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7 **STATE OF WASHINGTON**
KING COUNTY SUPERIOR COURT

8 STATE OF WASHINGTON,

NO.

9 Plaintiff,

10 v.

COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF UNDER THE
CONSUMER PROTECTION ACT

11 IMERGENT, INC., a Delaware
12 corporation; and STORESONLINE,
13 INC., a Delaware corporation,

14 Defendants.

15 The Plaintiff, State of Washington, by and through its attorneys Robert M. McKenna,
16 Attorney General, and Katherine M. Tassi, Assistant Attorney General, brings this action
17 against Defendants named herein. The State alleges the following on information and belief:

18 **I. INTRODUCTION**

19 **1.1** The Plaintiff, State of Washington, brings this action pursuant to RCW 19.86,
20 the Consumer Protection Act. Plaintiff seeks a permanent injunction and other equitable relief,
21 including civil penalties and attorneys' costs and fees based on violations of the Consumer
22 Protection Act.

23 **II. PLAINTIFF**

24 **2.1** The Plaintiff is the State of Washington ("State").
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1 engaged in trade or commerce within the meaning of RCW 19.86.020 through advertising,
2 marketing, promoting, selling, and providing products and services in the state of Washington.

3 **5.2** Defendants have been at all times relevant to this action in competition with
4 others engaged in similar business in the state of Washington.

5 **VI. FACTS**

6 **Overview**

7 **6.1** Defendants promote and sell a product that allegedly enables consumers to
8 build websites on which they can sell products or services.

9 **6.2** Defendants' primary form of marketing their product has been, during the
10 relevant time period, to invite consumers to sales presentations in Washington at which their
11 sales representatives ("sales agents") apply high-pressure sales techniques in order to induce
12 consumers to buy their product.

13 **6.2** At the sales presentations, Defendants, through their sales agents, make false,
14 deceptive, and misleading material representations.

15 **6.3** Defendants provide extensive scripting, training manuals, and presentation
16 materials to their sales agents and require that the sales agents follow and use the scripts,
17 materials, and presentations.

18 **6.4** Sales agents tell consumers that starting a business on the Internet using
19 Defendants' product will help them out of financial difficulty.

20 **6.5** Sales agents tell consumers that Defendants' product is easy to use even by
21 consumers with little or no knowledge of computers or the Internet.

22 **6.6** During sales presentations, sales agents show consumers the bare outline of
23 some Internet marketing tools and techniques and make Internet marketing appear very simple.

24 **6.7** Sales agents tell consumers that Defendants' product will enable them to start
25 an Internet business even if the consumer does not own a computer.

1 **6.8** Sales agents tell consumers that Defendants will be available for support and
2 assistance full-time to help consumers get their Internet businesses up and running.

3 **6.9** Numerous Washington consumers have found that Defendants' product is not
4 easy to use at all.

5 **6.10** Numerous Washington consumers have been solicited by third parties affiliated
6 with Defendants to purchase additional support at a cost of an additional several thousand
7 dollars.

8 **6.11** Numerous Washington consumers have resorted to spending thousands of
9 additional dollars purchasing support services from Defendants' affiliates to try to get their
10 Internet business started.

11 **6.12** Numerous Washington consumers have never been able to establish a business
12 on the Internet using Defendants' product.

13 **6.13** Numerous Washington consumers have filed complaints with the Washington
14 Attorney General stating that Defendants misrepresented how easy their product was to use
15 and the amount of assistance they would provide to the consumer in getting their Internet
16 business started.

17 **6.14** Numerous Washington consumers have reported to the Washington Attorney
18 General that they were deceived and misled by Defendants into believing that their product
19 was easy to use and that it was easy to start and market a business online using Defendants'
20 product.

21 **6.15** Numerous consumers who could not use Defendants' product due to the level of
22 skill required have asked Defendants for a refund, but Defendants, in most instances, refuse to
23 give consumers refunds, citing their three-day cancellation policy.

24 **6.16** Defendants are aware that they are selling their product to consumers who have
25 little or no skills in Internet marketing, little or no skills in building and operating a website,
26 and little or no skills in building and operating an Internet business.

1 **6.28** In Defendants' slide sales presentations, a short statement appears on some of
2 the slides stating, "All testimonials shared at this event are not typical. Your results may vary
3 based on Product, Price and Promotion."

4 **6.29** Variations of this statement appear in other presentations.

