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THE HONORABLE STEVEN GONZALEZ

KING COUNTY
SUPERIOR COURT

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

INTERNET ADVANCEMENT, INC.,
d/b/a 4GREATBUYS.COM, a
Washington for-profit corporation;
TODD WICKHAM, Chief Executive
Officer of INTERNET
ADVANCEMENT, INC., individually
and on behalf of his marital community;
KEN COMMITTEE, President of
INTERNET ADVANCEMENT, INC.,
individually and on behalf of his marital
community; and ERNESTO
VILLAMOR, Secretary and Treasurer
of INTERNET ADVANCEMENT,
INC., individually and on behalf of his
marital community,

Defendants.

NO. 04-2-20187-0SEA

SECOND STIPULATED JUDGMENT

I. JUDGMENT SUMMARY

1.1 Judgment Creditor:

State of Washington

1.2 Judgment Debtors:

Internet Advancement, Inc., d/b/a
4Greatbuys.com; Todd Wickham, individually,
and on behalf of his marital community; Ken
Committee, individually, and on behalf of his
marital community; and Ernesto Villamor,
individually, and on behalf of his marital
community

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1 **1.3** Principal Judgment Amount:

2 **a.** Restitution: To be determined pursuant to Section V below

3 **b.** Costs and Fees: \$35,959.00

4 **c.** Civil Penalty: \$118,386.36

5 **d.** Suspended Penalty See Paragraphs 4.2, 6.1 and 6.2 below

6 **1.4** Post Judgment Interest Rate: 12% per annum, beginning twelve months from
7 the date of Judgment.

8 **1.5** Attorney for Judgment Creditor: Paula Selis, Senior Counsel

9 **1.6** Attorney for Judgment Debtors: Andrew Kinstler of Helsell Fetterman LLP

10 Plaintiff, State of Washington, having filed a Petition for Enforcement of the August
11 11, 2004 Stipulated Judgment on November 6, 2007; and

12 Defendants Internet Advancement, Inc., d/b/a 4Greatbuys.com, Todd Wickham, Ken
13 Committee, and Ernesto Villamor having been served with copies of the Petition for
14 Enforcement herein; and

15 Plaintiff appearing by and through its attorneys, Robert M. McKenna, Attorney
16 General, and Paula Selis, Senior Counsel; and

17 Defendants appearing by and through their attorney, Andrew Kinstler of Helsell
18 Fetterman LLP; and

19 Plaintiff and defendants having stipulated and agreed upon a basis for resolving the
20 matters alleged in the Petition for Enforcement herein and to the entry of this Findings of Fact,
21 Conclusions of Law, Judgment and Decree (hereinafter "Decree") pursuant to CR 54; and

22 The Court having determined that there is no just reason for delay in the entry of a
23 final judgment against defendants, and being fully advised, the Court hereby makes and enters
24 the following:

1 **II. FINDINGS OF FACT**

2 **2.1** On August 11, 2004, the State of Washington acting through the Office of the
3 Attorney General, filed a lawsuit against defendants for violations of the Consumer Protection
4 Act, RCW 19.86 *et seq.* and the Unsolicited Electronic Mail Act, RCW 19.190, *et seq.* The
5 Complaint alleged that numerous aspects of defendants' Internet search engine optimization
6 business constituted unfair and deceptive practices. Specifically, the State alleged that
7 defendants made numerous misrepresentations in the context of their marketing and sale of
8 search engine optimization services; failed to honor guarantees and refunds as contractually
9 promised; made unauthorized charges to consumer credit cards; failed to provide contractually
10 required ranking reports; unfairly structured the terms of cancellation; and provided poor
11 customer service.

