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IN THE FOURTH DISTRICT COURT  
IN AND FOR UTAH COUNTY, STATE OF UTAH  
PROVO DIVISION

IMERGENT, INC., and STORESONLINE,  
INC.,

Plaintiffs,

vs.

BUSINESS RECOVERY SERVICES,  
LLC., and BRIAN HESSLER,

Defendant.

**SUMMONS**

CASE NO. 090404631

HONORABLE:

*McVey*

THE STATE OF UTAH TO DEFENDANTS BUSINESS RECOVERY SERVICES, LLC and  
BRIAN HESSLER:

You are summoned and must file a response to the Complaint in this law suit, in writing, with  
the clerk of the court at the following address: 125 North 100 West, Provo, Utah 84601; and deliver  
or mail a copy of your response to the Attorneys for Plaintiff, Christiansen & Jackson at 10421  
Jordan Gateway, Suite 600, South Jordan, Utah, 84095, within 20 days if you are served in the State

of Utah, or within 30 days if you are served outside the State of Utah, after service of this Summons upon you.

If you fail to do so, judgment by default will be taken against you for the relief demanded in said Complaint, which has been filed with the Clerk of said Court and a copy of which is hereto annexed and herewith served upon you.

Dated this 18<sup>th</sup> day of December, 2009.

CHRISTIANSEN & JACKSON, P.C.

  
By: Gregory J. Christiansen  
*Attorney for Plaintiff*

SERVE DEFENDANT AT:

Brian Hessler  
1551 W. Crescent Ave.  
Mesa, AZ 85210

Gregory J. Christiansen (10755)  
**CHRISTIANSEN & JACKSON, P.C.**  
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*Attorneys for Plaintiff*

IN THE FOURTH DISTRICT COURT, UTAH COUNTY  
STATE OF UTAH – PROVO DEPARTMENT

<p>IMERGENT, INC., and STORESONLINE, INC.,</p> <p style="text-align: right;">StoresOnline,</p> <p style="text-align: center;">v.</p> <p>BUSINESS RECOVERY SERVICES, LLC., and BRIAN HESSLER,</p> <p style="text-align: right;">Defendants.</p>	<p style="text-align: center;"><b>VERIFIED COMPLAINT AND JURY DEMAND</b></p> <p style="text-align: center;"><b>(JURY TRIAL DEMANDED)</b></p> <p>CASE NO.</p> <p>HONORABLE JUDGE:</p>
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NOW COMES StoresOnline, iMergent, Inc. and StoresOnline, Inc. (Collectively referred to as “StoresOnline”) by and through the law firm of Christiansen & Jackson, P.C., alleges and complains against Defendant Business Recovery Services, LLC and BRIAN HESSLER (Collectively referred to as “Defendant”) as follows:

**Nature of the Action**

1. In this action, StoresOnline seeks injunctive and monetary relief for acts of false advertising and unfair competition under the laws of the United States, Title 15, United States Code; violation of the Utah Consumer Sales Practice Act, Utah Code Ann. §§ 13-11-1 *et seq.*; and for business disparagement and tortious interference with contractual relations under the common

law of the State of Utah.

### **Jurisdiction and Venue**

2. Jurisdiction of this action is appropriate pursuant to Utah Code Ann. § 78A-5-102. The Court has personal jurisdiction over Defendant by virtue of his transacting, doing, and soliciting business in this District, and because a substantial part of the relevant events occurred in this District.

3. Venue is proper within this judicial district under Utah Code Ann. § 78B-3-307 because a substantial part of the events giving rise to the claim occurred in this District.

4. Venue and jurisdiction of this action is also appropriate pursuant to the State of Utah's long arm statute, Utah Code Ann. § 78B-3-201.

### **The Parties**

5. Plaintiff, iMergent, Inc., is a Delaware Corporation with its principal place of business located at 1303 North Research Way, Orem, Utah 84097.

6. Plaintiff, StoresOnline, Inc., is a Delaware Corporation with its principal place of business located at 1303 North Research Way, Orem, Utah 84097.

7. Defendant, Business Recovery Services, LLC., ("BRS") is a corporation incorporated under the laws of the State of Arizona, with its principal place of business located at 340 W. University Drive, Suite 2, Mesa, Arizona 85201.

8. Defendant, Brian Hessler ("Hessler"), is and was at all relevant times the managing member and president of BRS. Hessler, upon information and belief, is a resident of the State of Arizona, with a principal place of business at 1551 W. Crescent Ave., Mesa Arizona 85210. Individually, or acting in concert with others, Hessler formulates, directs, controls or

participates in the acts and/or practices of Defendant BRS, including the acts set forth in this Complaint. BRS transacts or has transacted business in this District in connection with the matters alleged herein.