5 **6.30** In contrast to that statement, numerous slides throughout the presentation tout
6 the extraordinary results of some of Defendants' customers with their online businesses.

7 **6.31** Some slides show Defendants' customers making their first sales within a week
8 of purchasing Defendants' product.

9 **6.32** In certain instances, sales agents represent that they can get the consumer's
10 website into the top-three search listings of search engines in three days.

11 **6.33** In certain instances, sales agents represent that the consumers will be successful
12 in operating an Internet business if they do everything Defendants tell them to do.

13 **6.34** Some slides show Defendants' customers with their websites appearing on the
14 first page of search engine results.

15 **6.35** Some slides state that the successful customers had "VERY Limited Computer
16 Experience."

17 **6.36** Sales agents have represented that "if you can point and click, you can" run an
18 Internet business using Defendants' software.

19 **6.37** At the end of the sales presentation at the Preview, sales agents offer consumers
20 a "one-day-only" deal to purchase a StoresOnline Express license ("the Express license") for
21 approximately \$50.00 and to attend a full-day "Internet training workshop" ("Workshop") for
22 free.

23 **6.38** Sales agents claim that they will waive the Workshop fee of over \$2,000.00 for
24 those consumers who take advantage of the one-day-only deal and purchase an Express
25 license.

26 **6.39** The Workshop is described as "8 Hours of Internet Marketing Training."

1 **6.50** In their sales presentations, sales agents use the example of Parker Garlitz, an
2 alleged StoresOnline customer who allegedly started a highly successful Internet business with
3 his sister using StoresOnline products and services.

4 **6.51** Parker Garlitz has been a paid consultant for StoresOnline and was in fact an
5 employee and officer of Galaxy Malls, Defendants' predecessor company that later became
6 StoresOnline.

7 **6.52** Defendants do not disclose to consumers Parker Garlitz's employment with
8 StoresOnline when using him as an example of a successful StoresOnline customer, nor do
9 they disclose his extensive Internet marketing experience.

10 **6.53** Many of the testimonials used by Defendants suggest, imply, or represent that
11 the individuals have made a lot of money from operating their Internet businesses using
12 StoresOnline product.

13 **6.54** In some of their presentations, Defendants redacted sales earnings figures from
14 the testimonials and stories about successful customers, but replaced such figures with
15 scripting requiring sales agents to tell customers that the earnings figures were removed
16 because they did not want to "put stars in your eyes."

17 **6.55** In their sales presentations, sales agents describe their own financial success in
18 operating an Internet business using StoresOnline product.

19 **6.56** In some instances, sales agents describe how they can now spend more time
20 with their families due to their success operating an Internet business.

21 **6.57** In their sales presentations, sales agents imply that they have been made very
22 wealthy by starting an Internet business using StoresOnline products.

23 **6.58** Sales agents claim that they are not permitted to tell consumers exactly how
24 much income they are deriving from their websites.

1 **6.59** It is Defendants' policy to have sales agents tell consumers that they are
2 prohibited from discussing the details of the revenue they have received through their Internet
3 businesses.

4 **6.60** In fact, some sales agents do not own or operate an Internet business.

5 **6.61** At the Workshop, sales agents try to persuade consumers to upgrade from the
6 Express license to the Pro license, which costs thousands of dollars.

7 **6.62** At the Workshop, Defendants market and sell product that contain such
8 materials as the storefront websites, store-building software, credit card processing licenses
9 and coaching assistance.

10 **6.63** Sales agents encourage consumers to purchase Pro licenses for six websites
11 rather than one or three to ensure a steady income.

12 **6.64** Pro licenses for six websites cost approximately \$6,000.00.

13 **6.65** Using testimonials and company scripts, sales agents tell consumers that after
14 setting up the websites, they can expect to expend no further significant effort and can, for
15 example, go on vacation while the websites automatically earn them money.

16 **6.66** Defendants represent that it is simple to find drop-shippers that will supply the
17 products consumers sell on their websites.

18 **6.67** Defendants promise that they will assist consumers in finding drop-shippers.

19 **6.68** Many consumers have had difficulty finding drop-shippers that will do business
20 with them.

21 **6.69** Defendants' assistance in locating drop-shippers is limited to providing
22 consumers with a list of drop-shippers.