12 **2.2** After negotiations with defendants, the lawsuit was settled with a Stipulated
13 Judgment entered on August 11, 2004 (hereinafter referred to as "First Stipulated Judgment").
14 A number of injunctive provisions were ordered as part of the First Stipulated Judgment.
15 These injunctive provisions listed several prohibited practices, including but not limited to
16 making misrepresentations; failing to disclose all material contract terms; making improper
17 money-back offers; failing to respond promptly to consumer requests; failing to cancel
18 consumer accounts; improperly billing and charging consumer accounts; and failing to grant
19 refunds. Pursuant to the terms of the First Stipulated Judgment, the Court retained jurisdiction
20 over the parties "for the purpose of enabling any party to this Decree to apply to the Court at
21 any time for the enforcement of compliance therewith, the punishment of violations thereof,
22 or the modification or clarification thereof." Page 15, Paragraph 6.3, First Stipulated
23 Judgment. The Stipulated Judgment provided for restitution, costs and fees, and a civil
24 penalty of which \$25,000.00 was payable and \$25,000.00 was suspended on compliance with
25 the injunctive provisions of the Judgment. Page 1, Section I, First Stipulated Judgment.

1 **2.3** Since entry of the First Stipulated Judgment, defendants have continued to
2 engage in some of the unlawful acts which gave rise to the original lawsuit. The frequency of
3 complaints has remained regular and consistent. From October 28, 2004 through March 10,
4 2008, the Attorney General's Office received 82 consumer complaints against defendants,
5 which referenced practices that occurred after entry of the First Stipulated Judgment. These
6 complaints alleged some of the same practices alleged in the State's original Complaint.

7 **2.4** On November 6, 2007, Plaintiff, State of Washington, filed a Petition for
8 Enforcement of the First Stipulated Judgment requesting that the Court unsuspend the civil
9 penalties of \$25,000.00 that were suspended upon condition of compliance with the terms of
10 the First Stipulated Judgment, impose additional civil penalties pursuant to RCW 19.86.140,
11 provide restitution to harmed consumers and award the costs and fees resulting from
12 plaintiff's enforcement action.

13 **2.5** Defendants Internet Advancement, Inc., d/b/a 4Greatbuys.com, Todd
14 Wickham, Ken Committee, and Ernesto Villamor were duly served with Plaintiff's Petition
15 for Enforcement.

16 **2.6** Defendants are engaged in the business of providing search engine marketing
17 services. Until 2008, Internet Advancement offered search engine optimization services to
18 customers as part of its marketing services, but currently it only provides search engine
19 optimization services to customers that previously contracted for that work. Internet
20 Advancement advertises its services on its website, www.internetadvancement.com, and also
21 by telemarketing. Businesses which market and sell products over the Internet often rely on
22 search engines to lead potential customers to their websites and therefore hire search engine
23 optimizers with the goal of improving traffic to their website. According to Internet
24 Advancement's 2006 website, 90% of users "never view sites listed under #20 on the Search
25 Engine Rankings," and the higher a ranking, the more traffic a website will generate.

26 <http://web.archive.org/web/20061107111225> <http://internetadvancement.com>. Defendants'

1 website, November 7, 2006. Internet Advancement's 2006 website also purported to guarantee
2 that its search engine optimization services would provide top twenty-five rankings on major
3 search engines such as Yahoo, Google and AOL. *Id.* In return for payments varying from
4 \$999.00 to \$3,000.00 in "set-up" fees, in addition to a monthly fee of \$149.00, Internet
5 Advancement offered a variety of search engine optimization packages for its clients. These
6 packages included but were not limited to ongoing submission to major search engines;
7 researching clients' products, markets and competition; researching and advising clients about
8 the use and relevance of key words; and providing ranking reports to clients.

9 <http://www.internetadvancement.com/services.php>. Defendants' website, October 1, 2007.

10 **2.7** Internet Advancement, Inc. is in competition with others in the State of
11 Washington engaged in similar business.

12 **2.8** Defendants have violated some of the injunctive provisions of the First
13 Stipulated Judgment since its entry on August 11, 2004. Specifically, defendants have violated
14 the injunctive provisions of the First Stipulated Judgment through the following conduct:

15 **a.** In some, but not all instances, defendants have made misrepresentations
16 in the context of the sale, advertising and delivery of services. Specifically, defendants have
17 misrepresented their ability to provide top search engine rankings; their use of key words and
18 phrases; their ability to increase traffic and profits for consumers' websites; and the existence
19 and nature of consumer complaints filed against their company. These misrepresentations
20 violate Paragraph 4.6(a) of the First Stipulated Judgment, which prohibits defendants from
21 "making any misrepresentations in the context of their sale, advertising or delivery of
22 services." First Stipulated Judgment, page 9, Paragraph 4.6(a).

