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**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
  
Plaintiff,  
  
v.  
  
VISIBLE.NET, a Washington  
corporation also doing business as  
Web Marketing Source,  
WebMarketingSource.com,  
Caputures.com, Captures.com, Inc. and  
Webmarketingsource.com, Inc;  
CAPTURES.COM, INC., a Washington  
corporation; and GILBERT WALKER,  
individually and on behalf of his marital  
community and as the Owner, Officer  
and Director of Captures.com, Inc. and  
Visible.net,  
  
Defendants.

NO. 08-2-38947-2 SEA  
  
STIPULATED JUDGMENT

**I. JUDGMENT SUMMARY**

- 1.1 Judgment Creditor: State of Washington
- 1.2 Judgment Debtors: VISIBLE.NET, a Washington corporation also doing  
business as Web Marketing Source,  
WebMarketingSource.com, Caputures.com,  
Captures.com, Inc. and Webmarketingsource.com, Inc;  
CAPTURES.COM, INC., a Washington corporation;  
and GILBERT WALKER, individually and on behalf of  
his marital community and as the Owner, Officer and  
Director of Captures.com, Inc. and Visible.net



1           2.3     Defendant Gilbert Walker is the owner, officer and sole director of defendants  
2 Visible.net and Captures.com. Defendant Gilbert resides at 13529 137th Pl. NE, Kirkland,  
3 Washington 98034.

4           2.4     Defendants advertise and sell a variety of marketing services to Internet-based  
5 businesses across the United States including website design, website hosting, sitemaps and  
6 search engine optimization. They advertise their services through various means including, but  
7 not limited to, on their websites, www.captures.com and www.visible.net, and also through  
8 unsolicited telemarketing.

9           2.5     Businesses which market and sell their products over the Internet often rely on  
10 search engines (“SEO’s”) and other marketing mechanisms to lead potential customers to their  
11 websites. Defendants offer website design and marketing services which purport to help their  
12 clients achieve “improved rankings, popularity, authority and brand recognition online.”  
13 <http://visible.net/services/marketing> October 21, 2008. As an initial “setup” fee, they have  
14 charged between \$3,749.99 for their least expensive “Novice” package of services, to  
15 \$9,749.99 for their most expensive “Expert” service package. In addition to the “setup” fee,  
16 Defendants charge a recurring monthly fee which has ranged from \$39.90 to \$99.99.  
17 Defendants claim their services “come complete with the features and tools needed in order to  
18 jump start, maintain and sustain an advanced, results driven search engine marketing and  
19 optimization campaign.” Id. Their website has stated that: “We use a team of in house  
20 developers and ecommerce store designers to put each aspect of your ecommerce store  
21 together for you quickly and easily with no hassle. We get our clients up and running within  
22 just a few weeks including colors, logo, icons, graphics and many tools to help you manage  
23 your products. These processes could take you or other designers months to complete, but  
24 with Captures there is no need to wait in order for you to start selling online. Sign up today,  
25 you           may           have           orders           by           tomorrow!”  
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1 | [http://www.captures.com/ecommerce\\_packages/ecommerce\\_packages.shtml#software](http://www.captures.com/ecommerce_packages/ecommerce_packages.shtml#software),  
2 | October 21, 2008.

