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KING COUNTY
SUPERIOR COURT

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

STATE OF WASHINGTON,

Plaintiff,

v.

SOFTWAREONLINE.COM, Inc., a
Washington Corporation; DAVID W.
PLUMMER, Chief Technology Officer
of SoftwareOnline, Inc., individually
and as a part of his marital community,

Defendants.

NO. 06-2-12343-3 SEA

STIPULATED JUDGMENT AND
ORDER AS TO
SOFTWAREONLINE.COM, INC.
AND DAVID W. PLUMMER

I. JUDGMENT SUMMARY

- 1.1 Judgment Creditor: State of Washington
- 1.2 Judgment Debtors: SoftwareOnline.com, Inc.
David Plummer
- 1.3 Principal Judgment Amount:
 - a. Costs and Fees: \$40,000.00
 - b. Restitution: See Section 4.4 below

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1 c. Civil Penalties: \$400,000.00, with \$250,000.00 suspended on
2 condition of compliance with all of the terms of the Decree.

3 d. Total Judgment: \$190,000.00 (\$440,000.00, with \$250,000.00
4 suspended on condition of compliance with all of the terms of the Decree).

5 1.4 Post-Judgment Interest Rate: 12 percent per annum (for any amount owing
6 after the agreed upon final payment date has passed).

7 1.5 Attorney for Judgment Creditor: Katherine Tassi, Assistant Attorney General

8 1.6 Attorney for Defendants: Kelly Corr, Esq.
9 Corr Cronin Michelson Baumgardner & Preece

10 Plaintiff, State of Washington, having commenced this action on April 11, 2006,
11 pursuant to RCW 19.86, the Unfair Business Practices – Consumer Protection Act (“CPA”),
12 and Defendants, SoftwareOnline.com, Inc., and David W. Plummer having accepted or waived
13 personal service;

14 Plaintiff having appeared by and through its attorneys, Rob McKenna, Attorney
15 General; and Katherine M. Tassi, Assistant Attorney General; and Defendants having
16 appeared through their attorney, Kelly Corr, Esq., Corr Cronin Michelson Baumgardner &
17 Preece;

18 Plaintiff and Defendants having agreed upon a basis for a complete and final
19 resolution of the matters alleged in the Complaint, and to the entry of this Stipulated Judgment
20 and Order, (hereinafter referred to as “Stipulated Judgment” or “Decree” or “Order”) pursuant
21 to CR 54;

22 This Stipulated Judgment reflects a settlement by and between the state of
23 Washington, SoftwareOnline and David W. Plummer and shall constitute a full and complete
24 resolution and release of all civil claims or causes of action of any kind that were brought or
25 could have been brought under the Consumer Protection Act and related consumer statutes
26

1 against David W. Plummer, SoftwareOnline and/or any of SoftwareOnline's officers, agents,
2 servants, employees or representatives;

3 Defendants assert that they are entering this Stipulated Judgment for the purpose of
4 avoiding the costs of unnecessary litigation and that this Stipulated Judgment and the Findings
5 and Conclusions herein shall be binding between the state of Washington, SoftwareOnline and
6 David W. Plummer only and, to the extent permitted by law, shall not constitute or be
7 construed as an admission, finding or conclusion of any party, or evidence thereof, in any
8 action or legal proceeding commenced by any person or entity other than the state of
9 Washington.

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

13
14 **II. FINDINGS OF FACT**

15 2.1. This action was commenced by the State of Washington pursuant to Chapter
16 19.86 RCW, the Unfair Business Practices – Consumer Protection Act.

17 2.2. Unless otherwise specified, the term "Defendants" as used in this document
18 shall mean SoftwareOnline.com, Inc., a Washington Corporation, and David W. Plummer.

19 2.3. Defendants accepted or herby waive personal service of the summons and
20 complaint.