23 **b.** In some, but not all instances, defendants' telemarketing sales
24 representatives have called prospective customers and coaxed them into purchasing
25 defendants' services by selectively highlighting favorable portions of their written contract and
26 misrepresenting its other unfavorable portions. In several instances, sales representatives have

1 misrepresented terms of the written contract; failed to mention its material provisions,
2 misrepresented the obligations of consumers; and made promises which exceed the contract's
3 written terms. Consumers have signed contracts solely based on salespersons' verbal
4 representations, only to later discover that the written contract provisions differed substantially
5 from the verbal representations. These practices violate Paragraphs 4.6(c), 4.6(i), 4.6(b) and
6 4.6(p) of the First Stipulated Judgment, which respectively prohibit defendants from "failing to
7 disclose, clearly and conspicuously, all material contract terms before prospective customers
8 have agreed to be charged for any of defendants' services," from "failing to clearly,
9 conspicuously, and unambiguously disclose all material terms in their contract," from
10 "misrepresenting the contractual obligations of customers or prospective customers," and from
11 "misrepresenting the terms of their written contract in oral statements, advertising, or through
12 other means." First Stipulated Judgment; page 9, Paragraph 4.6(c); page 12, Paragraph 4.6(i);
13 page 9, Paragraph 4.6(b); page 13, Paragraph 4.6(p).

14 c. One of the complaints that gave rise to the original lawsuit was
15 defendants' failure to honor a "money back guarantee" and adequately disclose its limitations.
16 The First Stipulated Judgment was crafted to specify with particularity the terms under which
17 defendants could offer a guarantee so that consumers could understand its terms. Only if the
18 terms were specified and disclosed could defendants offer the guarantee. Accordingly,
19 Paragraph 4.6(d) of the First Stipulated Judgment enjoins defendants from "making any
20 money-back offers," but allows them to "make an offer to refund one half of the set-up and
21 administration fees," if they comply with specific, enumerated conditions. First Stipulated
22 Judgment, page 9, Paragraph 4.6(d). Specifically, these conditions require defendants to
23 clearly disclose the refund policy; not charge monthly maintenance fees until promised
24 rankings have been achieved; make a reasonable effort to provide services and maintain a
25 record of such efforts; and provide a refund to customers for whom the promised results have
26 not been achieved. In some, but not all instances, defendants have violated Paragraph 4.6(d) of

1 the First Stipulated Judgment by making money-back offers to refund one-half of set-up and
2 administration fees without complying with these specified conditions.

3 d. In some, but not all instances, Defendants have failed to respond
4 promptly to consumer requests, complaints and inquiries, and in some instances have failed to
5 respond at all. These actions violate Paragraph 4.6(e) of the First Stipulated Judgment, which
6 prohibits defendants from “failing to respond promptly to consumers’ requests for fulfillment
7 of any guarantees, refund provisions in defendants’ contracts, complaints, or other requests for
8 service or information.” First Stipulated Judgment, page 11, Paragraph 4.6(e). The injunction
9 deems that a response by defendants is “prompt” if it is addressed in a professional manner
10 within three business days of the consumers’ initial contact.

11 e. When the State initially sued defendants, one of their defenses was that
12 they were not able to fulfill promised rankings because consumers performed their own
13 technical changes to their web pages, and that these changes prevented the rankings from
14 materializing. The purpose of Paragraph 4.6(k) of the First Stipulated Judgment was to shift
15 the burden of proof to defendants to prove that the consumers made changes to their websites
16 as a condition of asserting this practice as a defense to non-performance. Specifically,
17 Paragraph 4.6(k) bars defendants from “representing that a consumer is not entitled to a refund
18 because he or she has purportedly performed changes or allowed changes to the source code of
19 the consumer’s web page, unless defendants can prove that such changes were made through a
20 sworn statement of a third party technical expert unrelated to defendants.” First Stipulated
21 Judgment, page 1, p.12, Paragraph 4.6(k). (emphasis added). Defendants have violated
22 Paragraph 4.6(k) by denying refunds and improperly shifting blame to consumers without the
23 requisite proof of a third party technical expert.