3 |         2.6     Many of defendants' clients are small business owners who rely on them to  
4 | provide software, technical support and advice in order to operate their websites. Defendants  
5 | specifically market their services to appeal to these online merchants who do not necessarily  
6 | have the expertise to perform their own website marketing: "The Visible.net ecommerce  
7 | software comes complete with everything a new or existing merchant needs to design, create,  
8 | configure, customize, open, manage and market their online store. Each aspect of our platform  
9 | is designed to make any process on the backend administrative dashboard as simple as possible  
10 | to understand. We make it easy for users of different skill levels to comprehend and feel  
11 | comfortable using our software or tools." <http://www.visible.net/services/ecommerce/>,  
12 | October 21, 2008. "Our advanced, feature rich and flexible ecommerce software comes  
13 | complete with everything needed to become a successful merchant, no matter how long you've  
14 | been selling online." <http://www.visible.net/services/>, October 6, 2008. By way of continuing  
15 | technical support, defendants promise "the best customer service available," with each  
16 | customer "assigned a specific technician" who "will be happy to answer the phone any time  
17 | you call."  
18 | [http://www.youtube.com/watch?v=DiPITNqSVLY&feature=PlayList&p=D36AE971B2EF982](http://www.youtube.com/watch?v=DiPITNqSVLY&feature=PlayList&p=D36AE971B2EF9825&index=0)  
19 | [5&index=0; http://www.visible.net/visiblog/marketingseo-services-introduction-video-by-](http://www.visible.net/visiblog/marketingseo-services-introduction-video-by-visiblenet/)  
20 | [visiblenet/](http://www.visible.net/visiblog/marketingseo-services-introduction-video-by-visiblenet/), October 6, 2008.

21 |         2.7     Defendants are in competition with others in the State of Washington engaged  
22 | in similar business.

23 |         2.8     In the context of defendants' marketing and sale of services, the Court has  
24 | found that at a point in time in order to sell their products defendants used a script containing  
25 | the following misrepresentation: "Just like my last client, you will be blown away when you  
26 |

1 can see what having a top search engine ranking can do for your business and your  
2 pocketbook.” (referred to herein as the “Statement”).

3 2.9 The Statement constitutes an unfair and deceptive practice that violates the  
4 CPA.

5 2.10 The requirements of Washington’s Commercial Telephone Solicitation Act,  
6 RCW 19.158 et seq., (“CTSA”) only apply to a “commercial telephone solicitor,” as that term  
7 is defined by RCW 19.158.020.

8 2.11 There are questions of fact regarding whether defendants were a “commercial  
9 telephone solicitor” prior to September 24, 2009, and thus, whether defendants were subject to  
10 any of the requirements of the CTSA prior to September 24, 2009.

11 2.12 However, defendants became a “commercial telephone solicitor,” on  
12 September 24, 2009, on the basis of registration with the Department of Licensing on that date.  
13 Registration as a “commercial telephone solicitor” obligated the registrant to comply with the  
14 CTSA, even if such registration is believed to be voluntary by the registrant.

15 2.13 As a “commercial telephone solicitor” defendants were obligated as of  
16 September 24, 2009 to comply with the terms of the CTSA.

17 2.14 RCW 19.158.110(4) requires that, if a sale or an agreement to purchase is  
18 completed, a commercial telephone solicitor must inform the purchaser of his or her  
19 cancellation rights as described in the Commercial Telephone Solicitation Act, RCW 19.158 et  
20 seq., and must furthermore state the solicitor’s registration number as issued by the Department  
21 of Licensing. These cancellation rights include the consumer’s right to cancel his or her  
22 purchase within three days of receiving written confirmation of the sale and, in the event the  
23 Act has been violated, the consumer’s right to void the sale at any time. RCW 19.158.120,  
24 RCW 19.158.120(3). Defendants failed to orally inform consumers of these cancellation rights  
25 as required by RCW 19.158.110 or include them in a written confirmation of sale as provided  
26

1 by RCW 19.158.120. Furthermore, they fail to state their Department of Licensing registration  
2 number.

3 2.15 Pursuant to RCW 19.158.120(3), if a commercial telephone solicitor violates  
4 the Commercial Telephone Solicitation Act in making a sale, the purchaser's contract is  
5 voidable "by giving written notice to the seller." Defendants violated the Commercial  
6 Telephone Solicitation Act in at least two ways: by failing to register, in violation of RCW  
7 19.158.050(1) and (4); and by failing to orally inform consumers of their cancellation rights, in  
8 violation of RCW 19.158.110(4).

