
P.O. Box 45029-5029
Newark, New Jersey 07101

For the Respondent:

Hanni Fakhoury, Staff Attorney
Electronic Frontier Foundation
815 Eddy Street
San Francisco, California 94109

IT IS ON THE 26th DAY OF May, 2015 SO ORDERED.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

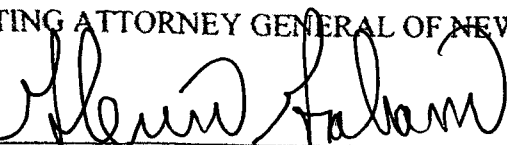
By: 

STEVE C. LEE, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS
CONSENT ORDER ON THE DATES BESIDE THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

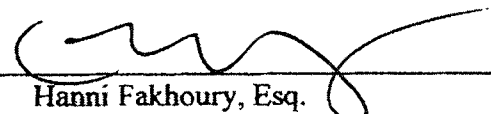
By:  _____

Glenn T. Graham
Elliott M. Siebers
Deputy Attorneys General
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

Dated: May 22, 2015

FOR THE RESPONDENT:

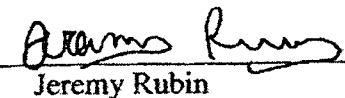
ELECTRONIC FRONTIER FOUNDATION

By:  _____

Hanni Fakhoury, Esq.
815 Eddy Street
San Francisco, California 94109

Dated: 5/22, 2015

JEREMY RUBIN D/B/A TIDBIT

By:  _____
Jeremy Rubin

Dated: 5/22/2015, 2015