24 f. The First Stipulated Judgment was crafted to assure that oral promises
25 that exceeded the written terms of the contract were either reduced to writing or that the
26 consumer was asked to affirm that no such promises were made. Accordingly, Paragraph

1 4.6(g) of the Stipulated Judgment requires defendants to provide customers, within the
2 contract, "the option of either checking a box indicating that no further promises were made or
3 checking a box indicating that additional promises were made and explicitly stating what those
4 promises were." First Stipulated Judgment, page 12, Paragraph 4.6(g). Despite this injunction,
5 defendants have provided consumers no such option within the contract. Rather, defendants
6 included a one-sentence statement that gave no option to the consumer to indicate that further
7 promises were made. It stated: "By clicking on "Activate Your Service Agreement" or signing
8 below, I verify that no promises were made to induce me to enter into this contract other than
9 those expressed in this agreement." As a result, when sales representatives made verbal
10 promises that exceeded the written terms of the contract, consumers had no way of evidencing
11 them. When consumers tried to enforce supplementary terms that were verbally guaranteed,
12 defendants have claimed that such terms are not part of the contract. This conduct violates
13 Paragraph 4.6(g) of the First Stipulated Judgment.

14 g. In some, but not all instances, defendants have billed consumers after
15 consumers cancelled their accounts pursuant to the terms of their contracts. Additionally, they
16 have failed to cancel consumer accounts after representing they would do so. They have also
17 failed to promptly cancel service to consumers when the consumer was contractually entitled
18 to cancellation and requested it through telephone, United States mail, email or facsimile, as
19 permitted by the terms of the Stipulated Judgment. These actions violate Paragraphs 4.2(h),
20 4.5(f) and 4.6(l) of the First Stipulated Judgment.

21 h. Defendants have violated Paragraph 4.6(q) of the First Stipulated
22 Judgment, which enjoins future violations of the Consumer Protection Act, RCW 19.86.020, *et*
23 *seq.*, by engaging in the practices described in paragraphs 2.8(a) through (g) herein, and by
24 repeatedly breaching their contracts with consumers.

25 2.9 Defendants deny that all of the above-described practices occurred in numerous
26 instances or were part of a repeated pattern, but admit to the occurrence of some of the

1 practices. Accordingly, defendants admit to multiple violations of the First Stipulated
2 Judgment. Therefore, defendants have agreed to be bound by the terms of the Second
3 Stipulated Judgment set forth below.

4 Based upon the foregoing Findings of Fact, the Court hereby makes the following:

5 **III. CONCLUSIONS OF LAW**

6 **3.1** The Court has jurisdiction of the subject matter of this action and of the parties
7 hereto, and plaintiff's Complaint states claims upon which relief may be granted.

8 **3.2** The Attorney General has jurisdiction to bring this action under RCW
9 19.86.080 and RCW 19.86.040.

10 **3.3** Defendants' conduct as described in the Findings of Fact violates the First
11 Stipulated Judgment.

12 **3.4** Plaintiff is entitled to a Decree ordering defendants to pay a civil penalty
13 pursuant to RCW 19.86.140.

14 **3.5** Plaintiff is entitled to a Decree ordering defendants to pay restitution to
15 consumers pursuant to RCW 19.86.080.

16 **3.6** Plaintiff is entitled to a Decree binding upon defendants and their successors,
17 officers, employees, agents, servants, transferees, directors, and all persons in active concert
18 or participation with defendants permanently enjoining defendants from engaging in the
19 practices described in Findings of Fact 2.8(a) through (h) and requiring defendants to comply
20 with the injunctive relief outlined below.

21 **3.7** Plaintiff is entitled to a Decree ordering defendants to pay plaintiff's costs and
22 fees incurred in the prosecution of this action pursuant to RCW 19.86.080.

23 **3.8** The fees and costs incurred by plaintiff in the prosecution of this action are
24 reasonable.

1 customers. For purposes of this provision, website design shall not include any of the
2 following:

- 3 1. keyword research or creation;
- 4 2. metatag creation; or
- 5 3. search engine submissions.

