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KING COUNTY
SUPERIOR COURT

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

STATE OF WASHINGTON,

Plaintiff,

v.

SECURELINK NETWORKS LLC, a
California Limited Liability Company;
NJC SOFTWARES, LLC, a California
Limited Liability Company; MANUEL
CORONA, JR., CEO of SECURELINK
NETWORKS LLC, individually and as
part of his marital community; RUDY O.
CORELLA, OFFICER OF NJC
SOFTWARES LLC, individually and as a
part of his marital community;
FIXWINREG, LLC, a California limited
liability company; HOANVINH V.
NGUYENPHUOC, President of
FIXWINREG, LLC, individually and as a
part of his marital community,

Defendants.

NO. 07-2-04987-8SEA

STIPULATED FINDINGS OF
FACT, CONCLUSIONS OF LAW,
AND JUDGMENT AND DECREE
AS TO FIXWINREG, LLC AND
HOANVINH V. NGUYENPHUOC

I. JUDGMENT SUMMARY

- 1.1 Judgment Creditor: State of Washington
- 1.2 Judgment Debtors: FIXWINREG, LLC
HOANVINH V. NGUYENPHUOC

COPY

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2 1.3 Principal Judgment Amount:

3 a. Costs and Fees: \$25,000.00

4 b. Restitution: See Section 4.4 below

5 c. Civil Penalties: \$75,000.00, with \$75,000.00 suspended on
6 condition of compliance with all of the terms of the Decree.

7 d. Total Judgment: \$100,000.00 (\$75,000.00 suspended on
8 condition of compliance with all of the terms of the Decree).

9 1.4 Post-Judgment Interest Rate: 12 percent per annum (for any amount owing
10 after the agreed upon final payment date has passed).

11
12 1.5 Attorney for Judgment Creditor: Katherine M. Tassi, Assistant Attorney General

13 1.6 Attorney for Defendants: David Britton, Esq.
14

15 Plaintiff, State of Washington, having commenced this action on February 2, 2007,
16 pursuant to RCW 19.270, the Computer Spyware Act, and RCW 19.86, the Unfair Business
17 Practices – Consumer Protection Act (“CPA”), and Defendants HOANVINH V.
18 NGUYENPHUOC and FIXWINREG, LLC, having accepted personal service;;

19 Plaintiff having appeared by and through its attorneys, Rob McKenna, Attorney
20 General; and Katherine M. Tassi, Assistant Attorney General; and Defendants having
21 appeared through their attorney, David Britton, Esq.;

22 Plaintiff and Defendants having agreed upon a basis for adjudication of the matters
23 alleged in the Complaint, and to the entry of this Stipulated Findings of Fact, Conclusions of
24 Law, Judgment and Decree (hereinafter referred to as “Stipulated Judgment” or “Decree”)
25 pursuant to CR 54; and
26

1 The Court having determined there is no just reason for delay in the entry of final
2 judgment against Defendants, and being fully advised, the Court hereby makes and enters the
3 following:
4

5 **II. FINDINGS OF FACT**

6 2.1. This action was commenced by the State of Washington pursuant to Chapter
7 19.270, the Computer Spyware Act, and 19.86 RCW, the Unfair Business Practices –
8 Consumer Protection Act.

9 2.2. Unless otherwise specified, the term “Defendants” as used in this document
10 shall mean HOANVINH V. NGUYENPHUOC and FIXWINREG, LLC, a California limited
11 liability company.

12 2.3. Defendants accepted personal service of the Summons and Complaint.

13 2.4. Defendants recognize and state that this Stipulated Judgment is entered into
14 voluntarily and that no promises or threats have been made by the Attorney General’s Office
15 or any member, official, agent, or representative thereof to induce Defendants to enter into
16 this Stipulated Judgment except as provided herein.

17 2.5. Defendants further agree that they will not oppose the entry of this Stipulated
18 Judgment on the grounds that it fails to comply with Rule 65(d) of the Rules of Civil
19 Procedure and hereby waive any objections based thereon.

20 2.6. The violations alleged in the State’s Complaint have been engaged in by
21 Defendants wholly or in part in King County, Washington, and elsewhere in the state of
22 Washington. Defendants transact or have transacted business in the state of Washington.

23 2.7 Defendant FixWinReg, LLC (“FixWin”) is a California limited liability
24 company. Its principal place of business is 503 S. Pacific Coast Hwy, Redondo Beach,
25 California 90277. At all times relevant to this action, FixWin was engaged in the marketing
26

1 and sale of software products over the Internet, including Registry Update, Registry Cleaner
2 32, Registry Rinse, and Registry Doc.