23 **6.70** During the Workshop, sales agents use high-pressure sales techniques to close
24 sales, including but not limited to: (a) offering a one-day-only deal on the Pro license, after
25 which the cost will increase substantially, three to ten times the deal price; (b) telling
26 consumers who are concerned about the cost that they are precisely the consumers who need

1 the product the most; (c) inflating consumers' expectations of the money they are going to
2 make using Defendants' product; (d) telling the consumers that the product is so easy to use
3 "how could you not do this?"; and (e) creating an environment where it appears that everyone
4 is taking advantage of the offer.

5 **6.71** During the Workshop, sales agents circulate in the room and talk to consumers
6 individually about purchasing Defendants' product.

7 **6.72** During the Workshop, sales agents also offer "personal consultations," during
8 which, according to consumer complaints, sales agents apply individual pressure on consumers
9 to purchase their product.

10 **6.73** Some of the high-pressure language reported by consumers includes sales
11 agents telling consumers that they do not have their priorities straight if they say they cannot
12 afford to purchase the Pro license and telling consumers that they would not be at the
13 Workshop if they had anything better to do with their days.

14 **6.74** Although Defendants audio-record the Workshop presentations, they do not
15 audio-record the individual consultations nor do they audio-record the sales transactions
16 themselves.

17 **6.75** Sales agents make many sales during these individual consultations with
18 consumers.

19 **6.76** Consumers report having been given information during these personal
20 consultations that conflicts with information provided in writing by Defendants.

21 **6.77** When discussing the cost of Defendants' products and the choice between
22 purchasing three websites and six websites, sales agents dissuade consumers from taking notes,
23 claiming that everything will be in the written materials that the consumer receives *after*
24 becoming a StoresOnline "merchant."

1 **6.78** However, during the oral presentation, sales agents use convoluted and
2 misleading calculations to create the impression that purchasing six websites that day is the
3 best deal for consumers.

4 **6.79** Sales agents use high-pressure strategies to persuade consumers who say they
5 cannot afford to purchase Defendants' product to go ahead with the purchase.

6 **6.80** Sales agents imply that making a purchase of Defendants' product for thousands
7 of dollars is going to help the consumer out of his or her financial difficulties.

8 **6.81** Sales agents offer consumers who say they cannot afford the cost of their
9 product the ability to finance the purchase using one of the financing companies with which
10 Defendants have a business relationship.

11 **6.82** In some instances, sales agents offer to finance the purchase of Defendants'
12 product to consumers who are on fixed incomes as low as \$14,000.00 a year.

13 **6.83** Defendants also offer their own financing to consumers.

14 **6.84** In some instances, sales agents try to persuade potential customers to make their
15 purchases on credit cards rather than using financing.

16 **6.85** The financing Defendants arrange for consumers is often at high-interest rates
17 with large monthly payments.

18 **6.86** Numerous consumers have been unable to establish Internet businesses using
19 Defendants' product.

20 **6.87** Numerous consumers have been unable to make the monthly payments on their
21 purchase and have been sent to collections by Defendants.

22 **6.88** Defendants represent to consumers that their product contain everything they
23 need to build and operate a successful Internet storefront.

24 **6.89** Defendants represent that they will provide consumers with full-time assistance
25 in using their product to build and operate a successful Internet storefront.
26

Refund Policy

6.99 Defendants in some instances offer a three-day right to rescind the consumer's purchase agreement; however, sales agents often do not disclose this right orally during the workshop and it is disclosed inconspicuously in writing.

6.100 Due to the nature of the product purchased, consumers generally do not discover their inability to use Defendants' products until after the three days have expired.

6.101 In some instances, sales agents have attempted to dissuade consumers from becoming aware of or using their three-day right to rescind by telling consumers, many of whom are elderly, to rest for a day before giving the purchase any more thought.

6.102 In some instances, consumers have tried but have been unable to reach a customer service representative during the three days in order to cancel their purchase.

6.103 Defendants rarely agree to refund consumers after the three-day period has expired.

II. VIOLATIONS OF THE CONSUMER PROTECTION ACT

A. First Cause of Action: Misrepresentations

7.1 Plaintiff realleges Paragraphs 1.1 through 6.103 and incorporates them herein as if set forth in full.

7.2 Defendants, as alleged above and detailed below, have in the course of trade and commerce, made numerous misrepresentations during their promotion, marketing and sale of their product, including, but not limited to the following:

7.3 Defendants represent, expressly or by implication, that the Workshop is an Internet marketing "training session" when, in fact, it is a multi-hour sales program designed primarily to entice consumers into purchasing Defendants' product.

7.4 Defendants represent, expressly or by implication, that no computer experience is needed to successfully use their product when, in fact, many consumers with little or no computer experience and skills found that without such experience, they were unable to

1 | successfully use the product.

