

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
07-CVS-7381

STATE OF NORTH CAROLINA *ex rel.*
ROY COOPER, Attorney General,

Plaintiff,

vs.

CONSENT JUDGMENT

IMERGENT, INC. and
STORESONLINE, INC.,

Defendants.

THIS CAUSE came on before the undersigned Judge for entry of a Consent Judgment between Plaintiff State of North Carolina, by and through its Attorney General (hereinafter “the State”), and Defendants iMergent, Inc. and StoresOnline, Inc. (“StoresOnline” and, together with iMergent, Inc., the “Defendants”). The Court finds that the parties have resolved the matters in controversy between them and have consented to the terms of this Judgment. The Court, with the consent of the parties, makes the following:

FINDINGS OF FACT

1. The State of North Carolina is the Plaintiff in this case.
2. iMergent, Inc. and StoresOnline, Inc. are the Defendants in this case.
3. The State filed this action seeking a permanent injunction and other equitable relief against Defendants, contending, *inter alia*, that they had violated N.C. Gen. Stat. §§ 66-94 *et seq.* and engaged in misleading and deceptive practices in violation of N.C. Gen. Stat. § 75-1.1.

4. The parties have consented to the entry of this Consent Judgment for the purposes of settlement only and this Consent Judgment does not constitute evidence against or any admission by any party.

BASED ON THE FOREGOING FINDINGS OF FACT, THE RECORD HEREIN, AND THE AGREEMENTS OF THE PARTIES MANIFESTED HEREIN, the Court concludes as follows:

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter of this action.
2. Good cause exists for the Court to enter judgment as to Defendants, as set forth herein.
3. Defendants have, by signature of their counsel hereto, waived any right to appeal, petition for certiorari, or move to reargue or rehear this judgment and order. Entry of this Consent Judgment is in the public interest.
4. The parties have agreed to resolve their differences and the agreement of the parties is just and reasonable with respect to all parties. The Court approves the terms of the parties' agreement and adopts them as its own determination of the parties' respective rights and obligations.

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

DEFINITIONS

1. The following definitions shall apply to this Consent Judgment:
 - a. "Defendant" or any reference to a Defendant includes its successors, assigns, officers, agents, servants, employees, and persons in active concert or participation with it.

- b. “Consumer” means any natural person, individual, entity, corporation, business, partnership, limited partnership, limited liability company, trust, estate, nonprofit organization, religious institution, or other legal or commercial entity, however organized.
- c. “Preview Presentation” means any event in North Carolina where a representative of either Defendant addresses Consumers, in person, regarding products or services.
- d. “Sales Presentation” means any event in North Carolina where a representative of either Defendant solicits or makes sales to Consumers, in person.

INJUNCTION

SOLICITATIONS AND CORRESPONDENCE

- 2. In any solicitation or correspondence originated by a Defendant or an agent of a Defendant, and in which a Defendant or its agent offers Consumers the opportunity to attend, or solicits Consumers to attend, a Preview Presentation or Sales Presentation, Defendants are hereby permanently enjoined from failing to clearly and conspicuously disclose:
 - a. the name and business address of the Defendant responsible for initiating the solicitation or correspondence;
 - b. the name of the entity or entities presenting the event;
 - c. that, if such is the case, Consumers will be solicited to purchase Defendants’ products or services at the presentation; and
 - d. any business relationship, or lack thereof, between the Defendant and any company referenced or otherwise included in the solicitation, offer, or correspondence.

REPRESENTATIONS

3. Defendants are hereby permanently enjoined from engaging in the following practices in North Carolina:
 - a. making any false or misleading statements to Consumers;
 - b. misrepresenting, expressly or by implication, the ease of use of Defendants' products and services, including but not limited to representing that it is easy for a novice business person or computer user to create one of Defendants' virtual storefronts and make it operational;
 - c. representing, expressly or by implication, that the Defendants' products or services can be used successfully without the Consumer owning a computer with an Internet connection on which the Consumer can load software and build a website;
 - d. misrepresenting, expressly or by implication, the level of customer support it will provide consumers;
 - e. representing, expressly or by implication, that the Defendants will provide consumers with a product to sell or a complete business;
 - f. making verbal representations which are inconsistent with written representations Defendants make to Consumers; and
 - g. failing to disclose, clearly and conspicuously, prior to the Consumer's purchase, all material terms and conditions associated with the purchase or use of Defendants' services or products.

