

RECEIVED  
VENTURA SUPERIOR COURT  
MAR 06 2009

VENTURA  
SUPERIOR COURT  
FILED  
MAR 18 2009

MICHAEL D. PLANET  
Executive Officer and Clerk  
BY: DEBRA HEBERT Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF VENTURA

**THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

Plaintiff,

v.

**IMERGENT, INC., A DELAWARE  
CORPORATION; AND STORESONLINE,  
INC., A DELAWARE CORPORATION,**

Defendants

56-2007-00287557-CU-MC-VTA

**STIPULATED FINAL JUDGMENT**

Plaintiff, the People of the State of California, appearing through its attorneys, Edmund G. Brown Jr., Attorney General of the State of California, by Benjamin G. Diehl, Deputy Attorney General, and Gregory D. Totten, District Attorney of Ventura County, by Mitchell F. Disney, Senior Deputy District Attorney, (hereinafter collectively "the People" of "Plaintiff"), and Defendants IMERGENT, INC., a Delaware corporation, and STORESONLINE, INC., a Delaware corporation, (jointly, "Defendants"), appearing through their attorneys

1 Greenberg Traurig, LLP, by Raymond Kim, Esq., hereby stipulate and consent to this Stipulated  
2 Final Judgment and Permanent Injunction ("Final Judgment") in the above-captioned action.

3 This Final Judgment is entered into prior to the taking of any proof and without trial or  
4 adjudication of any issue of law or fact. This Final Judgment does not constitute evidence of or  
5 an admission by the Defendants regarding any issue of law or fact alleged in the Complaint in the  
6 above-captioned action. This Final Judgment and the Stipulation for Entry of Final Judgment  
7 filed concurrently herewith constitute the complete, final, and exclusive agreement between the  
8 parties and supersede any and all prior written or oral agreements between the parties, except as  
9 specifically provided below.  
10

11 Therefore, the parties, having waived their rights of appeal and having approved this  
12 Final Judgment as to form and content:  
13

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

15 1. This Court has jurisdiction over the subject matter of this lawsuit and the parties  
16 hereto.

17 2. This Final Judgment is applicable to Defendants and their respective partners,  
18 agents, employees, representatives, assignees, and successors in interest who have actual or  
19 constructive notice of its provisions, and to all persons, corporations, and other entities who have  
20 actual or constructive notice of its provisions and act in concert or participation with them or any  
21 of them (collectively, "Enjoined Persons").  
22

23 3. Except as expressly provided in paragraph 5 below, this Final Judgment does not  
24 supersede or amend the previous judgment entered in Case No. CIV 243317 on or about  
25 September 14, 2006 ("the September 2006 Judgment"), and all remaining terms of the September  
26 2006 Judgment remain in full force and effect.  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PERMANENT INJUNCTION**

4. Pursuant to Business and Professions Code sections 17203 and 17535, the Enjoined Persons are hereby permanently enjoined and restrained from engaging in any of the following acts or omissions in the State of California:

A. Selling or leasing or offering to sell or lease any product, equipment, supplies, or services that requires a total initial payment exceeding five hundred dollars (\$500), but requires an initial cash payment of less than fifty thousand dollars (\$50,000), that will aid a purchaser or will be used by or on behalf of the purchaser in connection with or incidental to beginning, maintaining, or operating a business, and Defendants have advertised or in any other manner solicited the purchase or lease of such product, equipment, supplies, or services and made any of the representations set forth in Civil Code Section 1812.201 (a) (1), (2) or (3), unless Defendants filed with the Attorney General a copy of the disclosure statements required under Civil Code sections 1812.205 and 1812.206, as well as a list of the names and residence addresses of the individuals who sell the product, equipment, supplies, or services on behalf of the seller, at least thirty (30) days prior to placing any advertisement or making any other representations to prospective purchasers, and have received from the Attorney General's Office a Notice of Filing. By way of example only, and not by way of any limitation whatsoever, this paragraph shall apply to any situation in which Defendants offer to sell or lease a product, equipment, supplies, or services which costs less than \$500, and then within six months of completion of that sale, Defendants offer to sell or sell to a purchaser either the same or another product, equipment, supplies, or services, which costs more than \$500.