### 9 III. CONCLUSIONS OF LAW

10 3.1 The Court has jurisdiction of the subject matter of this action and of the parties  
11 hereto, and plaintiff's Complaint states claims upon which relief may be granted.

12 3.2 The Attorney General has jurisdiction to bring this action under  
13 RCW 19.86.080 and RCW 19.86.040.

14 3.3 Defendants' conduct as described in Findings of Fact Nos. 2.8 through 2.15  
15 constitute violations of the Consumer Protection Act, RCW 19.86 et seq.

16 3.4 Defendants' conduct as described in Findings of Fact Nos. 2.12 through 2.15  
17 constitute violations of the Commercial Telephone Solicitation Act, RCW 19.158 et seq.

18 3.5 Plaintiff is entitled to a Decree ordering defendants to pay amounts as described  
19 herein.

20 The Court having made the foregoing Finding of Fact and Conclusions of Law, and in  
21 accordance therewith, the Court enters the following:

### 22 IV. JUDGMENT AND DECREE

23 NOW, THEREFORE, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as  
24 follows:

25 4.1 Pursuant to RCW 19.86.080, and RCW 19.86.140, plaintiff shall recover and  
26 defendants shall pay \$250,000.00. Said payment shall be used by plaintiff for attorneys fees

1 and other costs of investigation and litigation; for restitution of consumers who have been  
2 harmed by the practices alleged in plaintiff's Complaint herein; or for civil penalties, at the  
3 sole discretion of the Attorney General.

4 4.2 Defendants and their successors, assigns, transferees, officers, agents, servants,  
5 directors, employees, and all other person or entities in active concert or participation with  
6 defendants shall be informed of the terms and conditions of this Order.

7 4.3 Defendants and their successors, assigns, transferees, officers, agents, servants,  
8 directors, employees, and all other persons or entities in active concert or participation with  
9 defendants are hereby enjoined and restrained from engaging in the following acts and  
10 practices in connection with any internet-related businesses:

- 11 a. Making any misrepresentations or material omissions, either implicitly  
12 or explicitly, in the context of their sale, advertising or delivery of  
13 services including, but not limited to misrepresentations regarding their  
14 ability to provide top search engine rankings, their ability to increase  
15 traffic to customers' websites, their ability to increase sales, or their  
16 success rate;
- 17 b. Misrepresenting their affiliation, agreement or relationship with other  
18 marketers or other third parties, including but not limited to their  
19 relationship with drop-ship wholesalers or membership programs;
- 20 c. Misrepresenting their ability to provide customer support, technical  
21 advice, or availability for consultations with customers;
- 22 d. Misrepresenting the terms or availability of refunds, guarantees, money-  
23 back offers, or cancellation rights;
- 24 e. Misrepresenting the time by which a web design or other project will be  
25 completed on behalf of a customer;
- 26

1 f. Failing to disclose, clearly and conspicuously, all material contract terms  
2 before prospective customers have agreed to be charged for any of  
3 defendants' services;

4 g. Failing to provide delivery of a fully operable website and/or a package  
5 of marketing services as promised;

6 h. Failing to respond promptly to consumers' requests for fulfillment of  
7 any guarantees, refund provisions in defendants' contracts, complaints,  
8 or other requests for service or information. For purposes of this  
9 injunction, defendants will be deemed to promptly respond if:

10 1. consumer requests, complaints, and inquiries are addressed in a  
11 professional manner within five business days of the consumers'  
12 initial contact; and

13 2. if the consumer is dissatisfied with defendants' action, defendants  
14 refer the consumer to a customer service supervisor for further  
15 explanation, action, or resolution within five business days of the  
16 consumer's request for further explanation, action, or resolution;  
17 and

18 3. if the consumer is dissatisfied with defendants' resolution through  
19 the customer service supervisor, defendants refer the consumer to  
20 the senior management for further explanation, action, or  
21 resolution within five business days of the consumers' request for  
22 further explanation, action, or resolution; and

23 4. defendants maintain a record of consumer complaints and  
24 resolutions; and  
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1                   5.    defendants train and supervise their customer service  
2                               representatives to assure they maintain a professional relationship  
3                               with consumers.