TESTIMONIALS

4. Defendants are hereby permanently enjoined from engaging in the following practices in North Carolina:
 - a. using testimonials that do not conform to the “Guides Concerning Use of Endorsements and Testimonials in Advertising,” 16 C.F.R. 255 *et seq.*, as they may be amended from time to time;
 - b. failing to clearly and conspicuously disclose any financial incentive, benefit, or thing of value, directly or indirectly, that has been provided to any individual in exchange for a testimonial that advertises or promotes any of Defendants’ services or products, if in fact any financial incentive, benefit or anything of value has been so provided;
 - c. using a testimonial by a person who is immediately related (*e.g.*, as a parent, child or sibling) to an employee or officer of a Defendant, unless such relationship is clearly and conspicuously disclosed in such testimonial;
 - d. using a testimonial without previously obtaining documentation from the person giving the testimonial that substantiates the claims made in the testimonial, including but not limited to financial documentation that supports any claims made in the testimonial regarding earnings; furthermore, Defendants shall make such documentation available to the North Carolina Attorney General’s office upon request; and
 - e. using any testimonial which does not comply with the terms of this Consent Judgment.

DISCLOSURES PRIOR TO AND AT SALES PRESENTATIONS

5. If Defendants conduct any Sales Presentation in North Carolina involving the sale of products or services that cost \$200.00 or more, Defendants shall disclose the following,

clearly and conspicuously, and in a written document or documents, to prospective buyers at least seven days prior to a Sales Presentation and then again at the Sales Presentation:

- a. Defendants' refund policy, and Consumers' right to cancel as set forth in Paragraph 7, below;
- b. that personal mentoring or coaching services are services provided solely by a third party at an additional cost and not by Defendants and that such services are not included in the Consumer's purchase from Defendants; and
- c. that certain pre-existing conditions are required to successfully use Defendants' products and services, including the following minimum requirements:
 - i. ownership of a computer;
 - ii. connection to a working Internet service provider;
 - iii. access to a product to sell;
 - iv. access to a working email account; and
 - v. moderate technical computer skills and basic web programming knowledge.

6. If Defendants conduct any Sales Presentation in North Carolina involving the sale of products or services that cost \$200.00 or more, Defendants shall provide a written document to Consumers, at least seven days prior to such Sales Presentation and again at such Sales Presentation, that clearly and conspicuously lists the products and services offered for sale by Defendants including:

- a. a list of products and services available for sale, including but not limited to specifics regarding the extent of customer service and support included as part of every sale and details regarding what such customer service and support can and cannot help Consumers do;

b. a list of optional products and services containing a description and price for each such option, including but not limited to a description and price of optional hosting fees and a description and price of any optional customer service and support that details what such customer service and support can and cannot help a Consumer do.

RIGHT TO CANCEL

7. Defendants shall provide to all Consumers who purchase products or services at a Sales Presentation held in North Carolina with a contractual three-day right to cancel all such sales contracts and, with respect to Consumers who are at least 65 years old at the time of purchase, a contractual fifteen-day right to cancel such sales contracts, as described below:

a. If a Consumer agrees to purchase a product or service from a Defendant, he or she may cancel the transaction, in writing and without any penalty, within three business days of the date of sale of that product or service (or, in the case of persons age sixty-five and older, within fifteen business days of the date of sale).

b. Defendant's order forms shall clearly and conspicuously state, in immediate proximity to the space reserved for the signature of the buyer: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction by sending a written notice of cancellation. In the event you are 65 or older you shall be provided 15 days after the date of this transaction to cancel your purchase in writing." Provided, that nothing in this paragraph shall prohibit Defendants' order forms from also stating: "After such respective periods all sales are final."