B. Selling or offering to sell any product, equipment, supplies, or services that will aid a purchaser or will be used by or on behalf of the purchaser in connection

1 with or incidental to beginning, maintaining, or operating a business, and that requires a  
2 total initial payment exceeding five hundred dollars (\$500), but requires an initial cash  
3 payment of less than fifty thousand dollars (\$50,000), and doing any of the following:

4 (1) Representing that the product, equipment, supplies, or services  
5 being sold or offered for sale provide income or earning potential of any kind  
6 without having data to substantiate the claims of income or earning potential and  
7 disclosing this data to prospective purchasers at the time the claim is made. This  
8 data shall include, at a minimum:

9 (a) The length of time the seller has been selling the particular  
10 product, equipment, supplies, or services being offered;

11 (b) The number of purchasers from the seller known to have  
12 made at least the same sales, income or profits as those represented; and

13 (c) The percentage the number represents of the total number  
14 of purchasers from the seller.

15 (2) Using the trademark, service mark, trade name, logotype,  
16 advertising or other commercial symbol of any business which does not either  
17 control the ownership interest in the defendants or accept responsibility for all  
18 representations made by the defendants in regard to the product, equipment,  
19 supplies, or services being sold or offered for sale, unless the nature of the  
20 defendants' relationship to such other business entity is set forth immediately  
21 adjacent to and in type size equal to or larger than that used to depict the  
22 commercial symbol of such other business.

23 (3) Placing or causing to be placed any advertisement for the product,  
24 equipment, supplies, or services being sold or offered for sale which does not  
25

1 include the actual business name of the defendant that placed the ad or caused the  
2 ad to be placed, and if it differs, the name under which the defendant(s) are  
3 operating and the street address of the principal place of business of the defendant  
4 that placed the ad or caused the ad to be placed.  
5

6 (4) Failing to provide to prospective purchasers a written document  
7 containing all disclosures required by Civil Code section 1812.205, subdivisions  
8 (a) through (g), as applicable, at the first in-person communication with a  
9 potential purchaser wherein the product, equipment, supplies, or services are  
10 described.  
11

12 (5) Failing to provide to prospective purchasers a written document  
13 containing all disclosures required by Civil Code section 1812.206, subdivision  
14 (a) through (f) at least 48 hours prior to the execution of a contract to sell the  
15 product, equipment, supplies, or services, or at least 48 hours prior to the receipt  
16 of any consideration, whichever occurs first.  
17

18 (6) Failing to provide to prospective purchasers a written document  
19 containing all information required by Civil Code section 1812.209, subdivisions  
20 (a) through (f), at least 48 hours prior to the execution of a contract or agreement  
21 for the sale of the products, equipment, supplies, or services or at least 48 hours  
22 prior to the receipt of any consideration therefore, whichever occurs first.  
23

24 C. Conducting an advertising plan or program, and offering any incentive  
25 (including any item or service of value, including, but not limited to, any prize, gift,  
26 money, or other tangible property) as an inducement to the recipient to attend a sales  
27 presentation, unless the offer clearly and conspicuously discloses in writing, in readily  
28 understandable language, on the front (or first) page of the offer:

1           (1)    The name and street address of the owner of the property and the  
2           provider of the services (if different) which are the subject of the sales  
3           presentation. If the offer is made by an agent or independent contractor employed  
4           or authorized by the owner or provider, or is made under a name other than the  
5           true name of the owner or provider, the name of the owner or provider shall be  
6           more prominently and conspicuously displayed than the name of the agent,  
7           independent contractor, or other name.  
8

9           (2)    A general description of the business of the owner or provider  
10          identified pursuant to subparagraph (1), and the purpose of the sales presentation,  
11          which shall include a general description of the property or services which are the  
12          subject of the sales presentation and a clear statement, if applicable, that there will  
13          be a sales presentation and the approximate duration of the sales presentation.  
14

15          D.    Conducting any sales presentation in the State of California that was  
16          advertised using an invitation that does not conform to paragraph C. (1) and (2), above.  
17

18          E.    Entering into any contract to sell any product, goods or services without  
19          clearly and conspicuously disclosing, in immediate proximity to the space reserved for  
20          the signature of the buyer, that in addition to the notice required by Civil Code section  
21          1689.7 or 1689.20, as appropriate, any purchaser aged 65 and over may cancel at any  
22          time prior to midnight fifteen (15) business days after the purchase date and receive a full  
23          refund (the "Fifteen-Day Refund Period").

