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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

iYOGI, INC., a New York corporation;
iYOGI TECHNICAL SERVICES
PRIVATE LTD.; and VISHAL DHAR,
individually and on behalf of his marital
community,

Defendants.

NO. 15-2-30407-1 SEA
D.A.N.
~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AGAINST
iYOGI, INC.

This matter, having come before the Court on the State of Washington's Motion for Summary Judgment against Defendant iYogi, Inc., and the Court having heard the arguments, if any, of the parties, and considered the following material:

1. The State of Washington's Motion for Summary Judgment, and any Response and Reply briefs;
2. The Declarations of Daniel Davies, Rebecca Hartsock, and Bhuvanshu Srivastava and the exhibits attached thereto; and
3. The papers and pleadings on file in this case.

Having found that there exist no issues of material fact, it is therefore ORDERED that the State of Washington's Motion for Summary Judgment against iYogi, Inc. is GRANTED. The Court therefore DECLARES that:

1 1. Defendant iYogi, Inc. is a New York corporation with its principal place of business
2 in New York, New York. iYogi, Inc. conducts business in the State of Washington.

3 2. The State must prove three elements to prevail on its Consumer Protection Act
4 (CPA) claim: (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce;
5 (3) that affects the public interest. *State v. Kaiser*, 161 Wn. App. 705, 719, 254 P.3d 850 (2001);
6 *see also Hangman Ridge Training Stables v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 719 P.2d 531
7 (1985). Whether a particular act is unfair or deceptive is a question of law. *See Panag v. Farmers*
8 *Ins. Co. of Washington*, 166 Wn.2d 27, 47, 204 P.3d 885 (2009).

9 3. iYogi, Inc. (iYogi US) and its agent iYogi Technical Services Private Ltd. (iYogi
10 India, collectively with iYogi US, iYogi), sold and provided computer technical support services
11 and hardware to consumers throughout the country, including in Washington. iYogi induced
12 consumers to purchase its services by making a series of deceptive representations in violation
13 of Washington's Consumer Protection Act, RCW 19.86 *et seq.* First, iYogi deceived people into
14 believing it was a part of major computer software and hardware companies like Norton,
15 Microsoft, or Apple. iYogi representatives then used iYogi proprietary software to remotely
16 access consumers' computers in order to identify complex looking files they misrepresented
17 were "infected files" harming the computer. The representatives convinced Washington
18 consumers they needed to download iYogi's diagnostic software to fully identify their computer
19 problems. The software by design flashed a variety of warning signs causing a "Critical"
20 computer status regardless of the computer's health, and iYogi's representatives again
21 deceptively claimed that malware or computer viruses had infected the consumer's computer.
22 After making these claims, iYogi sold consumers technical support plans costing between
23 \$149.99 and \$379.90, claiming the services were necessary to "fix" the consumer's non-existent
24 problems. iYogi also deceptively represented that consumers' computers lacked any anti-virus
25 programs, in order to induce them to purchase iYogi's own anti-virus software. Numerous
26 Washington consumers purchased iYogi's technical support services and anti-virus software

1 based on these deceptive actions, demonstrating a capacity to deceive a substantial number of
2 Washington consumers.

3 4. iYogi US was engaged in trade and commerce because it marketed and sold its
4 products and services to Washington consumers.

5 5. iYogi US's acts affected the public interest. The unfair and deceptive acts were
6 committed in the course of iYogi's business, there was a pattern or generalized course of conduct,
7 the acts were repeated, and many consumers were affected or likely to be affected.

8 6. In determining the appropriate amount for a civil penalty, the Court finds that iYogi
9 US repeatedly committed the same violations of the CPA through transactions with consumers in
10 Washington, and gained \$4,000,000 in revenues via its deceptive conduct. iYogi US did not act in
11 good faith. The acts and practices described herein were not isolated instances of misjudgment, but
12 rather, an intentional and deliberate practice. iYogi US's violations caused substantial injury to the
13 public. iYogi US violated the CPA at least 60 times and likely violated the CPA at least 10,000
14 times based on the \$4,000,000 in revenues it collected from Washington consumers.

15 7. The Computer Spyware Act, RCW 19.270.040(1), prohibits a person from
16 "induc[ing] an owner or operator to install a computer software component onto the computer
17 by deceptively misrepresenting the extent to which installing the software is necessary for
18 maintenance, update, or repair of the computer or computer software, for security or privacy
19 reasons, for the proper operation of the computer, in order to open, view, or play a particular
20 type of content."

21 8. iYogi induced consumers to install the PC Diagnostic software on their computer
22 by deceptively misrepresenting it was necessary to diagnose and repair the consumer's computer.
23 In reality, the software performed no real scan diagnostic work and instead displayed "Critical"
24 warnings even when a computer was free from defects.