6 **b.** Making any misrepresentations or material omissions in the context of
7 their sale, advertising or delivery of services including, but not limited to misrepresentations
8 regarding their ability to provide top search engine rankings, their ability to increase traffic to
9 customers' websites, their success rate, their number of repeat customers, the source or
10 identity of traffic to customer's websites, or the number or type of visits to customer's
11 websites.

12 **c.** Misrepresenting the contractual obligations of customers, including
13 misrepresenting the terms of defendants' written contracts in oral statements, advertising, or
14 through any other means.

15 **d.** Failing to disclose, clearly and conspicuously, all material contract
16 terms before prospective customers have agreed to be charged for any of defendants' services.

17 **e.** Failing to respond promptly to consumers' requests for fulfillment of
18 any guarantees, refund provisions in defendants' contracts, complaints, or other requests for
19 service or information. For purposes of this injunction, defendants will be deemed to
20 promptly respond if:

- 21 1. consumer requests, complaints, and inquiries are addressed in a
22 professional manner within three business days of the consumers'
23 initial contact; and
- 24 2. if the consumer is dissatisfied with defendants' action, defendants refer
25 the consumer to a customer service supervisor for further explanation,
26

1 action, or resolution within three business days of the consumer's
2 request for further explanation, action, or resolution; and

3 3. if the consumer is dissatisfied with defendants' resolution through the
4 customer service supervisor, defendants refer the consumer to the
5 senior management for further explanation, action, or resolution within
6 three business days of the consumers' request for further explanation,
7 action, or resolution; and

8 4. defendants maintain a record of consumer complaints and resolutions;
9 and

10 5. defendants train and supervise their customer service representatives to
11 assure they maintain a professional relationship with consumers and do
12 not abuse, harass, or intimidate them.

13 f. Offering a money-back guarantee for search engine optimization
14 services except as to existing customers seeking additional SEO services, provided that the
15 existing customer has not sought a refund pursuant to paragraphs 5.1 (a), (b) or (d) below, and
16 further provided that any such guarantees made before the entry of this Decree shall be fully
17 honored, and any refunds offered pursuant to the guarantee shall be made consistent with the
18 injunctive provisions herein.

19 g. Failing to cancel consumer' accounts after representing they will do so.

20 h. Placing charges on consumers' credit cards or debit cards without
21 authorization to do so, or exceeding consumers' contractually agreed limitations on authorized
22 charges. Internet Advancement shall clearly and conspicuously notify customers on the
23 contract itself that the terms of their written contract are the exclusive terms to which the
24 parties are bound, and provide the customer with the option of either checking a box
25 indicating that no further promises were made or checking a box indicating that additional
26 promises were made and explicitly stating what those promises were. In the latter event,

1 Internet Advancement management may choose to accept such additional terms by charging
2 the customer's credit card or to reject such additional terms by not charging the customer's
3 credit card and shall inform the customer as to its intended action and the reason therefore.

4 **i.** Billing consumers after they have cancelled their contracts pursuant to
5 the terms of their contracts with defendants.

6 **j.** Failing to toll any time limitations on the giving of refunds during the
7 period of time defendants are attempting to address a consumer's complaint. If such a period
8 of time extends beyond the term of defendants' contract with the consumer, the refund must
9 be provided even after termination of the contract.

10 **k.** Representing that a consumer who receives search engine optimization
11 services is not entitled to a refund because he or she has purportedly performed changes or
12 allowed changes to the source code of the consumer's web page, unless defendants can prove
13 that such changes were made through a sworn statement of a third party technical expert
14 unrelated to defendants.

15 **l.** If a consumer is contractually entitled to cancellation, failing to
16 promptly cancel service to said consumer when requested to do so through any of the
17 following means:

- 18 1. telephone;
- 19 2. United States mail;
- 20 3. email; or
- 21 4. facsimile.

22 **m.** Failing to disclose clearly and conspicuously defendants' cancellation
23 policy in the terms and conditions posted on their website and in any written terms and
24 conditions provided to the consumer.

25 **n.** Failing to provide ranking reports or other services that are
26 contractually agreed to.