24          F.    When a purchaser is under the age of 65 and has three (3) business days to  
25          cancel the sale, and where the third business day following the purchase date would occur  
26          prior to midnight of the first Monday after the day of purchase (*i.e.*, where the purchaser  
27          purchased on a Monday, Tuesday, Wednesday or Thursday), then the purchaser shall be  
28          given until midnight of the next Monday to cancel the sale.

1           G.     Charging any hosting, service or other fee related to the hosting or  
2 operation of any Internet website sold by any Enjoined Person after the Internet website is  
3 deactivated for any reason.

4           H.     Entering into any contract that includes a charge for web hosting that does  
5 not clearly and conspicuously disclose all charges, the basis for these charges and when  
6 the charges for StoresOnline hosting an Internet website will be incurred and also informs  
7 the purchaser that he or she has the right to reject StoresOnline hosting the Internet  
8 website and make other arrangements for the website hosting. In addition, Defendants  
9 shall not make any written or verbal representation that an Internet website created using  
10 Defendants' software is portable or compatible with other website hosting services unless  
11 that representation is in fact true.

12           I.     Making any verbal representation that is inconsistent with any written  
13 representation Defendants make to consumers.

14           J.     Using any testimonial that does not conform to the "Guides Concerning  
15 Use of Endorsements and Testimonials in Advertising," set forth at 16 C.F.R. 255, *et*  
16 *seq.*, as they may be amended from time to time.

17           K.     Using a testimonial without first obtaining documentation from the person  
18 giving the testimonial, such as a signed affidavit, substantiating any material claims made  
19 in the testimonial. Such documentation shall be maintained for a period of four (4) years  
20 and upon reasonable request, Defendants shall provide copies of such documentation to  
21 the People pursuant to the provisions of paragraph 11 below.

22           5.     Paragraph 6 of the September 2006 Judgment is hereby canceled and replaced by  
23 the provisions of this Paragraph. For the three (3) year period following the entry of this Final  
24 Judgment:

25           A.     Defendants shall maintain, and set forth the means of contacting, on all  
26 sales contracts entered into in California, an email account, 24/7 online support (staffed at  
27 all times by an employee or independent contractor), a facsimile transmission number,  
28 and a customer-service telephone number designated as being for general customer

1 questions and comments during regular business hours, and shall staff the telephone  
2 number with a live operator during regular business hours and with a voice-message  
3 system for after-hours receipt of calls.

4 B. If a customer calling the customer-service telephone number expresses to a  
5 live operator a desire to cancel or inquires regarding cancellation (as used herein "cancel"  
6 and "cancellation" shall be construed broadly and include requests for refunds or  
7 rescission, however worded by a customer), and that call has been made within the  
8 applicable Three-Day Refund Period or Fifteen-Day Refund Period, the operator shall  
9 advise the customer that any such cancellation request must be made in writing, by email  
10 or by facsimile transmission, and shall advise the customer of Defendants' mailing  
11 address, email address and fax number for receipt of the cancellation request. If that call  
12 has been made after expiration of the applicable Three-Day Refund Period or Fifteen-Day  
13 Refund Period but no later than 180 days after the purchase date, the operator shall advise  
14 the customer to submit a request for cancellation, telling the customer to submit a written  
15 request explaining why he or she thinks the contract should be canceled and the address  
16 where such request should be sent.

17 C. Defendants' voice-message system shall be monitored to review calls  
18 received, at least once prior to 12:00 p.m., and at least once after 3:00 p.m., during each  
19 business day. If a customer calls the customer service telephone number and leaves a  
20 message on the voice-message system that identifies the customer, the customer's  
21 telephone number, and expresses a desire to cancel or inquires regarding cancellation, and  
22 that message was left within the applicable Three-Day Refund Period or Fifteen-Day  
23 Refund, then upon receipt of the message, Defendants shall promptly call the customer  
24 and advise the customer that any such request must be made in writing, by email or by  
25 facsimile transmission, and shall further advise the customer of Defendants' mailing  
26 address, email address and fax number for receipt of the written cancellation request. If  
27 that message has been left after expiration of the applicable Three-Day Refund Period or  
28 Fifteen-Day Refund Period but no later than 180 days after the purchase date, the



1 operator shall advise the customer to submit a written request for cancellation explaining  
2 why he or she thinks the contract should be canceled and the address where such request  
3 should be sent.