c. If a Consumer properly and timely exercises the right to cancel, Defendants shall cancel any and all of the Consumer's contracts; and, within 30 days of the receipt of the written cancellation

request, and payment from the Consumer, return 100% of any cash, check or other form of payment paid by the Consumer to Defendants, not dispute any contest that the Consumer may make with a credit card company, or, if applicable, fully satisfy or cancel any obligation the Consumer may owe to a third party finance company.

d. Defendants shall allow Consumers to give notice of cancellation by mail, email or facsimile transmission.

e. If a Consumer calls a Defendant, or enters one of Defendants' chat rooms, within the applicable cancellation period, and expresses a desire to cancel or inquires regarding cancellation, Defendant shall advise the Consumer that the Consumer may give notice of cancellation by mail, email, or facsimile transmission, and shall advise the Consumer of Defendant's address, email address, and fax number for receipt of such notice, and that the Consumer should see his or her contract for the last date by which the Consumer must cancel.

f. At Sales Presentations in North Carolina, Defendants shall orally inform Consumers of their three day and, if applicable, fifteen day right to cancel.

g. The three-day and, if applicable, fifteen-day right to cancel a sales contract shall be available to any North Carolina Consumer who may purchase products or services at a Sales Presentation conducted outside of North Carolina.

CANCELLATION REQUESTS

8. Defendants are hereby permanently enjoined from the following practices in North Carolina:

a. failing to honor proper three-day and/or 15-day cancellation requests by Consumers;

b. requiring a Consumer to make multiple contacts with a Defendant to exercise the Consumer's right to cancel a transaction with a Defendant;

c. otherwise making it unreasonable or unduly burdensome for a Consumer to cancel a transaction with a Defendant; and

d. actively discouraging any Consumers from exercising their right to cancel; provided, however, that nothing herein shall be construed to prevent the Defendants from working with any Consumer to resolve disputes or technical issues that such Consumer may have; and further provided, however, that if a Consumer gives a proper notice of cancellation within the prescribed time period and continues to insist on it, the cancellation is effective as of the date of the initial notice of cancellation notwithstanding any efforts made by Defendants to work with the Consumer to resolve any issues the Consumer may have.

CONTRACTS

9. At the time of sale, Defendants shall provide Consumers with a fully executed copy of all written contracts for products or services purchased from Defendants. Such contracts shall clearly and conspicuously disclose any statutory or contractual right to cancel, including the right to cancel set forth in Paragraph 7, above, the mailing address, email address, and facsimile number for receipt of cancellation notices, any form the Consumer may use to effectuate such cancellation notice, and the exact date by which such cancellation is to be sent in order to be effective. Without limiting the foregoing, the following shall be given to the Consumer in writing at the time of purchase: (a) the terms and conditions of payment; (b) a full and detailed description of the acts and/or services Defendant will perform for the Consumer; and (c) Defendant's principal business address and the name and address of its registered agent for service of process in North Carolina.

COMPLIANCE AND RECORD KEEPING

10. Defendants shall comply with the following record keeping and compliance requirements for a period of three years from the date hereof:
- a. Defendants shall (i) disclose to the Office of the Attorney General by electronic mail sent to kander@ncdoj.gov and kwierzel@ncdoj.gov the dates, times and locations of all scheduled Preview Presentations and Sales Presentations in North Carolina, at least fourteen days for Preview Presentations and five days for Sales Presentations in advance of each presentation; and (ii) provide the Office of the Attorney General with a sample or proof copy of the physical or electronic mail piece used by Defendant to solicit Consumers to attend a Preview Presentation or Sales Presentation at the same time such solicitation is sent to Consumers.
 - b. Defendants shall make audible recordings of every Preview Presentation and Sales Presentation conducted in North Carolina, labeling each recording as to identify the date, time, speaker, and location of the presentation, and shall maintain the recordings for at least one year after the date of the original recording; further, Defendants shall not delete any part of, or in any way alter or edit, any recording that Defendants make and maintain pursuant to this Paragraph 10.
 - c. Defendants shall adequately staff, and continuously operate and maintain, a system to receive complaints and written cancellation requests made by Consumers that are made in accordance with the provisions of Paragraph 7, above. Defendants shall maintain copies of such complaints and cancellation requests, and upon request shall provide the Attorney General, within fourteen days of the date of such request, with all relevant information regarding the complaints and cancellation requests, including but not limited to: (i) the Consumer's name, address, and telephone number; (ii) a

copy of the complaint or request; (iii) a copy of each response to the complaint or request; and (iv) the nature and result of any investigation conducted concerning the complaint or request.

d. Defendants shall maintain records regarding (i) the name, address, and telephone number of any persons who make testimonials regarding Defendants' products or services in North Carolina; and (ii) the documentation substantiating the claims made in testimonials, as referenced in Paragraph 4, above; and shall provide the Attorney General with said records within fourteen days of the Attorney General's request.