4                   i.    Placing charges on consumers' credit cards or debit cards without  
5                               authorization to do so, or exceeding consumers' contractually agreed  
6                               limitations on authorized charges. Defendants shall clearly and  
7                               conspicuously notify customers on the contract itself that the terms of  
8                               their written contract are the exclusive terms to which the parties are  
9                               bound, and provide the customer with the option of either checking a  
10                              box indicating that no further promises were made or checking a box  
11                              indicating that additional promises were made and explicitly stating  
12                              what those promises were. In the latter event, defendants' management  
13                              may choose to accept such additional terms by charging the customer's  
14                              credit card or to reject such additional terms by not charging the  
15                              customer's credit card and shall inform the customer as to its intended  
16                              action and the reason therefore;

17                   j.    Billing consumers after they have cancelled their contracts, if the  
18                               following procedures are not implemented and maintained:

19                           1.    Instituting a review process of defendants' sales and verification  
20                                       scripts by an attorney licensed to practice law in the State of  
21                                       Washington, who will assure that the scripts are in compliance  
22                                       with the provisions of this Stipulated Judgment;

23                           2.    Exclusively using scripts that have been approved by the attorney  
24                                       performing the review process and strictly adhering to those  
25                                       scripts in the sales and verification process;

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3. Verifying each sale in a recorded verification call. For purposes of this provision, the verification call recording must be kept for a period of three years after the date of sale and must be made available upon request by Plaintiff. The verification call must be made before a consumer may be charged for services, but in no event shall it be made after 24 hours of the sales call wherein the consumer agreed to purchase services. A written copy of the contract must be sent to the consumer prior to the verification call.
4. In the context of the verification call, the verifier must disclose to the consumer: that defendants are not affiliated with any other entity, including marketers, dropshippers, or membership clubs; that the terms of the written contract are the exclusive terms to which the parties are bound; that defendants do not guarantee any particular search engine ranking, the ability to increase traffic to the customer's website, the ability to increase sales, the ability to increase visitors to the customer's websites, or the ability to achieve any general success rate; and, that the customer has the ability to cancel the contract by providing written notice to defendants within three days of the date the customer receives written confirmation of the sale pursuant to RCW 19.158.120(1).
5. In the context of the verification call, the verifier must also ask the customer whether any further promises were made to him or her that are not included in the written contract, including but not limited to promises regarding search engine rankings, ability to increase traffic to customers' websites, ability to increase sales,

1 ability to increase visitors to customers' websites or general  
2 success rates. If any further promises were made, the customer  
3 must be asked to state them in writing in the space provided on  
4 the customer's written contract with the defendants. If the  
5 customer indicates in writing that further promises were made to  
6 him or her, the verifier must indicate in writing on the contract  
7 whether the defendants choose to accept the additional promises  
8 as additional terms and conditions of the contract with the  
9 customer by charging the customer's credit card, or to reject such  
10 additional terms by not charging the customer's credit card. The  
11 verifier shall inform the customer as to defendants' intended  
12 action and the reasons therefore. If defendants choose to accept  
13 the additional terms, they shall become part of defendants'  
14 contract with the customer and shall be included in writing in  
15 defendants' contract with the customer, a copy of which shall be  
16 provided to the customer.

17 k. If a consumer is contractually entitled to cancellation, failing to  
18 promptly cancel service to said consumer when requested to do so  
19 through any of the following means:

- 20 1. United States mail;
- 21 2. email; or
- 22 3. facsimile.

23 Provided however, that if a consumer contacts defendants by telephone  
24 and expresses an intent to cancel, defendants shall inform the consumer  
25 that the cancellation must be in writing and either emailed to a specific,  
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1 identified address, sent via United States mail to a specific, identified  
2 address, or sent via facsimile to a specific, identified facsimile number.