25 9. iYogi induced consumers to install its anti-virus software products onto their
26 computers through deceptive misrepresentations. iYogi falsely told consumers they did not have

1 a security system installed on their computers, reiterated that the consumers' computers were
2 infected with malware, and stated that the TechGenie Software was necessary to remove the
3 malware and protect the computer from any future viruses. iYogi made these claims even when
4 the consumer already had an anti-virus or other computer security program installed on her
5 computer.

6 10. iYogi US violated the Computer Spyware Act, RCW 19.270.040(1), at least 60
7 times.

8 iYogi US, as well as its successors, assigns, officers, agents, servants, employees,
9 representatives, and all other persons in active concert or participation with iYogi, Inc., are
10 PERMANENTLY ENJOINED, pursuant to RCW 19.86.080(1) from:

11 a. Inducing consumers to install its proprietary software onto their
12 computers by deceptively representing that it is necessary to assess the computer's health, or
13 repair and protect the computer's security;

14 b. Deceptively representing that files on a consumer's computer are
15 potentially harming the computer, when the files are not infected or otherwise harmful to the
16 computer;

17 c. Using software that flashes warning signs, including "Critical" computer
18 status, regardless of the computer's health;

19 d. Falsely claiming that malware or computer viruses have infected a
20 consumer's computer;

21 e. Deceptively representing that consumers' computers lack any anti-virus
22 programs, when the computers have an anti-virus program installed;

23 f. Purchasing advertising on Internet search engines so that Defendants' or
24 their agents' websites are featured more prominently than the software and hardware companies
25 for which the consumer is actually searching;

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1 g. Identifying items on a consumer's screen as malware, infected files,
2 potentially harmful files, or other serious defects harming the computer, when items are routine
3 programs or files that pose no harm to the consumer's computer;

4 h. Encouraging consumers to download computer software that displays
5 warnings when a computer is free from defects, including "warnings" that are related to routine
6 computer functions rather than a defect;

7 i. Selling hardware and software products, including operating system
8 upgrades, which are available for free from the manufacturer, including products that are covered
9 by a manufacturer's warranty;

10 j. Deceptively representing to consumers that products are defective in
11 order to sell them new products;

12 k. Selling additional service subscriptions to a consumer when the consumer
13 already has a subscription for the advertised service;

14 l. Engaging in unfair and deceptive sales tactics to induce consumers to
15 purchase products or services, including continuing attempts to sell additional services after a
16 consumer has declined the services;

17 m. Engaging in unfair and deceptive sales tactics by making false and
18 misleading statements to consumers including but not limited to, the need for computer repair,
19 replacement and/or service, and the quality of services consumers will receive;

20 n. Deceptively representing the nature or identity of iYogi India;

21 o. Deceptively representing the identity, existence, nature, or qualifications
22 of any persons affiliated with iYogi;

23 p. Failing to comply with 16 CFR Part 255, the FTC Guides Concerning the
24 Use of Endorsements and Testimonials in Advertising;

25 q. Failing to disclose any facts that would be material to a consumer's
26 decision to purchase iYogi's products or services;

1 r. Failing to obtain a consumer's express informed consent to any recurrent
2 payment plan. For purposes of this provision, "express informed consent" shall mean a check box
3 whereby the consumer must affirmatively agree to be automatically billed for a product or service
4 on a recurring basis, which must be clearly and conspicuously disclosed;

5 s. Failing to disclose all material terms and conditions of any recurrent
6 payment plan in direct proximity to the check box whereby the consumer is asked to give express
7 informed consent to be automatically billed for a product or service on a recurring basis;

8 t. Engaging in any other acts or practices that violate the CPA;

9 u. Failing to ensure that all its successors, assigns, officers, agents, servants,
10 employees, representatives, and all other persons in active concert or participation with them
11 receive a copy of this Order.

12 The Court ORDERS that iYogi, Inc. shall pay:

13 1. \$4,000,000 as restitution to aggrieved Washington consumers pursuant to RCW
14 19.86.080.

15 2. \$2,000,000 in damages, representing at least 60 violations of RCW 19.270.040,
16 while taking into consideration RCW 19.270.060's \$2,000,000 limit on damages.

17 3. \$120,000 in civil penalties to the State of Washington pursuant
18 to RCW 19.86.140.

19 4. The State's reasonable costs and attorneys' fees in the amount of \$134,115.23

20 5. With the exception of the State's reasonable costs and attorney's fees, these
21 amounts are joint and several to the Default Judgment entered against iYogi Technical Services
22 Private Ltd. on August 28, 2017 in this litigation.

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