### **Relevant Facts**

9. StoresOnline is engaged in the development and marketing of various products and Internet related services, and has developed business procedures, knowledge, data, expertise, resources, customers, goodwill, and experience in such business activities, and its continually exploring or developing other business activities.

10. In particular, StoresOnline sells an e-commerce template website package which allows individuals to build and place their business or products and services on the World Wide Web.

11. A majority of StoresOnline's customers who purchase a website package, host the websites created using their software on StoresOnline's on-line servers.

12. StoresOnline is publicly traded and has been in business for more than ten (10) years.

### **Defendant's Activities**

13. Business Recovery Services, LLC, ("BRS") is a limited liability company formed under the laws of Arizona, and located at 340 W. University Drive, Suite 2, Mesa, Arizona 85201.

14. The company operates a website located at [www.businessrecoveryservices.net](http://www.businessrecoveryservices.net) where it purports to offer individuals assistance in obtaining refunds from several companies, including StoresOnline.

15. BRS generates profits by offering "refund kits" to individuals for two hundred and

fifty dollars (\$250.00) or more.

16. The purpose of these kits is to assist individuals, legitimately or not, in obtaining a refund from a company whom they made a purchase.

17. In addition to the initial charge of two hundred and fifty dollars (\$250.00), BRS also takes a fee equalling twenty-five percent (25%) or more of the refunded amount obtained.

18. BRS generates "leads" to contact StoresOnline's customers in two ways.

19. First, BRS buy's data files from lead brokers which contain the names, addresses, e-mail addresses, telephone numbers, and other contact information of StoresOnline's customers.

20. Second, BRS discovers StoresOnline's customers contact data by purchasing reports of all websites hosted on StoresOnline's servers.

21. With a website address, BRS can employ a technique called "Spydering" which extracts emails, telephone numbers, business names, and addresses from a URL or website address.

22. After obtaining StoresOnline's customers' data files and contact information, BRS directs sales agents to contact StoresOnline's customers via telephone or e-mail.

23. Because BRS profits from obtaining refunds, legitimate or not, it begins its conversations with StoresOnline's customers by stating StoresOnline is a scam, and using other defamatory language.

24. Defendant has contacted customers who have purchased StoresOnline's promotional and e-commerce software services, and has made false and defamatory representations regarding StoresOnline's products and services. Defendant also has misrepresented to StoresOnline's customers that StoresOnline's products and services are

inadequate to perform the functions for which they are marketed and sold, including search engine optimization, and said customer should demand a refund.

25. StoresOnline became specifically aware of Defendant's disparagement of StoresOnline's products and services after several customers complained of harassing, defamatory, and abusive contacts with BRS representatives. BRS continues to make such misrepresentations and disparagement.

26. Specific instances of these misrepresentations and disparagements, include but are not limited to the following:

- a. On or about August 19, 2009, StoresOnline's customer, Virginia Weller, called StoresOnline to complain about a telephone call she received from a company called "Business Recovery Services whose telephone number is (480) 733-2214.
- b. During the telephone call BRS claimed StoresOnline were bad actors and she should break her relationship with StoresOnline.
- c. Ms. Weller stated the agent, Chris Spicer, used threatening tactics to get her to terminate her relationship with StoresOnline, and harassed her when she defended StoresOnline.
- d. On or about August 25, 2009, BRS representative, David Rodriquez, contacted another of StoresOnline's customers, Pamela Thomas.
- e. Ms. Thomas stated Mr. Rodriquez spoke "so fast she could not get a word in." She further claimed Mr. Rodriquez was very high pressure, and every other word he used to describe StoresOnline was "fraud".
- f. Ms. Thomas found Mr. Rodriquez and BRS extremely unprofessional and

harassing.

g. On or about August 27, 2009, BRS contacted Ms. Andria Finau, of South Jordan, Utah.

h. BRS bombarded Ms. Finau with several negative comments about StoresOnline, calling them a “scam” and encouraging Ms. Finau to terminate her relationship with StoresOnline.

i. The BRS sales representative “was aggressive” and rude.

j. On or about August 28, 2009, BRS left six (6) telephone messages for Mr. Shaun Shelton of Eagle Mountain, Utah.

k. The BRS representative, going by the name “Peggy”, used threat tactics by leaving voice messages stating Mr. Shelton “could be convicted of fraud for your StoresOnline website. You need to call us back immediately.”

l. Mr. Shelton logged on to his website to make sure everything was in order and then returned “Peggy’s” call.

m. Mr. Shelton, however, was unable to get “Peggy”, instead a man who refused to give his name answered. Mr. Shelton began to ask this person’s name, purpose of calling him, etc. Instead of answering the person hung up the phone.

n. Ten (10) minutes after being hung up by the unnamed person, “Peggy” called Mr. Shelton again. This time he answered.

o. “Peggy” stated she was with BRS and they were “a business designed to recoup losses incurred by companies such as StoresOnline.”