2 | **7.5** Defendants represent, expressly or by implication, that no business experience
3 | is needed to successfully use their product when, in fact, many consumers found that without
4 | business experience, they were unable to successfully use the product.

5 | **7.6** Defendants represent, expressly or by implication, that Defendants will supply
6 | needed support in an accessible and prompt manner so as to enable consumers to successfully
7 | use the product when, in fact, some consumers experience difficulty when attempting to
8 | contact customer service for assistance.

9 | **7.7** Defendants represent, expressly or by implication, that Defendants will supply
10 | needed support in an accessible and prompt manner so as to enable consumers to successfully
11 | use the product when, in fact, Defendants contract with third parties, which solicit Defendants'
12 | customers to offer them the support services promised by Defendants for a fee payable by the
13 | consumer.

14 | **7.8** Defendants represent, expressly or by implication, that consumers have a
15 | contractually granted three-day right to cancel the purchase contract when, in fact, consumers
16 | have been unable to reach Defendants' customer service representatives to cancel the contract
17 | within the three-day period.

18 | **7.9** Defendants represent, expressly or by implication, that their customers run
19 | successful Internet businesses when, in fact, Defendants do not have any knowledge of the
20 | earnings of their typical customers' Internet businesses and therefore have no basis for
21 | representing that their customers are successful in generating revenue using Defendants'
22 | product.

23 | **7.10** Defendants represent, expressly or by implication, that the product they are
24 | offering the consumer contain everything that the consumer will need to start a business online
25 | when, in fact, after their purchase of product at a Workshop, many consumers discover
26 |

1 additional fees that are required in order to start an online business, such as a domain name
2 registration fee and a business license fee.

3 **7.11** Defendants represent, expressly or by implication, that training, counseling, and
4 technical support will be provided with the sale of Defendants' product when, in fact, many
5 consumers had to pay additional fees to third parties to get the support they required to use
6 Defendants' product.

7 **7.12** Defendants represent, expressly or by implication, that the Workshop will be
8 run by experts in Internet marketing when, in fact, the presenters at the Workshop are trained
9 salespeople, hired based on their ability to make sales, not trained Internet marketers, and their
10 responsibility is to maximize sales, not to train consumers in Internet marketing

11 **7.13** Defendants represent, expressly or by implication, that consumers do not need
12 to pay a hosting fee for the Express package unless they build and activate a website when, in
13 fact, Defendants charge consumers a monthly hosting fee of up to \$29.95 whether or not they
14 build and activate a site using the Express package.

15 **7.14** Defendants represent, expressly or by implication, that the monthly hosting
16 charges would not begin until one month after attending the Workshop when, in fact,
17 consumers have been charged even when they never attended the Workshop.

18 **7.15** The conduct described in paragraphs 7.2 through 7.14, separately and taken
19 together, has the capacity to mislead a substantial number of consumers and constitutes unfair
20 or deceptive acts or practices in trade or commerce and unfair methods of competition in
21 violation of RCW 19.86.020.

22 **B. Second Cause of Action: Material Omissions of Fact**

23 **7.16** Plaintiff realleges Paragraphs 1.1 through 7.15 and incorporates them herein as
24 if set forth in full.

25 **7.17** The vast majority of Defendants' sales to consumers are based upon oral sales
26 presentations that do not contain adequate disclosure of material facts.

1 **7.18** During their sales presentations, sales agents fail to disclose or fail to disclose
2 adequately numerous material facts, including, but not limited to the following:

3 **7.19** During their sales presentations, sales agents fail to disclose or fail to disclose
4 adequately to consumers the actual level of computer and Internet skills required to build a
5 website using Defendants' product.

6 **7.20** During their sales presentations, sales agents fail to disclose or fail to disclose
7 adequately to consumers that the technical support provided by Defendants is limited.

8 **7.21** During their sales presentations, sales agents fail to disclose or to disclose
9 adequately that Defendants do not provide individualized technical assistance sufficient to
10 enable them to get websites up and running.

11 **7.22** During their sales presentations, sales agents fail to disclose or fail to disclose
12 adequately to consumers that in order to get the individualized technical assistance promised
13 by Defendants, consumers may be required to expend significant additional sums of money.

14 **7.23** During their sales presentations, sales agents fail to disclose or fail to disclose
15 adequately to consumers that finding third parties, e.g., drop-shippers, whose goods they can
16 market and sell may require them to pay additional sums of money.