3
4 2.8 Defendant HoanVinh V. Nguyenphuoc (“Nguyenphuoc”) is the president of
5 FixWin, and, as such, controls its policies, activities, and practices, including those alleged in
6 the Complaint herein. Between 2005 and 2007, Nguyenphuoc, both as president of FixWin
7 and individually, advertised and marketed various software products over the Internet,
8 including Registry Update, Registry Cleaner 32, Registry Rinse, and Registry Doc.
9 Nguyenphuoc resides at 503 S. Pacific Coast Hwy, Redondo Beach, California 90277.

10 2.9 Defendants marketed software products on behalf of product owners through
11 the affiliate network Click Bank and through the affiliate program run by the owners of the
12 products. Defendants were paid a percentage of the sale price for each sale attributed to their
13 advertising.

14 2.10 Defendants’ sole form of advertising was the Net send message, an
15 advertisement that Defendants transmitted remotely to computers running Windows
16 Messenger Service. Defendants knowingly advertised a commercial product through the
17 operating system of the user’s computer so that the advertisement appeared as an internal
18 alert, and Defendants represented that the alert was an “Important Security Bulletin”. Many
19 of Defendants’ Net Send advertisements misrepresented that they were internal messages
20 from “Security” or from “Windows”. Defendants knowingly misrepresented to the user that
21 the software they were promoting was necessary for security purposes; in fact, the messages
22 were advertisements and the products did not remedy security problems on a user’s computer.

23 2.11 Many of Defendants’ Net send advertisements contained false, misleading, and
24 deceptive messages telling computer users that their computers contained registry errors that
25 compromised the data and the functioning of the computer. The messages told computer
26 users that immediate attention was required in order to avoid data loss and corruption.

1 person who is not an owner or operator of a user's computer to induce an owner or operator to
2 install a computer software component onto the computer by intentionally misrepresenting the
3 extent to which installing the software is necessary for security purposes. Plaintiff, State of
4 Washington, is authorized by RCW 19.270.060 to enjoin further violations of the Computer
5 Spyware Act, and to recover either actual damages or one hundred thousand dollars per
6 violation, whichever is greater, and costs and reasonable attorneys' fees.

7 3.4 Plaintiff is entitled to a Decree enjoining and restraining Defendants and any
8 and all persons in active concert or participation with Defendants from engaging in the future
9 in the acts or practices described in Findings of Fact 2.10 through 2.14 that violate the
10 Consumer Protection Act and the Computer Spyware Act.

11 3.5 Plaintiff is entitled to a Decree ordering Defendants to pay Plaintiff's costs
12 and fees of \$25,000.00 incurred by Plaintiff in pursuing this action. Said payment shall be in
13 addition to and exclusive of any costs or fees which may be incurred by Plaintiff in enforcing
14 the provisions of this Decree, including the costs of any collection actions. Plaintiff's request
15 for costs and fees of \$25,000.00 is reasonable, and Plaintiff is entitled to a Decree ordering
16 Defendants to pay the requested amount.

17 3.6 Plaintiff is entitled to a Decree ordering Defendants to comply with the
18 injunctive provisions described below.

19 3.7 Plaintiff is entitled to a Decree ordering Defendants to pay civil penalties as
20 described below.

21 3.8 Plaintiff is entitled to a Decree ordering Defendants to pay restitution as
22 described below.

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

25 **IV. JUDGMENT AND DECREE**
26

1 It is hereby ADJUDGED, ORDERED, and DECREED as follows:
2

3 4.1 Defendants shall immediately inform and give actual notice to all successors,
4 assigns, transferees, officers, agents, affiliates, employees, and representatives of Defendants
5 of the terms and conditions of this Stipulated Judgment and Decree.