p. During the conversation, “Peggy” was aggressive, used high pressure

techniques, and threatened Mr. Shelton in an attempt to get him to terminate his relationship with StoresOnline.

q. Mr. Shelton asked her not to call him again, and she hung up the phone. Ten (10) minutes later, however, "Peggy" called another telephone number listed on his website which went to his girlfriend's cell phone.

r. Mr. Shelton's girlfriend, in his presence, told "Peggy" not to call back; that the telephone calls were harassing.

s. A few minutes after ending this call, Mr. Shelton's girlfriend received another call from a man from BRS mocking her and calling her "stupid" for remaining a customer of StoresOnline.

t. Mr. Shelton received several telephone calls from BRS after they asked them to stop calling.

u. On December 4, 2009, BRS Representative, Joe Rosell, called StoresOnline's customer Bonnie Denlinger, and stated "she had been a victim of fraud from the very instant she came into contact with StoresOnline."

v. Ms. Denlinger felt harassed by Mr. Rosell's correspondence.

w. On or about September 8, 2009, BRS contacted StoresOnline's customer, Robert Brown.

x. BRS informed Mr. Brown that StoresOnline was a "scam" and that they would assist him in getting his money back.

y. When Mr. Brown began asking questions the representative became belligerent.

z. Mr. Brown asked the BRS representative not to contact him again.

27. BRS uses retaliatory and harassing tactics to lure StoresOnline's customers into purchasing its products and services.

28. In the event a StoresOnline's customer does enroll in BRS's program, BRS relies on a system of deception and misrepresentation in an attempt to obtain monies from StoresOnline.

29. One of the fraudulent methods BRS employs to obtain money is to send StoresOnline, Attorney Generals Offices, the BBB, and other local, state, and government consumer protection entities correspondence alleging to be the customer.

30. Furthermore, several of BRS communications to StoresOnline pretend to be from the BBB, State Attorney General's Offices, Federal Trade Commission, and various local, state, and federal enforcement agencies.

31. BRS perpetuates this fraud by setting up e-mail accounts in the names of StoresOnline's customers and sending correspondences to StoresOnline and various agencies requesting refunds for various boiler plate offenses, none of which are true or accurate.

32. These deceptive e-mails are meant not only to mislead StoresOnline but also the BBB, government entities, and Attorney General's Offices.

33. Several of StoresOnline's customers who paid for BRS's services have called StoresOnline to complain after they receive a refund and are charged by BRS more than the refund amount they received.

34. Legitimate consumer advocacy programs, entities, and agencies exist which provide a legitimate services to valid individuals who have complaints with companies.

35. BRS's services are not required to assist in legitimate customer complaints.

36. Defendant's misrepresentations and disparagement of StoresOnline's tools and services have caused and are likely to continue to cause loss of sales and revenue as a result of StoresOnline's consumers canceling their purchases and will continue to cause damage to StoresOnline's reputation and goodwill in the e-commerce and website development community.

## **CAUSES OF ACTION**

### **COUNT I**

#### **(False Advertising/Misleading Promotion Under Federal Law)**

37. StoresOnline realleges and incorporate paragraphs 1 through 36 as if set forth herein.

38. Defendant's conduct constitutes false or misleading factual representations of the nature, characteristics, or qualities of StoresOnline's tools and services that were made by Defendants during the course of their respective commercial activities, and that deceived or have a tendency to deceive a substantial number of the public, including StoresOnline customers.

39. Defendant's conduct has disparaged StoresOnline's tools and services in commerce in violation of Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

40. Defendant's conduct has damaged and will continue to cause damage to StoresOnline.

41. Defendants made and, on information and belief, continue to make false and misleading material representations to consumers about StoresOnline's tools and services that are likely to influence the purchasing decisions of such consumers.

42. As a result of Defendant's Conduct, each respective Defendant has caused injury to StoresOnline in terms of declining sales, lost sales and revenue, damage to its goodwill and reputation, and irreparable harm and injury, and will continue to do so unless each Defendant is

restrained and enjoined by this Court from further violations.

43. StoresOnline has no adequate remedy at law.

**COUNT II**  
**(Unfair Competition Under Federal Law)**

44. StoresOnline realleges and incorporate paragraphs 1 through 43 as if set forth herein.

45. Specifically, Defendant's conduct constitutes false representations as to the source, sponsorship, approval, affiliation, connection, or association of the respective Defendant's goods and/or services with StoresOnline which is likely to cause confusion, mistake, or deception as to origin, sponsorship, or approval, in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C § 1125(a)(1)(A).

46. Defendant's alleged false affiliation with other entities such as the Utah Department of Consumer Protection, the Better Business Bureau, and the Federal Trade Commission also constitutes false representations as to the source, sponsorship, approval, affiliation, or association which is likely to cause confusion, mistake, or deception as to origin sponsorship, or approval, in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C § 1125(a)(1)(A).