21 2.4. Defendants recognize and state that this Stipulated Judgment is entered into
22 voluntarily and that no promises or threats have been made by the Attorney General's Office
23 or any member, official, agent, or representative thereof to induce Defendant to enter into this
24 Stipulated Judgment except as provided herein.
25
26

1 2.5. Defendants further agree that they will not oppose the entry of this Stipulated
2 Judgment on the grounds that it fails to comply with Rule 65(d) of the Rules of Civil
3 Procedure and hereby waive any objections based thereon.

4 2.6. The violations alleged in the State's Complaint, have been engaged in by
5 Defendants wholly or in part in King County, state of Washington, and elsewhere in the state
6 of Washington. Defendants transact or have transacted business in the state of Washington.

7 2.7 Defendant SoftwareOnline, Inc. is a Washington corporation with its principal
8 place of business at 336-228th Avenue NE, Suite 301, Sammamish, WA 98074. Defendant
9 David W. Plummer is the Chief Technology Officer of SoftwareOnline, and as such, controls
10 its policies, activities, and practices, including those alleged in the Complaint herein.
11 Defendant resides at 25822 NE 25th St., Redmond, WA 98053-9076. Defendant is married to
12 Nicole Plummer, and together they constitute a marital community. All actions taken by
13 Defendant as alleged in the Complaint herein are for the benefit of his marital community.
14 Defendant resides in the state of Washington and transacts or has transacted business in the
15 state of Washington. Since at least 2005, Defendants have advertised, promoted, and sold
16 various software products to the public over the Internet and through commercial electronic
17 mail solicitations ("email"), including a product called InternetShield, an Internet security and
18 privacy program that Defendants represented will detect a computer's vulnerabilities to
19 harmful "exposed web sites" and will provide the computer user protection against security
20 and privacy attacks; and a product called Registry Cleaner, software that Defendants
21 represented will clean a computer's registry in order to protect the computer from crashes,
22 slow performance, and other problems.

23 2.8 In promoting and advertising Registry Cleaner and InternetShield, Defendants
24 offered the user a "free scan" of the user's computer, and then offered to fix a small number of
25 the problems identified by the scan. Defendants then strongly recommended that the user
26 purchase the "full program" in order to be protected from the remaining problems on the user's

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1 computer. If the user declined to purchase the full program, Defendants' software generated
2 multiple advertisements or dialogue boxes, and/or launched new browser windows in order to
3 continue to induce the user to purchase the full program. The advertisements and dialogue
4 boxes repeatedly warned the user of the threat or risk remaining on the user's computer, no
5 matter what the scan "results" of the user's computer revealed, and urged the user to purchase
6 the full program. In some instances, if the user did not purchase the full program of the
7 product, Defendants' advertisements and scan program, both warning the user of the remaining
8 problems on the computer, would automatically appear on the user's screen each time the user
9 re-started the computer until the user uninstalled the "free scan" software or purchased the
10 product. The totality of the user's experience after running Defendants' Registry Cleaner and
11 InternetShield free scan – from the scan results to the subsequent series of warning-type
12 advertisements – created the misleading impression that the user's computer was at serious risk
13 of harm, regardless of the security settings or vulnerabilities specific to the user's computer

14 2.9 Defendants' InternetShield allegedly detected vulnerabilities to security and
15 privacy attacks specific to the user's computer. The scan found every computer at risk for
16 security and privacy violations as long as the computer did not have the same 2,000-plus Web
17 sites that Defendants identified as harmful entered into the computer's "restricted zone."
18 Furthermore, the scan showed a user's computer as vulnerable to over 2,000 dangerous Web
19 sites, even when all of those exact sites were blocked by means of the user's Hosts file. In this
20 way, the scan function was unreliable in assessing the computer's vulnerability and misled the
21 user into believing that the user's computer was at risk when it was not.