6 4.2 Defendants and all successors, assigns, transferees, officers, agents, servants,
7 employees, and representatives of Defendants are hereby enjoined and permanently
8 restrained in the State of Washington from directly or indirectly engaging in any of the
9 following conduct:

- 10 1. Misrepresenting, directly or by implication, an urgency, exclusivity, or
11 need for products or services in the context of any advertising or marketing of
12 services or products, including, but not limited to, using any language,
13 symbols, or other visual or verbal messages that misrepresent to the user that
14 the user's computer is at a risk that necessitates purchasing the product.
- 15 2. Using Net Send messages to advertise, market, or promote any products
16 or services.
- 17 3. Using any form of advertising that simulates a security alert or security
18 message.
- 19 4. Misrepresenting the risks that any products or services are designed to
20 address, or the benefits of any products or services.
- 21 5. Making any misrepresentations in the context of any advertising of
22 products or services.
- 23 6. Engaging in any conduct that violates the Computer Spyware Act,
24 RCW 19.270 et seq.
- 25 7. Engaging in any conduct that violates RCW 19.86, the Unfair Business
26 Practices – Consumer Protection Act.

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8. Prior to advertising any product or service, failing to review the proposed advertisement(s) and proposed manner of transmission with a licensed attorney to determine whether the advertisement(s) or manner of transmission violate the provisions of this Stipulated Judgment, and to obtain a written affirmation from the attorney that they do not. This injunction shall apply regardless of whether Defendants are themselves responsible for the content of the advertisement(s) or manner of transmission or actual transmission of such advertisement(s), and specifically includes third parties who design or send advertisements on Defendants' behalf, or who contract with Defendants for such services. Defendants shall provide to the reviewing attorney an accurate copy of the advertisement(s), an explanation of the process by which they will be transmitted or made otherwise available to consumers, and a complete description of the computer user's experience when viewing the advertisement, if the advertisement will be received on users' computers. Defendants shall keep a record of the attorney's written affirmation that the proposed advertisement does not violate the terms of this Stipulated Judgment.

4.3 Pursuant to RCW 19.86.140, Plaintiff shall recover and Defendants shall pay civil penalties in the amount of \$75,000.00, with \$75,000.00 suspended upon full compliance with this Stipulated Judgment. Provided Defendants comply fully with the terms of this Stipulated Judgment, the full amount of civil penalties shall be extinguished three (3) years following the date of entry of this Stipulated Judgment.

4.4 Pursuant to RCW 19.86.080, Plaintiff shall recover and Defendants shall pay costs and attorneys' fees incurred in pursuing this matter in the amount of \$25,000.00. Interest on any unpaid balance of this amount shall accrue in the amount of 12% per annum.

1 customers of Defendants' products or services; (c) complaints relating to Defendants'
2 advertising; (d) refunds to Washington consumers; and (e) gross amounts processed and billed
3 to Washington consumers.

4 5.6 Representatives of the Office of Attorney General shall be permitted, upon ten
5 (10) days' notice to Defendants, to access, inspect, and/or copy all business records or
6 documents under the control of Defendants, in order to monitor compliance with the
7 injunctive provisions of this Stipulated Judgment.

8 5.7 Representatives of the Office of the Attorney General may be permitted to
9 question Defendants, or any officer, director, agent, or employee of any business organization
10 affiliated with Defendants, in the form of a deposition, pursuant to the provisions and notice
11 requirements of CR 30, and to issue interrogatories and requests for production of documents,
12 pursuant to the provisions and notice requirements of CR 33 and CR 34, in order to monitor
13 compliance with the injunctive provisions of this Stipulated Judgment.

14 5.8 Under no circumstances shall this Stipulated Judgment or the names of the
15 State of Washington or the Office of the Attorney General, Consumer Protection Division, or
16 any of its employees or representatives be used by Defendants' agents or employees in
17 connection with the promotion of any product or service or an endorsement or approval of
18 Defendants' practices.

19 5.9 The Court finding no just reason for delay, hereby expressly directs entry of
20 this Stipulated Judgment. **OCT 10 2007**

21 SO ORDERED this _____ day of _____, 2007.

22
23 **Roderick S. Simmons**

24 _____
JUDGE

25 Presented by

26 ROB MCKENNA

1 Attorney General

2 
KATHERINE M. TASSI #32908

3 Assistant Attorney General

4 katherinet@atg.wa.gov

5 Attorneys for Plaintiff, State of Washington
Office of the Attorney General of Washington

6 Consumer Protection Division

7 800 Fifth Avenue, Suite 2000

8 Seattle, Washington 98104

9 Phone: 206.464.7744

10 Agreed to, Approved for Entry
11 Notice of Presentation Waived:

12  10/2/07

13 HOANVINH V. NGUYENPHUOC

14 Defendant

15  10/2/07

16 FIXWINREG, LLC

17 Defendant

18  10/4/07

19 DAVID BRITTON, ESQ.

20 Attorney for Defendants