47. Defendant's conduct constitutes an attempt to tarnish the goodwill of StoresOnline by coat tailing on the goodwill and reputation of several local, state, and federal private and government consumer agencies, to the detriment of StoresOnline.

48. As a result of Defendant's conduct, each respective Defendant has caused injury to StoresOnline in terms of declining sales, lost sales and revenue, damage to its goodwill and reputation, and irreparable harm and injury, and will continue to do so unless each Defendant is

restrained and enjoined by this Court from further violations.

49. StoresOnline has no adequate remedy at law.

**COUNT III**  
**(Utah Consumer Sales Practices Act (UCSPA), Utah Code Ann. § 3-11-1 *et seq.*)**

50. StoresOnline realleges and incorporate paragraphs 1 through 49 as if set forth herein.

51. Defendant's conduct constitutes a deceptive act or practice in connection with a consumer transaction by Defendant knowingly or intentionally: (a) indicating that Defendant's goods and services are necessary, which is a false and misleading claim; (b) indicating that the goods and services are sponsored and approved by the Better Business Bureau, Utah Division of Consumer Protection, Federal Trade Commission, and/or a local, state, or federal private or governmental consumer protection entity.

52. Defendant's conduct constitutes a violation of the UCSPA, Utah Code Ann. § 3-11-4(a) and (g).

53. As a result of Defendant's conduct, each respective Defendant has caused injury to StoresOnline in terms of declining sales, lost sales revenue, damage to its goodwill and reputation, and irreparable harm and injury, and will continue to do so unless each Defendant is restrained and enjoined by this Court from further violations.

54. StoresOnline has no adequate remedy at law.

**COUNT IV**  
**(Business Disparagement Under the Common Law)**

55. StoresOnline realleges and incorporate paragraphs 1 through 54 as if set forth herein.

56. Defendant's conduct constitutes publication of false statements about StoresOnline and its products and services that were material and likely to induce reasonable reliance by StoresOnline's customers in such false statements.

57. Defendant knew of the falsity of its respective statements, acted with reckless disregard concerning Defendant's conduct, or acted with ill will or intended to interfere in the economic interest of StoresOnline, and was without privilege in doing so.

58. As a result of Defendant's conduct, Defendant has caused damages in the amount of considerable quantifiable lost sales and revenues resulting from StoresOnline customers that have cancelled their previous purchases of StoresOnline's products and services, and, unless restrained and enjoined by this Court will continue to cause monetary damages, loss of future business and injury to StoresOnline.

**COUNT V**  
**(Tortious Interference with Business Relations)**

59. StoresOnline realleges and incorporate paragraphs 1 through 58 as if set forth herein.

60. A business relationship or potential economic relationship existed between StoresOnline and customers that had purchased its products and service, or were considering such purchases.

61. Defendant became aware of StoresOnline's customer relationship by obtaining,

without permission or authorization, information and data enabling Defendant to identify such consumers.

62. Defendant, without privilege, intentionally and unjustifiably interfered with Plaintiff's existing or potential economic relations by claiming falsely that StoresOnline's products and services were inadequate and Defendant's products and/or services were necessary.

63. As a result of Defendant's conduct, Defendant has caused injury to StoresOnline in terms of declining sales, lost sales and revenue, damage to its goodwill and reputation, and irreparable harm and injury, and will continue to do so unless each Defendant is restrained and enjoined by this Court from further violations.

64. Defendant's conduct was willful and malicious and in reckless disregard of StoresOnline's rights.

**COUNT VI**  
**(Defamation/Libel)**

65. StoresOnline realleges and incorporate paragraphs 1 through 64 as if set forth herein.

66. Defendant's statements to potential clients and others in the community regarding StoresOnline are false.

67. The statements intentionally make one or more false, misleading, disparaging, and/or defamatory comments and/or allegations about Plaintiff, its managers, owners, business activities, and products.

68. Defendant has publicly communicated false, misleading, disparaging and/or defamatory comments and allegations to third parties by making ill and disparaging comments about StoresOnline.

69. Defendant knowingly and willingly made these false, misleading, and/or defamatory comments to third parties, knowing that such comments and allegations were false, or was reasonably certain that such comments were false, or with a reckless disregard for the truth.

70. Notwithstanding its knowledge regarding these comments, Defendant refused to redact the defamatory and misleading statements in his attempt to harm StoresOnline and to earn a profit at StoresOnline's expense.

71. Defendant disseminated false, misleading, disparaging and/or defamatory comments and allegations with the intent to damage the business, goodwill, and professional reputation of StoresOnline.

72. Defendant's false, misleading, disparaging, and/or defamatory comments and allegations have caused general defamation damages to StoresOnline by exposing it to hatred, contempt, and ridicule by the third parties.