RESTITUTION AND CONSUMER REDRESS

11. a. Excluding any Consumer who has released defendant StoresOnline from further liability or has received a full refund pursuant to the Amended Preliminary Consent Order entered in this case, Defendants shall provide full refunds to all North Carolina Consumers (i.e., Consumers who resided in North Carolina when they purchased Defendants' products or services or who reside in North Carolina at the time of the refund request) who purchased Defendants' products or services at any time prior to this Consent Judgment and who submit qualifying Refund Applications in the form attached hereto as Exhibit A that are postmarked, faxed, or emailed to the Attorney General's office within sixty (60) days after entry of this Consent Judgment. Consumers whose refund cover letters (as described below) are returned as undeliverable shall receive refunds if they submit qualifying Refund Applications that are postmarked, faxed, or emailed to the Attorney General's office within seventy five (75) days after entry of this Consent Judgment.

- b. On or about the date this Consent Judgment is entered, the State will send a cover letter in the form attached hereto as Exhibit B and Refund Application to the Consumers listed on Schedule 1, which has been filed under seal with the Court. Defendants contend that the customer information contained in Schedule 1 is confidential and proprietary. For settlement purposes, and with the State not conceding or admitting that such information is in fact confidential or proprietary, the parties have agreed to file Schedule 1 with the Court under seal. A Refund Application is qualifying and entitles a Consumer to a refund if the Refund Application is completed and shows that both refund criteria are satisfied, and the Consumer certifies, under penalty of perjury, that the statements contained in it are true. Said certification by the Consumer is determinative as to the Consumer's eligibility for a refund; provided however, that Defendants may dispute the exact dollar amount of the refund owed to the Consumer, as provided below, if their records show that the amount the Consumer paid for Defendants' products and services is different from the amount claimed by the Consumer.
- c. The Attorney General's office will fax or email Defendants a list containing the names and addresses of Consumers who submit Refund Applications within the deadlines set forth above. Within ten (10) days of the date the Attorney General's office sends said list to Defendants, Defendants will fax or email the Attorney General's office a list setting forth the amount that they contend each such Consumer paid for Defendants' products and services. The Attorney General will then forward all qualifying Refund Applications to Defendants via Federal Express or a similar

next-day delivery service. Within thirty (30) days of the date the Attorney General's office sends the Refund Applications to Defendants, Defendants shall provide said Consumers with full refunds and shall provide the Attorney General's office with documents evidencing the refunds; provided, however, that, if based on their payment records, Defendants contend that the dollar amount claimed by a Consumer in a Refund Application is incorrect, within seven (7) days of the date the Attorney General's office sends the Refund Applications to Defendants, Defendants shall provide the Attorney General's office with copies of any payment records supporting their position in that regard. The parties will then compare the Consumer's payment records and assertions regarding amount paid with the Defendant's payment records and assertions regarding amount paid in order to attempt to reach resolution as to the correct amount owed the Consumer. In the event that the parties are unable to reach agreement on the amount of the refund due to a particular consumer, any party may apply to the Court for a determination of the proper amount.

- d. Furthermore, for any Consumer who receives a refund in accordance with the above provisions, Defendants will arrange to cancel any related obligation the Consumer may owe to a third-party finance company. For any such Consumer who receives a refund and has a negative credit report as a result of any obligation to either Defendant, Defendants shall provide notice to the applicable credit reporting agencies that any negative account information, as previously reported by Defendants, should be removed. Defendants shall not be in violation of this requirement if a credit reporting agency fails to remove the negative account information so long as

Defendants provide the notice, as described above. Furthermore, Defendants shall not communicate with the credit reporting agency in a way that is inconsistent with such notice.