- 3 l. Failing to disclose clearly and conspicuously defendants' cancellation  
4 policy in the terms and conditions posted on their website and in any  
5 written terms and conditions provided to the consumer;
- 6 m. Failing to provide ranking reports or other services that are contractually  
7 agreed to;
- 8 n. Violating the Consumer Protection Act, RCW 19.86 et seq;
- 9 o. Failing to register as a Commercial Telephone Solicitor, pursuant to  
10 RCW 19.158 et seq;
- 11 p. Violating the Commercial Telephone Solicitation Act, RCW 19.158 et  
12 seq;
- 13 q. Failing to orally inform consumers of their cancellation rights as  
14 required by RCW 19.158.110 or include them in a written confirmation  
15 of sale as provided by RCW 19.158.120;
- 16 r. Failing to state their Department of Licensing registration number as  
17 required by RCW 19.158.110; and
- 18 s. Pursuing collection efforts with respect to the customers identified on  
19 the attached Exhibit A.

## 20 V. PAYMENT

21 5.1 Payments owing under the provisions of this Stipulated Judgment at Paragraph  
22 4.1 shall be in the form of valid checks paid to the order of the "Attorney General—State of  
23 Washington" and shall be due and owing in accordance with the schedule set forth in  
24 Paragraph 5.2. Payment shall be sent to the Office of the Attorney General, Attention:  
25 Cynthia Lockridge, Administrative Office Manager, 800 Fifth Avenue, Suite 2000, Seattle,  
26 Washington 98104-3188.

1 5.2 Pursuant to Paragraphs 4.1 and 5.1 above:

- 2 a. Defendants' first payment in the amount of \$50,000 shall be due and  
3 owing within four months of the date the Judgment is entered.
- 4 b. Defendants' second payment in the amount of \$13,333.33 shall be due  
5 and owing within five months of the date the Judgment is entered.
- 6 c. Defendants' third payment in the amount of \$13,333.33 shall be due and  
7 owing within six months of the date the Judgment is entered.
- 8 d. Defendants' fourth payment in the amount of \$13,333.33 shall be due  
9 and owing within seven months of the date the Judgment is entered.
- 10 e. Defendants' fifth payment in the amount of \$13,333.33 shall be due and  
11 owing within eight months of the date the Judgment is entered.
- 12 f. Defendants' sixth payment in the amount of \$13,333.33 shall be due and  
13 owing within nine months of the date the Judgment is entered.
- 14 g. Defendants' seventh payment in the amount of \$13,333.33 shall be due  
15 and owing within ten months of the date the Judgment is entered.
- 16 h. Defendants' eighth payment in the amount of \$13,333.33 shall be due  
17 and owing within eleven months of the date the Judgment is entered.
- 18 i. Defendants' ninth payment in the amount of \$13,333.33 shall be due and  
19 owing within twelve months of the date the Judgment is entered.
- 20 j. Defendants' tenth payment in the amount of \$13,333.33 shall be due and  
21 owing within thirteen months of the date the Judgment is entered.
- 22 k. Defendants' eleventh payment in the amount of \$13,333.33 shall be due  
23 and owing within fourteen months of the date the Judgment is entered.
- 24 l. Defendants' twelfth payment in the amount of \$13,333.33 shall be due  
25 and owing within fifteen months of the date the Judgment is entered.  
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1 m. Defendants' thirteenth payment in the amount of \$13,333.33 shall be  
2 due and owing within sixteen months of the date the Judgment is  
3 entered.

4 n. Defendants' fourteenth payment in the amount of \$13,333.33 shall be  
5 due and owing within seventeen months of the date the Judgment is  
6 entered.

7 o. Defendants' fifteenth payment in the amount of \$13,333.33 shall be due  
8 and owing within eighteen months of the date the Judgment is entered.

9 5.3 In any successful action to enforce any part of this Stipulated Judgment,  
10 defendants will pay the Attorney General its attorney's fees and costs, including reasonable  
11 attorney's fees as provided by RCW 19.86.080.