73. StoresOnline has also suffered special damages in the form of financial loss as the result of Defendant's statements relating to StoresOnline's business practices, falsely alleging StoresOnline engaged in fraudulent activity with its clients.

74. Defendant has acted maliciously by making such comments to StoresOnline's customers, with wanton disregard, and with ill will and evil intent to injure StoresOnline.

75. Defendant's unlawful conduct has caused damages to StoresOnline in an amount to be determined at trial, and threatens to cause additional damage.

**PRAYER FOR RELIEF**

ACCORDINGLY, StoresOnline asks this Court to:

- A. Grant immediate temporary, preliminary and permanent injunctive relief enjoining Defendant, Business Recovery Services, Defendant Brian Hessler, and any principals, agents, servants, employees, successors, and assigns of them and all those in privity, concert, or participation with Defendant from:
- i. Using or making any false representation or false description which can or is likely to lead the trade or public, or individual members thereof, to believe mistakenly that any products and/or services advertised, promoted, offered, or sold by Business Recovery Services are sponsored, endorsed, connected with, approved, or authorized by the Better Business Bureau, Utah Division of Consumer Protection, Federal Trade Commission, or any other local, state, or federal private or government consumer protection/advocacy entity or to allege any affiliation with StoresOnline.
  - ii. Using or making any false representations and statements alleging impaired functionality of StoresOnline's products and services, or that Defendant's products and/or services are necessary;
  - iii. Engaging in any other activity constituting false advertising and/or product disparagement; and
  - iv. Assisting, aiding, or abetting another person or business entity in engaging or performing any of the activities enumerated in subparagraphs (i) through (iii) above.

- B. Find that Defendant's conduct violates federal law and has damaged StoresOnline's reputation and goodwill;
- C. Find that each Defendant has unfairly competed with StoresOnline by the acts complained of herein in violation of federal law;
- D. Find that Defendant's conduct violates the Utah Consumer Sales Practices Act, §§ 13-11-1 *et seq.*;
- E. Find that Defendant's conduct constitutes product disparagement, in violation of the common law of the State of Utah;
- F. Find that Defendant's conduct constitutes tortious interference with contractual relations, in violation of the common law of the State of Utah;
- G. Grant an order requiring Defendants, and any principals, agents, servants, employees, successors, and assigns of and all those in privity or concert with either Defendant any other printed materials of any kind that contains false representations that each Defendant is connected and/or affiliated with StoresOnline, and/or that contains false representations relating to StoresOnline's products and/or services;
- H. Find Defendant liable and award to StoresOnline its monetary damages in an amount to be fixed by the Court in its discretion as just, including Defendant's profits or gains of any kind resulting from its willful conduct constituting acts of unfair competition, false advertising and misleading promotion in violation of the Lanham Act, said amount to be trebled, and exemplary damages in view of the intentional nature of the acts complained of herein, pursuant to 15 U.S.C. § 1117;

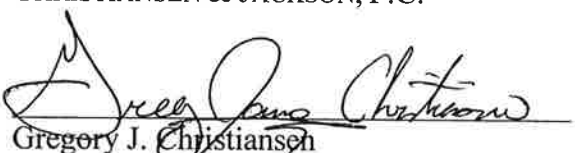
- I. Award to StoresOnline its attorneys' fees, due to the exceptional nature of this case, and all of its costs and expenses of litigation, pursuant to 15 U.S.C. § 1117;
- J. Award StoresOnline, as special damages for its pecuniary losses, its lost revenues and profits resulting from cancelled customers and lost customer sales;
- K. Award to StoresOnline its actual damages and attorneys' fees pursuant to the Utah Consumer Sales Practices Act, Utah Code Ann. §§ 13-11-19;
- L. Award to StoresOnline exemplary damages in view of the intentional, willful and malicious nature of the acts complained of herein; and
- M. Grant to StoresOnline such other and further relief as the Court may deem just, proper, and equitable under the circumstances.

**JURY DEMAND**

STORESONLINE demands a trial by jury on all issues so triable.

DATED this 18<sup>th</sup> day of December, 2009.

CHRISTIANSEN & JACKSON, P.C.

By:   
Gregory J. Christiansen  
*Attorney for the Plaintiff*

OF COUNSEL:

CHRISTIANSEN & JACKSON, P.C.  
10421 Jordan Gateway, Ste. 600  
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**VERIFICATION**



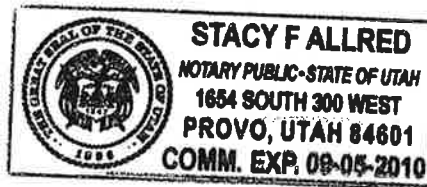
Clint Sanderson,  
President, StoresOnline, Inc.  
Vice President Sales, iMergent, Inc.