4 D. If a customer enters Defendants' 24/7 support and expresses a desire to  
5 cancel or inquires regarding cancellation, and that request is made within the applicable  
6 Three-Day Refund Period or Fifteen-Day Refund, Defendants' representative shall  
7 promptly advise the customer that any such cancellation request must be made by email  
8 or by facsimile transmission, and shall advise the customer of Defendants' mailing  
9 address, email address and fax number for receipt of such written cancellation request. If  
10 that contact has been made after expiration of the applicable Three-Day Refund Period or  
11 Fifteen-Day Refund Period but no later than 180 days after the purchase date, the  
12 operator shall advise the customer to submit a written request for cancellation explaining  
13 why he or she thinks the contract should be canceled and the address where such request  
14 should be sent.

15 E. Notwithstanding subparagraphs B., C. and D., above, in the event that a  
16 customer expresses a desire to cancel or inquires regarding cancellation after expiration  
17 of the applicable Three-Day Refund Period or Fifteen-Day Refund Period, nothing herein  
18 precludes Defendants from advising the inquirer about the expiration of the Three-Day  
19 Refund Period or Fifteen-Day Refund Period or attempting to resolve a complaint the  
20 customer may have, provided the operator first advises the customer to submit a written  
21 request for cancellation explaining why he or she thinks the contract should be canceled  
22 and the address where such request should be sent.

23 F. Except as expressly provided in this Final Judgment, nothing herein shall  
24 be construed to limit or reduce any method of cancellation provided by law, or any  
25 obligation by Defendants to comply therewith, and no waiver or reduction of a  
26 customer's rights of cancellation under law shall result.

27 G. Defendants shall create and maintain reasonable and customary business  
28 records of their communications with California purchasers who express a desire to

1 cancel or inquire regarding cancellation, and persons who claim that their agreement to  
2 purchase was procured by any misrepresentation or nondisclosure of fact. Such records  
3 shall include, to the extent practicable, the following:

- 4 (1) The customer's name, address and telephone number;
- 5 (2) A general description of the nature of the inquiry, request, or  
6 claim;
- 7 (3) The date the communication was received;
- 8 (4) The date and location of the seminar, sales presentation or other  
9 event or act from which the inquiry, request or claim arises;
- 10 (5) The name(s) of any individual(s) implicated or referenced by the  
11 customer; and
- 12 (6) Defendants' response to the inquiry, request or claim, and any  
13 action taken by Defendants in response to the complaint.

14 H. Defendants shall maintain the records provided for in paragraph 5.G.,  
15 above, for a minimum of three (3) years from the date of their creation and shall make  
16 them available for inspection and copying within twenty (20) calendar days of receipt of a  
17 written request by any representative of the California Attorney General's Office or  
18 District Attorney's Office for the County of Ventura.

#### 19 **COMPLIANCE-MONITORING, RECORD-KEEPING AND REVIEW**

20 6. All terms, requirements and obligations set forth in paragraphs 4, 5, and 7 (and all  
21 subparagraphs thereto) of the September 2006 Judgment shall continue to run for three years  
22 from the date of this Judgment.

#### 23 **CANCELLATION OF CONTRACTS, RESTITUTION, AND ECONOMIC** 24 **PAYMENT**

25 7. Pursuant to Business and Professions Code sections 17203 and 17535, Defendants  
26 shall take all of the actions set forth below:

27 A. Known Claimants: Customers who attended a sales presentation, preview  
28 seminar or workshop seminar conducted by Defendants in California, and purchased any

1 product(s) and/or service(s) from Defendants, and either: (i) made a request for  
2 cancellation to any Defendant between September 14, 2006 and the date of entry of this  
3 Final Judgment, that was denied or granted only in part, or (ii) made a request for  
4 cancellation that was received by the District Attorney of Ventura County or the Attorney  
5 General of the State of California at any time prior to the entry of this Final Judgment, are  
6 referred to in this paragraph 7.A. as the "Known Claimants." Defendants are ordered to  
7 identify to the District Attorney and the Attorney General all Known Claimants. Plaintiff  
8 shall send to each Known Claimant a claim form, by regular U.S. Mail ("Claim Form"),  
9 which shall offer the Known Claimant an opportunity to cancel contracts with  
10 Defendants, and any financing company if applicable, arising from the purchase of any  
11 product(s) and/or service(s) marketed, offered or sold by Defendants, and to participate in  
12 restitution for payments made pursuant to those contracts, as more specifically set forth in  
13 paragraph 11.A. of this Final Judgment. Each Known Claimant who timely returns to the  
14 People a signed and dated Claim Form postmarked within sixty (60) days from the initial  
15 date of mailing ("Executed Claim Form") shall be entitled to relief as provided in  
16 subparagraphs (1) through (4), inclusive, of this paragraph 7.A., and shall be entitled to  
17 participate in the restitution as set forth in paragraph 11A, below. At ninety (90) days  
18 from the initial date of mailing of the Claim Forms ("Closure Date"), no further Executed  
19 Claim Forms may be considered eligible for relief as provided herein. Within thirty (30)  
20 days after receipt of a properly completed and timely Executed Claim Form from the  
21 People ("Verified Claimant"), and regardless of the date of original purchase, Defendants  
22 shall:

23 (1) Cancel all outstanding contractual obligations allegedly owed by  
24 the Known Claimants (and by any guarantor or co-signor) to Defendants, without  
25 obligation to return any product or license to Defendants;

26 (2) Take reasonable commercial steps to identify any Third Party  
27 financing entity and pay off and/or buy back the financing agreement such that the  
28 Known Claimant's payment obligations to the Third Party are fully satisfied, if a

1 purchase by a Known Claimant was financed by a Third Party, or if it was initially  
2 financed by a Defendant and assigned to a Third Party. For purposes of this  
3 paragraph 7.A, and for paragraph 7.B., below, the term "Third Party" shall mean  
4 any entity providing financing which is offered or arranged by Defendants for the  
5 purchase of Defendants' products, goods or services. Third Party financing does  
6 not include a credit card used to pay for products, goods or services sold by  
7 Defendants;

8 (3) Take reasonable commercial steps to determine whether any  
9 account of any Known Claimant has been turned over to a collection agency. For  
10 each such Known Claimant whose account has been turned over to a collection  
11 agency, Defendants shall notify the collection agency that the customer's  
12 obligation has been fully satisfied and ensure that all collection efforts are  
13 discontinued;

14 (4) Take reasonable commercial steps to determine, as allowed by the  
15 Fair Credit Reporting Act or other similar applicable law, whether a derogatory  
16 report to a credit-reporting bureau has been made by Defendants, any third-party  
17 financing entity or any collection agency, about any Known Claimant; and in the  
18 event a derogatory statement exists, Defendants shall take reasonable commercial  
19 steps, as allowed by the Fair Credit Reporting Act or other similar applicable law,  
20 to request the credit bureaus to update the reporting for each Known Claimant's  
21 account to reflect its satisfied status; and

22 (5) Promptly provide a written notification to each Known Claimant  
23 upon completion of each action specified in subparagraphs (1) through 4),  
24 inclusive, of this paragraph 7.A.

25 Defendants shall submit a written report to the District Attorney of Ventura  
26 County and the Attorney General of the State of California confirming the timely  
27 completion of the obligations set forth above, that includes the name and contact  
28 information for each such customer and the steps taken by Defendants to comply with the

1 requirements of subparagraphs (1) through (5), inclusive, of this paragraph 7.A. within  
2 120 days after the initial date of mailing of the Claim Forms.

3 Each Known Claimant shall be entitled to participate in the restitution as set forth  
4 in paragraph 11.A., below.

5 B. Post-Judgment Claimants. Customers who attended a sales presentation,  
6 preview seminar or workshop seminar conducted by Defendants in California between  
7 August 30, 2007 and the date of entry of this Final Judgment, and who purchased any  
8 product(s) and/or service(s) from Defendants, and make a request for cancellation that is  
9 received within ninety (90) days of the date of entry of this Final Judgment by the District  
10 Attorney of Ventura County or the Attorney General of the State of California, are  
11 referred to in this paragraph 7.B. as the "Post-judgment Claimants."