22 2.10 Defendants advertised Registry Cleaner and InternetShield in various ways,
23 including, but not limited to, through pop-ups, pop-unders, dialogue boxes, and chat dialogue
24 boxes, some of which were generated by the free scan software. Defendants misrepresented
25 through standard "buttons" on its advertisements and program interfaces that if a user clicked
26 on those buttons, the advertisements would close or that processes in progress would cease. In

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1 fact, in many instances, the “buttons” on Defendants’ advertisements and interfaces did the
2 opposite of what the “button” should do or failed to do what the “button” should do. For
3 example, if a user clicked on “x” to close an advertisement, rather than the advertisement
4 closing, another advertisement would pop up over the original advertisement. If a user clicked
5 on “close” to close an interface, rather than the interface closing, an advertisement would pop
6 up. Defendants’ misrepresentation of buttons that did not perform their normally expected
7 functions misled consumers and forced users to continue to view Defendants’ advertisements
8 when the user was trying to close out of the advertisement.

9 2.11 Defendants offered an uninstall option for its Registry Cleaner and
10 InternetShield free scan software; however, the uninstall option did not reliably uninstall the
11 software. Furthermore, when the user was informed that the software had been uninstalled,
12 some of Defendants’ software files, in fact, remained on the user’s computer without the user’s
13 knowledge or consent.

14 2.12 On the check-out page for its software products, Defendants offered for sale
15 numerous additional services and products, including extended download plans, download
16 updates, and other software products. Additional products and services had boxes next to them
17 to be checked by the consumer if the consumer wanted to purchase the product or service;
18 however, Defendants checked by default all of the nonrefundable services. Defendants also
19 checked by default a service that had to be affirmatively cancelled by the consumer or else the
20 consumer’s credit card was authorized to be charged at the end of one year. In order for the
21 consumer not to be charged for the purchase of the additional nonrefundable products and
22 services, or not to have a credit card subject to being billed automatically after the “free”
23 period had expired, the consumer had to manually un-check all of the boxes. In numerous
24 instances, consumers received, and were billed for, products and services that they did not
25 affirmatively request.

26 Based on the foregoing Findings of Fact, the Court hereby makes the following:

1 **III. CONCLUSIONS OF LAW**

2 3.1 This Court has jurisdiction of the subject matter of this action and of the parties.
3 The Plaintiff's Complaint in this matter states claims upon which relief may be granted under
4 the provisions of Chapter 19.86 RCW, the Unfair Business Practices-Consumer Protection
5 Act.

6 3.2 Defendants' acts and practices as described in Findings of Fact numbers 2.8
7 through 2.12 have the capacity to mislead a substantial number of consumers, are unfair and
8 deceptive, and are unfair methods of competition and therefore constitute violations of RCW
9 19.86.020, which prohibits unfair methods of competition and unfair or deceptive acts or
10 practices in the conduct of any trade or commerce. Plaintiff, State of Washington, is authorized
11 by RCW 19.86.080 to enjoin violations of the Consumer Protection Act, to obtain restitution on
12 behalf of persons harmed by such violations, and to obtain such further and other relief as the
13 court may deem appropriate, including civil penalties up to the amount of \$2,000.00 per violation
14 and attorneys' fees and costs.

15 3.3 Plaintiff is entitled to a Decree enjoining and restraining Defendants and any
16 and all persons in active concert or participation with Defendants from engaging in the future
17 in the acts or practices described in Findings of Fact 2.8 through 2.12 that violate the
18 Consumer Protection Act.

19 3.4 Plaintiff is entitled to a Decree ordering Defendants to pay Plaintiff's costs
20 and fees of \$40,000.00 incurred by Plaintiff in pursuing this action. Said payment shall be in
21 addition to and exclusive of any costs or fees which may be incurred by Plaintiff in enforcing
22 the provisions of this Decree, including the costs of any collection actions. Plaintiff's request
23 for costs and fees of \$40,000.00 is reasonable, and Plaintiff is entitled to a Decree ordering
24 Defendants to pay the requested amount.

25 3.5 Plaintiff is entitled to a Decree ordering Defendants to comply with the
26 injunctive provisions described below.

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1 a Web site by opening a new browser window; "x" buttons that fail to close the
2 advertisement, dialogue box, or browser window, or open another
3 advertisement, dialogue box, or any other form of pop-up; and "no" buttons
4 that redirect the user to Defendant's or any other Web site.