STATE OF UTAH            )  
                                      : ss  
COUNTY OF UTAH        )

On the 18 day of December, 2009, personally appeared before me Clint Sanderson, who after being duly sworn upon his oath, did state that he is an authorized agent for Plaintiff in the above-entitled action, that he has read the foregoing Verified Complaint and understands the contents thereof, and that the same is true and correct of his own knowledge, information and belief.



NOTARY PUBLIC  
Residing in the State of Utah



Gregory J. Christiansen (10755)  
Jarred A. Henline (12550)  
**CHRISTIANSEN & JACKSON, P.C.**  
10421 S. Jordan Gateway, Suite 600  
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Telephone 801.572.2662  
Facsimile 801.415.9340

*Attorneys for Plaintiffs*

IN THE FOURTH DISTRICT COURT, UTAH COUNTY  
STATE OF UTAH – PROVO DEPARTMENT

IMERGENT, INC., and STORESONLINE, INC.,	<b>PLAINTIFF’S AMENDED VERIFIED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION</b>
Plaintiffs,	
v.	CASE No. 090404631
BUSINESS RECOVERY SERVICES, LLC., and BRIAN HESSLER,	HONORABLE JUDGE: McVey
Defendants.	

STORESONLINE, iMergent, Inc. and StoresOnline, Inc., (Collectively referred to as “StoresOnline”) by and through their attorney of record, Gregory J. Christiansen, hereby moves this Court pursuant to Utah R. Civ. P. 65A for a temporary restraining order and preliminary injunction enjoining Defendant, and their agents, employees, and all others acting in concert with any of them from contacting StoresOnline’s clients for the purpose of offering its products and services, and/or to harm or defame StoresOnline, or discuss StoresOnline’s business, in any way. Furthermore, StoresOnline seek a temporary restraining order and preliminary injunction enjoining Defendant from assisting, directing, or submitting complaints on behalf of itself or any of StoresOnline’s customers with any government or non-government regulatory agency.

If Defendant is not so enjoined, StoresOnline will suffer immediate and irreparable harm. Additionally, StoresOnline have met all other requirements for immediate injunctive relief. StoresOnline's Motion should therefore be granted.

*RELEVANT FACTS*

1. StoresOnline, engaged in the development and marketing of various products and Internet related services, and has developed business procedures, knowledge, data, expertise, resources, customers, goodwill, and experience in such business activities, and its continually exploring or developing other business activities.

2. In particular, StoresOnline sell an e-commerce template website package which allows individuals to build and place their business or products and services on the World Wide Web.

3. A majority of StoresOnline's customers who purchase a website package, host the websites created using their software on StoresOnline's on-line servers.

4. StoresOnline are publicly traded and have been in business for more than ten (10) years.

5. Defendant, Business Recovery Services, LLC, ("BRS") is a limited liability company formed under the laws of Arizona, and located at 340 W. University Drive, Suite 2, Mesa, Arizona 85201.

6. Defendant, Brian Hessler ("Hessler"), is and was at all relevant times the managing member, president of BRS, upon information and belief, is a resident of the State of Arizona. Individually, or acting in concert with others, Hessler formulates, directs, controls or participates in the acts and/or practices of Defendant BRS, including the acts set forth in this Complaint. Hessler transacts or has transacted business in this District in connection with the

matters alleged herein.

7. The company operates a website located at [www.businessrecoveryervices.net](http://www.businessrecoveryervices.net) where it purports to offer individuals assistance in obtaining refunds from several companies, including StoresOnline.

8. Defendants generate profits by offering “refund kits” to individuals for two hundred and fifty dollars (\$250.00) or more.

9. The purpose of these kits is to assist individuals, legitimately or not, in obtaining a refund from a company whom they made a purchase.

10. In addition to the initial charge of two hundred and fifty dollars (\$250.00), Defendants also takes a fee equalling twenty-five percent (25%) or more of the refunded amount obtained.

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16. Because Defendants profits from obtaining refunds, legitimate or not, it begins its conversations with StoresOnline's customers by stating StoresOnline are a "scam", and using other defamatory language.

17. Several customers have complained to StoresOnline about the harassing and derogatory nature of Defendants' calls.

18. For example, On or about August 19, 2009, StoresOnline customer, Virginia Weller, called StoresOnline to complain about a telephone call she received from a company called "Business Recovery Services whose telephone number is (480) 733-2214.

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StoresOnline, calling them a scam and encouraging Ms. Finau to terminate her relationship with StoresOnline.

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28. The Defendants' representative, going by the name "Peggy", used threat tactics by leaving voice messages stating Mr. Shelton "could be convicted of fraud for your StoresOnline website. You need to call us back immediately."