12 Plaintiff shall send to each Post-judgment Claimant a claim form, by regular U.S.  
13 Mail ("Claim Form"), which shall offer the Post-judgment Claimant an opportunity to  
14 cancel contracts with Defendants, and any financing company if applicable, arising from  
15 the purchase of any product(s) and/or service(s) marketed, offered or sold by Defendants,  
16 and to participate in restitution for payments made pursuant to those contracts, as more  
17 specifically set forth in paragraph 11A of this Final Judgment. Each Post-judgment  
18 Claimant who timely returns to the People a signed and dated Claim Form postmarked  
19 within sixty (60) days from the initial date of mailing ("Executed Claim Form") shall be  
20 entitled to relief as provided in subparagraphs (1) through (4), inclusive, of this paragraph  
21 7.B., and shall be entitled to participate in the restitution as set forth in paragraph 11.A.,  
22 below. At ninety (90) days from the initial date of mailing of the Claim Forms ("Closure  
23 Date"), no further Executed Claim Forms may be considered eligible for relief as  
24 provided herein. Within thirty (30) days after receipt of a properly completed and timely  
25 Executed Claim Form from the People ("Verified Claimant"), and regardless of the date  
26 of original purchase, Defendants shall:

1 (1) Cancel all outstanding contractual obligations allegedly owed by  
2 the Post-judgment Claimants (and by any guarantor or co-signor) to Defendants,  
3 without obligation to return any product or license to Defendants;

4 (2) Take reasonable commercial steps to identify any Third Party  
5 financing entity and pay off and/or buy back the financing agreement such that the  
6 Post-judgment Claimant's payment obligations to the Third Party are fully  
7 satisfied, if a purchase by a Post-judgment Claimant was financed by a Third  
8 Party, or if it was initially financed by a Defendant and assigned to a Third Party;

9 (3) Take reasonable commercial steps to determine whether any  
10 account of any Post-judgment Claimant has been turned over to a collection  
11 agency. For each such Post-judgment Claimant whose account has been turned  
12 over to a collection agency, Defendants shall notify the collection agency that the  
13 customer's obligation has been fully satisfied and ensure that all collection efforts  
14 are discontinued;

15 (4) Take reasonable commercial steps to determine, as allowed by the  
16 Fair Credit Reporting Act or other similar applicable law, whether a derogatory  
17 report to a credit-reporting bureau has been made by Defendants, any third-party  
18 financing entity or any collection agency, about any Post-judgment Claimant; and  
19 in the event a derogatory statement exists, Defendants shall take reasonable  
20 commercial steps, as allowed by the Fair Credit Reporting Act or other similar  
21 applicable law, to request the credit bureaus to update the reporting for each Post-  
22 judgment Claimant's account to reflect its satisfied status;

23 (5) Promptly provide a written notification to each Post-judgment  
24 Claimant upon completion of each action specified in subparagraphs (1) through  
25 4), inclusive, of this paragraph 7.B.; and

26 (6) Submit a written report to the District Attorney of Ventura County  
27 and the Attorney General of the State of California confirming the timely  
28 completion of the obligations set forth above, that includes the name and contact

1 information for each such customer and the steps taken by Defendants to comply  
2 with the requirements of subparagraphs (1) through (5), inclusive, of this  
3 paragraph 7.B., within ninety (90) days of the date of entry of this Judgment.

4 Each Known Claimant shall be entitled to participate in the restitution as set forth  
5 in paragraph 11.A., below.

6 C. In order to become a Verified Claimant under subparagraphs A. or B., of  
7 this paragraph 7, the customer will need to sign a Claim Form provided by Plaintiff to  
8 eligible customers, which releases any and all restitutionary claims such customer may  
9 have against Defendants based upon the contract(s) signed by the customer.

10 D. The Claim Form shall include a request for information which shall  
11 include at least the following items: claimant's name and current address; and, such  
12 information as is available to the claimant regarding: (1) the total dollar amount of the  
13 contract with Defendants; (2) the amount actually paid to Defendants by cash, check or  
14 credit card; (3) the remaining balance, if any, on any contract with Defendants; and (4)  
15 who has made attempts and when attempts have been made to collect on any outstanding  
16 balance on the contract with Defendants. The information collected will be provided to  
17 Defendants so that they may carry out their responsibilities under Paragraphs 7.A. (2)-(5)  
18 and 7.B. (2)-(5), above, and shall not be used by Defendants for any other purpose.

19 E. If, despite the efforts of Defendants to comply with the provisions of  
20 subparagraphs 7.A. (2), (3) and (4), and subparagraphs 7.B. (2), (3) and (4), a claimant  
21 notifies Plaintiffs' attorneys that Defendants' efforts pursuant to said subparagraphs were  
22 not satisfactory, then Plaintiff shall notify the Defendants who shall take further  
23 reasonable commercial steps as specified in said subparagraphs. In so advising the  
24 Defendants, Plaintiff shall make reasonable efforts to provide Defendants with  
25 information (if known), including the name of the collection or credit reporting agency,  
26 name of a contact person, phone number, address and account number.