5 3. Advertising, marketing, or promoting InternetShield by means of a scan
6 of the user's computer.

7 4. Installing on a user's computer, by means of a free scan, a free "trial
8 version," or any other form of software download, software that causes
9 multiple advertisements, dialogue boxes, or any form of pop-up or pop-under
10 to appear on the user's computer after the user first attempts to close out of the
11 advertisement, scan interface, or any other form of advertising generated by the
12 software, provided, however, that this restriction shall not prohibit a reminder
13 no more than once a week of the opportunity to upgrade to the full commercial
14 version of the product so long as Defendants disclose clearly and
15 conspicuously and contemporaneously to the offer of a free scan or free trial
16 version of any product that the user (1) will be offered an opportunity to
17 purchase the full commercial version of the product no more than one time a
18 week if they elect to use the free scan software; and (2) may prevent further
19 offers from Defendants to purchase the full product if the user uninstalls the
20 free scan or trial version of the software.

21 5. Failing to use commercially reasonable efforts consistent with industry
22 standards and technology to provide a functional and easily accessible uninstall
23 option for any software Defendants market, promote, advertise or sell,
24 including, but not limited to, "trial versions."

25 6. Failing to use commercially reasonable efforts consistent with industry
26 standards and technology to remove entirely all software files from the user's

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1 computer in the uninstall process, including, but not limited to, executables and
2 icons.

3 7. Interfering with the user's efforts to uninstall software that Defendants
4 markets, advertise, and/or sell by generating more advertisements on the user's
5 computer, or by any other means, before the installation is complete.

6 8. Failing to obtain a consumer's explicit, positive assent to purchase a
7 product or service prior to billing for the product or service.

8 9. Misrepresenting the risks that any products or services are designed to
9 address, or the benefits or cost of any products or services.

10 10. Misrepresenting the utility, substance, or effect of any scan of the
11 consumer's computer.

12 4.3 Pursuant to RCW 19.86.140, Plaintiff shall recover and Defendant shall pay
13 civil penalties in the amount of \$400,000.00, with \$250,000.00 suspended on condition of
14 compliance with all of the terms of this Judgment and Decree.

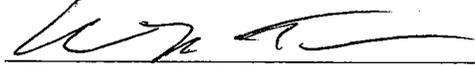
15 4.4 Pursuant to RCW 19.86.080, Defendant, at its own expense, hereby agrees to
16 provide consumer refund/adjustments (to the extent it has not already done so) to those
17 consumers who have filed complaints or who file complaints or requests for refunds with
18 Defendant or with the Attorney General's Office, the Better Business Bureau, or Federal Trade
19 Commission within 120 days following entry of this Decree. Six months after entry of this
20 Decree, Defendant will deliver a written report to Plaintiff's counsel detailing the claims or
21 requests it received, including the identity of each claimant; the amount of refund requested
22 and the reason for the request; the amount refunded; and the total amount of all refunds and
23 adjustments.

24 4.5 Pursuant to RCW 19.86.080, Plaintiff shall recover and Defendant shall pay
25 costs and attorneys' fees incurred in pursuing this matter in the amount of \$40,000.00.
26 Interest on any unpaid balance of this amount shall accrue in the amount of 12% per annum.

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1 Presented by

2 ROB MCKENNA
3 Attorney General

4 

5 KATHERINE M. TASSI #32908
6 Assistant Attorney General
7 katherinet@atg.wa.gov

8 Attorneys for Plaintiff, State of Washington
9 Office of the Attorney General of Washington
10 Consumer Protection Division
11 900 Fourth Avenue, Suite 2000
12 Seattle, Washington 98164-012
13 Phone: 206.464.7744
14 Facsimile: 206.587.5636

15 Agreed to, Approved for Entry
16 Notice of Presentation Waived:

17 

18 DAVID W. PLUMMER
19 Defendant

20 

21 SOFTWAREONLINE.COM, INC.
22 Defendant

23 

24 KELLY CORR, ESQ.
25 Attorney for Defendant
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