29. Mr. Shelton logged on to his website to make sure everything was in order and then returned "Peggy's" call.

30. Mr. Shelton, however, was unable to get "Peggy", instead a man who refused to give his name answered. Mr. Shelton began to ask this person's name, purpose of calling him, etc. Instead of answering the person hung up the phone.

31. Ten (10) minutes after being hung up by the unnamed person, "Peggy" called Mr. Shelton again. This time he answered.

32. "Peggy" stated she was with Defendants and they were "a business designed to recoup losses incurred by companies such as StoresOnline."

33. During the conversation, "Peggy" was aggressive, used high pressure techniques, and threatened Mr. Shelton in an attempt to get him to terminate his relationship with StoresOnline.

34. Mr. Shelton asked her not to call him again, and she hung up the phone. Ten (10) minutes later, however, "Peggy" called another telephone number listed on his website which

went to his girlfriend's cell phone.

35. Mr. Shelton's girlfriend, in his presence, told "Peggy" not to call back; that the telephone calls were harassing.

36. A few minutes after ending this call, Mr. Shelton's girlfriend received another call from a man from Defendants mocking her and calling her "stupid" for remaining a customer of StoresOnline.

37. Mr. Shelton received several telephone calls from Defendants after they asked them to stop calling.

38. On December 4, 2009, Defendants Representative, Joe Rosell, called StoresOnline' customer Bonnie Denlinger, and stated "she had been a victim of fraud from the very instant she came into contact with StoresOnline."

39. Ms. Denlinger felt harassed by Mr. Rosell's correspondence.

40. On or about September 8, 2009, Defendants contacted StoresOnline' customer, Robert Brown.

41. Defendants informed Mr. Brown that StoresOnline were a "scam" and that they would assist him in getting his money back.

42. When Mr. Brown began asking questions the representative became belligerent.

43. Mr. Brown asked the Defendants' representative not to contact him again.

44. Several of Defendants' communications pretend to be from the BBB, State Attorney General's Offices, Federal Trade Commission, and various local, state, and federal enforcement agencies.

## *ARGUMENT*

### A. PLAINTIFFS ARE ENTITLED TO A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION.

A district court may issue appropriate injunctive relief if the moving party establishes the following:

- (1) The applicant will suffer irreparable harm unless the order or injunction is issued;
- (2) The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined;
- (3) The order or injunction, if issued, would not be adverse to the public interest; and
- (4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

Utah R. Civ. P. 65A(e); *System Concepts v. Dixon*, 669 P.2d 421 (Utah 1983). Plaintiff can establish each of these factors, and therefore is entitled to a preliminary injunction pending trial on the merits of this case.

#### 1. *Plaintiffs are Substantially Likely to Prevail on the Merits.*

Plaintiffs have brought claims against Defendants for False Advertising/Misleading promotion under Federal Law, Unfair Competition under the Lanham Act, violations of the Utah Consumer Sales Practices Act, Business Disparagement Under the Common Law, Tortious Interference with Business Relations, and Defamation/Liable.

As outlined above, Defendants have acted in concert to contact clients of StoresOnline, for the sole purpose of destroying said client's relationship with StoresOnline. Defendants have shown a propensity to use any means, legal or non-legal, to obtain their end designs. Of the

many strategies employed by Defendants, Defendants attempt to deceive StoresOnline by acting as if they are either directed or are government or non-government consumer advocacy groups such as the BBB, Utah Division of Consumer Protection, Attorney Generals Office, etc. Furthermore, they deceive these same entities by claiming to be the customer of StoresOnline when they are not.

Numerous clients have complained to StoresOnline regarding the abusive, defamatory, and harassing behaviour and actions of Defendants. Sufficient evidence already exists to prove Defendants wrong deeds. Consequently, Plaintiffs are substantially likely to prevail on the merits of their claims.

*2. Plaintiffs will Suffer Immediate, Irreparable Harm if This Court Does not Issue An Injunction.*

Irreparable Harm is defined as “a harm that a court would be unable to remedy even if the movant would prevail in the final adjudication.” *Johnson v. Hermes Associates, Ltd.*, 128 P.3d 1151, 1157 (Utah 2005) (quoting *Moore’s Federal Practice* § 65.06[2] (3d ed.2005)). Currently, Defendant is liable to Plaintiff for several hundred thousand dollars. Plaintiff, however, is unlikely to recover any of the amounts owed if Defendant is able to remove all trade fixtures and property not leased by a third party, attached to a mortgage or a security interest. Plaintiff has sufficient proof of irreparable harm to warrant the issuance of a Temporary Restraining Order and a Preliminary Injunction.

Furthermore, a “party proves irreparable injury when establishing that he or she is unlikely to be made whole by an award of monetary damages or some other legal, as opposed to equitable, remedy.... Thus, an injury is irreparable if the damages are estimable only by

conjecture and not by any accurate standard.” *Id.* Here, Plaintiffs’ damages cannot be adequately measured for a variety of reasons.