- 1 o. Violating the Consumer Protection Act, RCW 19.86.
- 2 p. Violating the Unsolicited Commercial Electronic Mail Act, RCW
- 3 19.86.190, in any manner, including but not limited to:
- 4 1. using false or misleading information in subject line; or
- 5 2. misrepresenting the transmission path or point of origin in an email.
- 6 q. Engaging in the practices described in Findings of Fact 2.8(a) through
- 7 (h).
- 8 r. Selling or attempting to sell additional or different services to
- 9 customers or any additional SEO services at the time they ask for cancellation of their
- 10 contracts for search engine optimization services, unless defendants first cancel the
- 11 customer's SEO contract.
- 12 s. Failing to implement and/or maintain the following business practices
- 13 on an ongoing basis:
- 14 1. Monitoring accounts monthly to insure search engine rankings according to
- 15 customers' contracts have been met for existing search engine optimization service
- 16 ("SEO") customers.
- 17 2. Notifying existing SEO customers by email that they are refund eligible if search
- 18 engine rankings are not achieved.
- 19 3. Responding in a timely fashion to customer requests for refunds for SEO services.
- 20 4. Establishing toll free telephone and fax numbers for the exclusive use of
- 21 customers.
- 22 5. Employing a full-time employee to answer incoming phone calls as opposed to
- 23 having sales people receive calls.
- 24 6. Ensuring that all department heads have access to customer data, customer
- 25 inquiries, customer status and monthly customer ranking reports.
- 26 7. Making the status of accounts available to all department heads.

- 1 8. Maintaining improved ranking software that gives existing SEO customers better
2 information on the status of how well their sites are ranking on search engines and
3 improves the quality and level of data provided monthly to existing SEO
4 customers.
- 5 9. Retaining an experienced controller to restructure the Accounting Department.
- 6 10. Maintaining new and improved accounting, credit card processing, and refund
7 procedures.
- 8 11. Maintaining improvements to financial reporting, and rebuilding a recurring billing
9 system to ensure proper billing.
- 10 12. Maintaining safeguards for customer credit card information.
- 11 13. Discharging, where appropriate, managers, sales personnel and customer services
12 personnel due to unacceptable performance, poor customer service or failure to
13 adhere to company procedures.
- 14 14. Giving existing SEO customers access to ranking reports.
- 15 15. Maintaining phone software to monitor customer calls with sales staff.
- 16 16. Recording random sales calls to monitor if any promises are being made that are
17 not within the contract terms.
- 18 17. Maintaining an Online "No Promises" System to ensure that the sales team is not
19 making non-contract promises to customers and to ensure customers understand
20 what they are buying.
- 21 18. Not accepting contracts or credit card until the "No Promises" System clears the
22 contract as having no promises.
- 23 19. Maintaining a new triple check system to require refund/cancellation specialist
24 sign-off, customer service manager review and accounting final review for all
25 refunds.
- 26 20. Maintaining a list of platforms and web site types that should not be sold to.

1 21. Providing sales personnel in any current or future internet business with a list
2 of representations the sales personnel may not make to any prospective customers.

3 That list shall include the following prohibited representations:

- 4 a. Promises regarding rankings customers will achieve on any
5 search engines;
- 6 b. Promises regarding traffic customers will achieve;
- 7 c. Promises regarding sales customers will achieve;
- 8 d. Promises that the company will provide keyword research or
9 metatag creation; and
- 10 e. Promises that the company will make submissions on the
11 client's behalf to any search engines.

12 V. RESTITUTION

13 5.1 Pursuant to RCW 19.86.080, defendants hereby agree to provide payment for
14 consumer restitution as follows:

15 a. Within one week of the signing of this Decree, defendants shall contact
16 all existing SEO customers who have contracted for services within the nine-month period
17 preceding the entry of this Decree and give them an option to cancel their contracts and
18 receive a refund. The contact shall be made via email and shall state that the consumer is
19 entitled to cancel because of an agreed-upon settlement of a lawsuit between defendants and
20 the state of Washington. The subject line of the email should read as follows: "Internet
21 Advancement Offer to Cancel Contract and Refund." The email should include a statement
22 indicating that the recipient is entitled not only to a cancellation of the contract, but to a pro
23 rata refund of any set-up fees, and an actual refund of monthly fees already paid that cover the
24 remaining term of the contract period after the date of the cancellation request (i.e., if the
25 consumer has paid a \$980 set-up fee that is to be paid over a six-month period and the
26 consumer cancels in month three, then half the set-up fee will be refunded; any monthly fees