27 8. Defendants shall cooperate with the District Attorney of Ventura County and the  
28 Attorney General of the State of California and use their best efforts to promptly furnish

1 information to verify under oath the claims presented referenced in paragraph 7, including  
2 verifying the amounts paid by customers pursuant to contracts entered into with Defendants for  
3 the purchase of Defendants' products and/or services.

4 9. Compliance with the provisions of Paragraph 7 of this Final Judgment shall  
5 relieve Defendants of all obligations of Defendants to perform under any contract cancelled  
6 pursuant to such provisions; provided, however, that the Claimants shall retain all non-  
7 restitutionary rights and remedies afforded to them by law or contract.

8 10. A. Within thirty (30) days of the date of entry of this Final Judgment,  
9 Defendants shall send to all California purchasers of its products, goods or services since August  
10 30, 2007, a written notice that informs the purchaser(s) that the contract the purchaser(s) entered  
11 into with the Defendants is unenforceable by the Defendants (or their assignees), and that the  
12 purchaser(s) can void the contract, and receive a full refund from the seller if the purchaser  
13 returns any equipment, supplies, or products delivered by the Defendants. The notice shall  
14 further explain that if the purchaser(s) cannot return all such items, the refund shall be less the  
15 fair market value at the time of delivery of the non-returned equipment, supplies or products; or,

16 B. Within thirty (30) days of the date of entry of this Final Judgment, Defendants  
17 may file with the Attorney General the necessary documents per Civil Code Section 1812.203,  
18 and within fifteen (15) days after receipt of a Notice of Filing from the California Attorney  
19 General, send a written notice that informs the purchaser(s) that because of Defendants' error in  
20 failing to comply with California's Seller Assisted Marketing Plan Law at the time of the sale,  
21 the purchaser has 15 days after receipt of the notice to cancel all contracts entered into with  
22 Defendants and receive a full return of all moneys paid, in exchange for return of whatever  
23 equipment, supplies or products the purchaser has. Such written notice shall have attached to it  
24 the correct disclosure statements required by Civil Code sections 1812.205 and 1812.206 and the  
25 contract required by 1812.206 (f), as they have been provided in final form to the California  
26 Attorney General at the time that Defendants received their Notice of Filing from the Attorney  
27 General; and,  
28



1 C. Both the notices referenced in subparagraphs A. and B. above shall inform the  
2 recipient-purchaser of the notice that if s/he wishes to cancel the contract, s/he must notify the  
3 Defendants in writing of their desire to do so. Recipients of the subparagraph B notice shall also  
4 be informed that if they wish to cancel the contract they must notify Defendants of their desire to  
5 cancel the contract in writing within fifteen (15) days of receipt of the notice from Defendants; a  
6 and,

7 D. If pursuant to subparagraph B, Defendants file the necessary documents with the  
8 Attorney General, but do not receive a Notice of Filing from the Attorney General within sixty  
9 (60) days after the date of entry of this Final Judgment, Defendants shall send the notice required  
10 by subparagraph A hereof no later than seventy (75) days after the date of entry of this Final  
11 Judgment; and,

12 E. Defendants shall submit a written report to the District Attorney of Ventura  
13 County and the Attorney General of the State of California confirming the timely completion of  
14 the obligations set forth above, that includes the name and contact information for each such  
15 customer and the steps taken by Defendants to comply with the requirements of this paragraph  
16 within one hundred twenty (120) days after the date of entry of this Judgment.

17 11. On or before the date of entry of this Final Judgment, Defendants shall pay to the  
18 People the sum of Eight Hundred and Fifty Thousand Dollars (\$850,000) pursuant to Business  
19 and Professions Code sections 17203 and 17535, as well as 17206 and 17536, as specified below.  
20 Payment shall be by cashier's check made payable to "Ventura County District Attorney" and  
21 delivered to the attorneys for the People, who shall deposit these funds in an account and allocate  
22 and distribute the funds as follows:

23 A. Three Hundred and Fifty Thousand Dollars (\$350,000) to Verified  
24 Claimants, whose claims have been subject to reasonable verification to the satisfaction  
25 of the District Attorney of Ventura County and the Attorney General of the State of  
26 California, regarding the validity of the amounts claimed ("Verified Claims"). Verified  
27 Claimants presenting verified claims shall receive full restitution for the amount paid to  
28 Defendants if the cumulative amount of all of the Verified Claims is equal to or less than