12 5.4 Defendants grant to plaintiff a security interest in the following described  
13 property and interests in property of Defendants (hereinafter called the "Collateral"): All  
14 business assets of Defendants, including all furniture, computers, servers, supplies, and  
15 equipment to secure payment of the Obligations of defendants to plaintiff as described in  
16 Paragraph 5.2 herein. Except for the security interest granted hereby, defendants warrant that  
17 they are the owners of the Collateral free from any adverse lien, security interest or  
18 encumbrance; and defendants will defend the Collateral against all claims and demands of all  
19 persons at any time claiming the same or any interest therein, until such time as defendants'  
20 obligation to plaintiff has been satisfied. Defendants warrant that they will not sell or offer to  
21 sell, assign, pledge, lease or otherwise transfer or encumber the Collateral or any interest  
22 therein, without the prior written consent of plaintiff. Defendants shall be in default under this  
23 Stipulated Judgment upon default in the payment of any of the Obligations described in  
24 Paragraph 5.2 herein.  
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1 **VI. ENFORCEMENT**

2 6.1 Violation of any of the injunctions contained in this Stipulated Judgment, as  
3 determined by the Court, shall subject the defendants to a civil penalty of up to \$25,000.00 per  
4 violation pursuant to RCW 19.86.140.

5 6.2 Violation of any of the terms of this Stipulated Judgment, as determined by the  
6 Court, shall constitute a violation of the Consumer Protection Act, RCW 19.86.020.

7 6.3 This Stipulated Judgment is entered pursuant to RCW 19.86.080. Jurisdiction is  
8 retained for the purpose of enabling any party to this Stipulated Judgment with or without the  
9 prior consent of the other party to apply to the Court at any time for enforcement of  
10 compliance with this Stipulated Judgment, to punish violations thereof, or to modify or clarify  
11 this Stipulated Judgment.

12 6.4 Representatives of the Office of the Attorney General shall be permitted to  
13 access, inspect and/or copy business records or documents under control of defendants in order  
14 to monitor compliance with this Stipulated Judgment, pursuant to the Civil Rules, provided  
15 that the inspection and copying shall be done in such a way as to avoid disruption of  
16 defendants' business activities.

17 6.5 Representatives of the Office of the Attorney General may be permitted to  
18 question defendants, or any officer, director, agent, or employee of any corporation affiliated  
19 with defendants, in deposition, pursuant to the provisions and notice requirements of CR 30, in  
20 order to monitor compliance with this Stipulated Judgment.

21 6.6 Under no circumstances shall this Stipulated Judgment or the names of the state  
22 of Washington or the Office of the Attorney General, Consumer Protection Division, or any of  
23 its employees or representatives be used by defendants' agents or employees in connection  
24 with the promotion of any product or service or an endorsement or approval of defendants'  
25 practices.

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1 6.7 Nothing in this Stipulated Judgment shall be construed as to limit or bar any  
2 other governmental entity or consumer from pursuing other available remedies against  
3 defendant.

4 **VII. DISMISSAL AND WAIVER OF CLAIMS**

5 7.1 Upon entry of this Stipulated Judgment, all claims in this matter, not otherwise  
6 addressed by this Stipulated Judgment are dismissed with prejudice.

7 DONE IN OPEN COURT this \_\_\_\_\_ day JUL 07 2010, 2010.

8 **ERIC B. WATNESS**

9 ~~JUDGE~~/COURT COMMISSIONER

10 Presented by:

11 ROBERT M. MCKENNA  
12 Attorney General

13   
14 \_\_\_\_\_  
15 PAULA SELIS, WSBA #12823  
16 Senior Counsel  
17 Attorneys for Plaintiff  
18 State of Washington

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

21 LANE POWELL, PC

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23 \_\_\_\_\_  
24 DAN J. DONLAN, WSBA #25374  
25 Attorney for Defendants  
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