1 paid in advance shall be likewise refunded). The email shall notify the recipient that he or she
2 must reply within 30 days of receipt of the notice to be eligible for the refund, and that in
3 order to reply, the recipient should click on "reply all" in order for the Attorney General's
4 Office to be informed of the reply. All emails sent by defendants pursuant to this paragraph
5 must be copied to the Attorney General's Office. Plaintiff shall review the text of the form
6 email that defendants propose to send to their customers before it is sent and shall retain
7 approval rights over the language of the email. The emails sent by defendants in compliance
8 with this paragraph shall not include any advertising or information other than what is
9 required herein. Plaintiff shall retain the right to make further contact with consumers.

10 **b.** Within one week of the signing of this Decree, defendants shall contact
11 all customers who have complained to the Attorney General's Office since August 11, 2004
12 (provided such customers have not already received a full refund of all funds paid to
13 defendants) and give customers the option to cancel their contracts and receive a full refund of
14 all funds paid to defendants. The contact shall be made via email and postcard via U.S. Mail
15 and shall state that the consumer is entitled to cancellation and a full refund because of an
16 agreed-upon settlement of a lawsuit between defendants and the state of Washington. The
17 subject line of the email shall read as follows: "Internet Advancement Offer to Cancel
18 Contract and Provide Full Refund." The email and postcard should include a statement
19 indicating that the recipient is entitled not only to a cancellation of the contract, but a full
20 refund of any set-up fees and monthly fees already paid to defendants. The email and
21 postcard should notify the recipient that he or she must reply within 30 days to be eligible for
22 the refund, and that in order to reply to the email, the recipient should click on "reply all" in
23 order for the Attorney General's Office to be informed of the reply, or, if the reply is in
24 response to the postcard, the consumer should contact defendants via their toll-free number.
25 All emails sent by defendants pursuant to this paragraph must be copied to the Attorney
26 General's Office. Plaintiff shall review the text of the form emails that defendants propose to

1 send to their customers before it is sent and shall retain approval rights over the language of
2 the email. The emails sent by defendants in compliance with this paragraph shall not include
3 any advertising or information other than what is required herein. Plaintiff shall retain the
4 right to make further contact with the consumers.

5 c. At the conclusion of the 30-day period following the sending of the
6 emails and postcards referenced above, defendants shall provide all restitution owing directly
7 to those consumers who are entitled to refunds and shall cancel their contracts in accordance
8 with the provisions referenced above.

9 d. For the 60-day period following entry of this Decree, consumers who
10 contact the Attorney General's Office, and who complain about defendants' practices, shall be
11 entitled to immediate cancellation of their contracts by the corporate defendant and a refund
12 of any amount pre-paid for future services.

13 e. At the conclusion of the 60-day period following entry of this Decree,
14 defendants shall provide a full accounting to plaintiff that (1) identifies the consumers who
15 received refunds pursuant to paragraph c above (including name, address, email and telephone
16 number), the amounts of the refunds, and the dates the refunds were made; and (2) identifies
17 the consumers whose contracts were cancelled pursuant to paragraphs c-d above.

18 VI. ENFORCEMENT

19 6.1 Violation of any of the terms of this Decree shall constitute a violation of an
20 injunction for which contempt of court proceedings and civil penalties may be sought by the
21 Attorney General pursuant to RCW 19.86.140, which provides in relevant part: "Every person
22 who shall violate the terms of any injunction issued as in this chapter provided, shall forfeit
23 and pay a civil penalty of not more than twenty-five thousand dollars." The amount of any
24 civil penalty shall be up to the discretion of the Court, provided that the suspended civil
25 penalties referenced in paragraph 4.2 shall only be unsuspended if defendants materially
26 violate the terms of this Decree and, prior to seeking the unsuspension of the civil penalties,

1 plaintiff: (a) provides defendants with ten (10) days' notice before initiating any action or
2 proceeding seeking unsuspension of the penalties, and (b) allows defendants seven (7)
3 additional days to provide a written response to the notice. Such notice shall not be required in
4 those cases where an Attorney General concludes that because of an alleged violation, a threat
5 of immediate and irreparable harm requires immediate action.