17 **7.24** During their sales presentations, sales agents fail to disclose or to disclose
18 adequately that many drop-shippers will not contract with non-established businesses.

19 **7.25** During their sales presentations, sales agents fail to disclose or fail to disclose
20 adequately to consumers they the assistance they provide in finding drop-shippers is minimal.

21 **7.26** Sales agents at the Previews fail to disclose or fail to disclose adequately that
22 consumers will be automatically charged a monthly hosting fee of up to \$29.95 in addition to
23 the purchase price of the Express license whether or not consumers are able to build a website
24 unless or until the consumer cancels the hosting service.

25 **7.27** During their sales presentations, sales agents fail to disclose or fail to disclose
26 adequately to consumers that the companies whose logos are displayed by Defendants and to

1 | which Defendants make references in presentations are not affiliated with Defendants.

2 | **7.28** The conduct described in paragraphs 7.17 to 7.27, separately and taken together,
3 | has the capacity to mislead a substantial number of consumers and constitutes unfair or
4 | deceptive acts or practices in trade or commerce and unfair methods of competition in violation
5 | of RCW 19.86, *et seq.*

6 | **C. Third Cause of Action: Unfair and Deceptive High-Pressure Sales Tactics**

7 | **7.29** Plaintiff realleges Paragraphs 1.1 through 7.28 and incorporates them herein as
8 | if set forth in full.

9 | **7.30** When consumers are reluctant to purchase their product, Defendants apply
10 | high-pressure sales tactics to persuade consumers.

11 | **7.31** Defendants train their sales agents on how to have a retort for every conceivable
12 | objection that a consumer might have to purchasing their product.

13 | **7.32** Sales agents use such terms as “one-day-only deal” and try to convince
14 | consumers that they are losing an opportunity to get out of financial distress by not purchasing
15 | Defendants’ product.

16 | **7.33** Some of the high-pressure language reported by consumers includes sales
17 | agents telling consumers that they do not have their priorities straight if they say they cannot
18 | afford to purchase the Pro license and telling consumers that they would not be at the
19 | Workshop if they had anything better to do with their days.

20 | **7.34** In trying to convince Preview consumers to attend the Workshop, one sales
21 | agent said, “If you cannot figure out how to put fifty bucks together to go to a workshop like
22 | this...then you really need to go to this workshop more than anybody else.”

23 | **7.35** Sales agents tell consumers at the Workshop to fill out “prequalification” forms
24 | for financing options during the first hour of the eight-hour Workshop.

25 | **7.36** Sales agents stress that they can provide options for consumers no matter what
26 | their credit situation is, even if a consumer has “bad credit.”

1 **7.37** When consumers are in their individual sessions with sales agents, sales agents
2 are ready to counter any arguments made by consumers that they cannot afford to purchase
3 Defendants' product because Defendants have already obtained the consumers'
4 prequalification for some form of financing.

5 **7.38** Sales agents conduct their most aggressive sales pitches in individual sessions
6 with consumers.

7 **7.39** Washington consumer Karen Garves, who attended a Workshop, described the
8 sales pitch at the end of the day as: "Basically, it was like, if you're going to do this, you better
9 go ahead and do this now."

10 **7.40** Garves said that Defendants' offer has "all these fees they gloss over" and the
11 sales agents did not cover in detail "the stuff that any normal person wouldn't understand."

12 **7.41** Washington consumer Bill Pattison, who attended a Workshop, stated of the
13 "personal consultations": "It turns out to be a real hard one-on-one sales pitch" and "they're
14 very adamant about not saying it's a business opportunity, but their presentation and demeanor
15 presents it exactly as that."

16 **7.42** Washington consumer Michael Szuba, who attended a Workshop, stated that
17 sales agents would say things like: "You need to hurry up and fill out this piece of paper, so
18 you can start making money," and "This offer's only good for today."

19 **7.43** Washington consumer Larry Smith stated that sales agents "made it sound like
20 they would be ready to go with a website after the full day Workshop with no problems," and
21 that the sales agents "took each person out individually for a personal consult and that is where
22 the high pressure came."

23 **7.44** The conduct described in paragraphs 7.30 to 7.43 is unfair and deceptive and
24 has the capacity to mislead a substantial number of consumers and thus constitutes unfair or
25 deceptive acts or practices in trade or commerce and unfair methods of competition in violation
26 of RCW 19.86, *et seq.*