1 Three Hundred and Fifty Thousand Dollars (\$350,000). In the event the cumulative  
2 amount of the Verified Claims is greater than Three Hundred and Fifty Thousand Dollars  
3 (\$350,000), payment of Verified Claims received from Known Claimants shall take  
4 precedence and be paid first. All restitution funds deposited by Defendants remaining  
5 after payment of Verified Claims by Known Claimants shall be distributed on a pro rata  
6 basis to Post-judgment Claimants presenting Verified Claims, such that each Verified  
7 Post-judgment Claimant shall be paid a percentage of the amount of his or her verified  
8 claim equal to the ratio borne by the value of all Verified Claims by Post-judgment  
9 Claimants to the balance of funds remaining after payment to the Known Claimants. Any  
10 restitution funds deposited by Defendants remaining in the account 60 (sixty) days  
11 following distribution as set forth above shall revert, in equal shares, to the District  
12 Attorney of Ventura County and the Office of the Attorney General as costs of suit.

13 B. Civil penalties of One Hundred and Twenty-Five Thousand Dollars  
14 (\$125,000) to the California Attorney General's Office, pursuant to Business and  
15 Professions Code section 17206.

16 C. Civil penalties of Two Hundred and Forty-Nine Thousand Six Hundred  
17 and Fifty Dollars (\$249,650) to the Ventura County District Attorney's Office, pursuant  
18 to Business and Professions Code section 17206.

19 D. One Hundred and Twenty-Five Thousand Dollars (\$125,000) to the  
20 California Attorney General's Office as attorney fees and costs.

21 E. Court costs of Three Hundred and Twenty Dollars (\$350) to the Clerk of  
22 the Ventura County Superior Court, for filing fees that would have been paid or deposited  
23 by Plaintiff upon filing the Complaint, but for the exemption provided by Government  
24 Code section 6103, and which are due and payable within 45 days of collection pursuant  
25 to Government Code section 6103.5, subdivision (b).

26 12. Upon thirty (30) days notice from a representative of the Attorney General or  
27 Ventura County District Attorney's Office, Defendants shall produce for inspection and copying  
28 any records the Attorney General or Ventura County District Attorney deem necessary to

1 determine whether Defendants are in compliance with the provisions of this Stipulated Judgment,  
2 including without limitation records that may be used to verify the claims presented in  
3 Defendants' presentations and testimonials and the amounts paid by customers pursuant to  
4 contracts entered into with Defendants for the purchase of Defendants' products and/or services.

5 13. Any notices or communications required to be transmitted between the  
6 Defendants and the Plaintiff pursuant to this Final Judgment shall be provided in writing by first  
7 class mail or facsimile transmission to the parties or their successors as follows:

8 To Plaintiff:

9 Benjamin G. Diehl  
10 Deputy Attorney General  
11 [REDACTED]  
12 [REDACTED]

13 and

14 Mitchell F. Disney  
15 Senior Deputy District Attorney  
16 Consumer and Environmental Protection Unit  
17 [REDACTED]  
18 [REDACTED]

19 To Defendants:

20 Raymond B. Kim  
21 Greenberg Traurig, LLP  
22 [REDACTED]  
23 [REDACTED]

24 Any notices provided pursuant to the requirements of this Final Judgment shall be  
25 deemed given five (5) business days after regular mailing or one (1) business day after facsimile  
26 transmission or overnight mailing.  
27

28 14. The terms of this Final Judgment shall be governed by the laws of the State of

1 California.

2 15. This court shall retain jurisdiction of this matter for the purpose of enabling any  
3 party to this Final Judgment to apply to the court at any time for such further orders and  
4 directions as are necessary or appropriate for carrying out this Final Judgment, for the  
5 modification of the injunctive provisions herein, for the enforcement of compliance herewith,  
6 and for punishment of violations thereof as permitted by law.

8 16. This Final Judgment shall take effect immediately upon entry hereof.

9 17. Enforcement of the injunctive terms and conditions of this Final Judgment by way  
10 of contempt shall only be by the California Attorney General's Office and/or the District  
11 Attorney for the County of Ventura.

13  
14 DATED:

**MAR 10 2009**

**STEVEN HINTZ**

JUDGE OF THE SUPERIOR COURT

15  
16 LA2007601277