6 **6.2** If an individual defendant, but not the corporate defendant, shall violate the
7 terms of this Decree, then the other individual defendants shall only be liable for such
8 violation under paragraph 6.1 above if they were engaged in active concert or participation
9 with the violating defendant.

10 **6.3** The violation of any of the terms of this Decree constitutes a violation of the
11 Consumer Protection Act, RCW 19.86 et seq.

12 **6.4** Jurisdiction is retained for the purpose of enabling any party to this Decree to
13 apply to the Court at any time for the enforcement of compliance therewith, the punishment
14 of violations thereof, or the modification or clarification thereof.

15 **6.5** Nothing in this Decree shall be construed to limit or to bar any other consumer
16 in the pursuit of other remedies against defendants or any governmental entity from pursuing
17 other remedies arising out of causes of action or unlawful conduct not alleged herein.

18 **6.6** Representatives of the Office of Attorney General shall be permitted upon 10
19 days' notice to defendants to access, inspect, and/or copy all business records or documents
20 under the control of defendants in order to monitor compliance with the injunctive provisions
21 of this Decree.

22 **6.7** Under no circumstances shall this Decree or the names of the state of
23 Washington or the Office of the Attorney General, Consumer Protection Division, or any of
24 its employees or representatives be used by defendants' agents or employees in connection
25 with the promotion of any product or service or an endorsement or approval of defendants'
26 practices.

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2 **VII. TERMS OF PAYMENT**

3 7.1 The total Judgment amount is to be paid in full within twelve months of entry
4 of this Decree and shall be paid as follows:

5 a. Defendants shall pay the \$118,386.36 civil penalty and the \$35,959.00
6 in attorney fees and costs in four equal payments of \$38,586.34. The penalty, fees and costs
7 shall be paid over 12 months, with the first payment being due three months from the date of
8 entry of this Decree, the second payment being due six months from the date of entry of this
9 Decree, the third payment being due nine months from the date of entry of this Decree, and
10 the final payment being due 12 months from the date of entry of this Decree.

11 b. All payments owing shall be made by cashier's check, made payable to
12 the Attorney General—State of Washington, and shall be delivered to the Office of the
13 Attorney General, 800 Fifth Avenue, Suite 2000, Seattle, Washington 98104, Attention:
14 Cynthia Lockridge.

15 c. There shall be no interest charged on the amounts owing, if they are
16 paid in full within twelve months of the date of entry of this Decree. After such time, if
17 payment is not made in full, a 12 percent per annum interest rate shall be applied, and
18 defendants shall be considered in default if all principal and interest is not repaid within
19 eighteen (18) months of entry of judgment herein.

20 d. As security for the amounts owing pursuant to this Decree, plaintiff
21 shall have a security interest in the following property, which interest shall be superior to all
22 other interests in such property other than those of financial institutions, as warranted by
23 defendants: equipment and accounts receivable. Defendants further warrant that there are no
24 current purchase money security interests outstanding in any of their equipment or accounts
25 receivable.
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The Court finding no just reason for delay, hereby expressly directs entry of this Judgment and Decree.

APR 08 2008

SO ORDERED this _____ day of _____, 2008.

Commissioner Eric Wainess
JUDGE/COURT COMMISSIONER

Presented by:

ROBERT M. MCKENNA
Attorney General



PAULA SELIS, WSBA #12823
Senior Counsel
Attorneys for Plaintiff
State of Washington

Agreed to, Approved for Entry, and
Notice of Presentation Waived:

INTERNET ADVANCEMENT, INC.


By: _____
Todd Wickham, its Chief Executive Officer

Todd Wickham

Keh Committee

Ernesto Villamor

1 HELSELL FETTERMAN LLP

2 By: 
3 Andrew Kinsler, WSBA #12703
4 1001 4th Avenue, Suite 4200
5 Seattle, WA 98154
6 Phone: 206.292-1144
7 Attorneys for Defendants
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