PAYMENT TO THE STATE

12. Upon execution of this Consent Judgment, Defendants shall pay the Attorney General the sum of ninety thousand dollars (\$90,000) for attorneys' fees, investigative costs and for consumer restitution, consumer education, enforcement or other consumer protection purposes at the discretion of the Attorney General. Defendants shall pay the amount set forth above via a certified check payable to "North Carolina Attorney General." The check shall be tendered the date this Consent Judgment is entered by the Court, and shall be forwarded to North Carolina Attorney General, c/o Kevin Anderson, Assistant Attorney General, Consumer Protection Division, 114 West Edenton Street, Raleigh, North Carolina, 27601.

GENERAL PROVISIONS

13. Nothing contained in this Consent Judgment shall be construed to deprive any Consumer or other person or entity of any private right under the law.
14. Nothing contained in this Consent Judgment shall be construed as approval, sanction or authorization of any act, practice, or conduct of Defendants. Furthermore, Defendants shall not represent that the State has determined that the requirements of N.C. Gen. Stat. §§ 66-94 *et seq.* were not or are not applicable to Defendants.
15. This Consent Judgment resolves all matters of dispute between the parties arising from the Complaint in this action with respect to conduct occurring up to the date of entry of this Consent Judgment, and nothing in this Consent Judgment shall be construed to limit the

authority of Plaintiff to prospectively enforce laws, regulations or rules against Defendants, their successors and assigns.

16. The Court shall retain jurisdiction of this matter for the purposes of enabling any of the parties to this Consent Judgment to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Consent Judgment, for the enforcement of compliance therewith, or for the punishment of violations thereof. The provisions of this Consent Judgment shall be enforceable by contempt proceedings and as provided in N.C. Gen. Stat. § 75-15.2.

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EXHIBIT A – REFUND APPLICATION

My name is _____ . I understand that to be eligible for a refund I must complete this form, check or initial both of the items listed below, and return the form to Linda Matthews, Consumer Specialist, North Carolina Department of Justice at [insert address for AG’s office] by [insert date].

Check or initial the following items, if the statements next to them are true:

____ I was not able to use StoresOnline’s software to set up a website and get it fully operational.

____ I contacted StoresOnline’s customer service at least once and still was not able to get the website fully operational.

Name: _____

Address: _____

Amount Paid to StoresOnline
or a finance company
for StoresOnline Products/Services: _____

The payment information you list above will be provided to StoresOnline and StoresOnline will check its payment records for accuracy. If you did not keep payment records or are uncertain as to the amount you paid, feel free to say “unknown.” Also, feel free to attach copies of any payment records you do have when you return your application.

I swear and affirm, under penalty of perjury, that the statements I made in this Refund Application are true and correct to the best of my knowledge and belief.

Signature: _____

EXHIBIT B

Dear _____

I write to inform you that my office has entered into a Consent Judgment with StoresOnline and you may be entitled to a refund as a result of this Judgment.

In order to qualify for a refund, you must fill out the form on the next page and return it to my office as soon as possible. Please read the form carefully. If you decide to apply for a refund, PLEASE MAIL THE FORM TO THE ADDRESS LISTED ON THE FORM AND MAKE SURE YOUR ENVELOPE IS POSTMARKED BY _____. Forms that are not returned on time or are incomplete are not eligible for refunds. This refund opportunity is for StoresOnline products and services, not products and services provided by other companies. If you do not wish to receive a refund or have already received a full refund, please do not return the form.

If you receive a refund, your contract with StoresOnline will be cancelled. This means, among other things, that your software licenses with StoresOnline will be cancelled, you can't use the software, and any license, keysite, or website you currently have on the StoresOnline web hosting system will be closed and unavailable to you or the public.

If you have any questions, please feel free to contact Linda Matthews in my office at 919-716-6000.

If we in the North Carolina Attorney General's office can be of assistance to you on other consumer matters, please feel free to contact us.

With kind regards, I am

Very truly yours,

Roy Cooper [or other representative of AG's office]