First, no monetary award can be placed on the havoc Defendants cause when they verbally assault StoresOnline’s clients over the telephone with a barrage of insults, insinuations, and outright deceptions. The damage these communications create is devastating to StoresOnline and will take time and effort to heal.

Second, the increased case load of fraudulent and unwarranted complaints which Defendants continue to send to local, state, and federal agencies such as the Utah Division of Consumer Protection, waste tax payer time and resources while burying legitimate concerns brought by StoresOnline customers. These fraudulent complaints make it merely impossible to separate the legitimate complaints from those sent by Defendants. Over the past month the Division of Consumer Protection has received over seventy-five (75) complaints which it and representatives of StoresOnline have had to spend time and effort to address which the Division has deemed as improper complaints from Defendants. Defendants’ solicitations have bogged down this and many other entities such as the BBB.

Lastly, there is no adequate monetary value to place on the harm StoresOnline is experiencing with maintaining its relationship with government entities and the BBB.

3. *Harm to Plaintiff Outweighs Any Harm Defendant Might Suffer.*

The balance of harms in this case weighs decidedly in favour of StoresOnline. If this Court does not issue an injunction, there is a substantial likelihood StoresOnline customers will continue to receive high pressured, defamatory, sales calls from Defendants. Furthermore, Defendants will be able to continue to perpetuate a system of fraud with state, local, and federal

consumer agencies which will cause a bog of illegitimate complaints. Moreover, the acts of Defendants are clearly planned and intentional. Defendants should not benefit in any manner from the same. Whatever “minor” harm Defendants may suffer from an injunction should be viewed in this context.

4. *Public Policy Favors Injunctive Relief.*

Systems of consumer advocacy for legitimate consumer concerns already exist on both a local, state, and federal level provided by governmental and private entities, at no cost to the customer. While StoresOnline desires every customer to be satisfied with its products and services, dissatisfied customers are encouraged to contact the company directly, or in extreme cases use one of the services listed above. In those cases, the customer can when appropriate obtain relief without having to pay someone to assist them. Profiting as Defendants do by promoting, harassing, and defaming another company neither helps consumers resolve a legitimate concern nor creates change within the company. Furthermore, the defamatory nature of Defendants’ calls creates a hostile environment which the public in general should not have to endure. In short, great public policy supports injunctive relief in this case.

5. *Security.*

Pursuant to Utah R. Civ. P. 65(c)(1), this Court may dispense with the security requirement when injunctive relief carries little or no threat of loss to the non-moving party. *See Corporation of President of Church of Jesus Christ of Latter-Day Saints v. Wallace*, 673 P.2d 1285, 1286-87 (Utah 1978); *Coquina Oil Corp. v. Transwestern Pipeline Co.*, 825 F.2d 1461, 1462 (10th Cir. 1987); 11A C. Wright, A. Miller and M. Kane, *Federal Practice and Procedure* Section 2954, p. 293 (1995). In this case, Defendant will suffer little if any loss. Moreover,

Defendants' acts have been intentional, and StoresOnline should not be punished as a result of such actions. Nevertheless, StoresOnline stands ready to post nominal or more adequate security if the Court so requires.

6. *Notice.*

Pursuant to Utah R. Civ. P. 65A(b)(1), this Court may issue a temporary restraining order and dispense with notice to the non-moving party so long as two requirements are met. First, from specific facts shown, it must clearly appear that an immediate and irreparable injury, loss, or damage will result to the applicant before the opposing party can be heard. Secondly, the applicant or the applicant's attorney must certify in writing as to the efforts in providing notice and the reasons supporting the claim that notice should not be required.

As previously stated, irreparable harm is defined as "a harm that a court would be unable to remedy even if the movant would prevail in the final adjudication." *Johnson* at 1157. Furthermore, an irreparable injury can be proven when a party "establish[es] that he or she is unlikely to be made whole by an award of monetary damages or some other legal, as opposed to equitable, remedy.... Thus, an injury is irreparable if the damages are estimable only by conjecture and not by any accurate standard." *Id.*

Even though Defendant is liable to Plaintiff for several hundreds of thousand of dollars, Plaintiffs' damages cannot be adequately measured since no monetary award can be placed on the havoc Defendants cause when they verbally assault StoresOnline's clients over the telephone, with a barrage of insults, insinuations, and outright deceptions. The damage these communications create is devastating to StoresOnline and will take time and effort to heal. Plaintiffs suffer further immediate and irreparable injury with each such call Defendants make.


Plaintiffs' attorney has made efforts in providing notice to Defendants. Valleywide Process Server, a process serving company located at 1818 E. Aire Libre Avenue, Phoenix, Arizona 85022, has been retained to serve notice on Defendant, but such service has yet to be affected. In light of these efforts and the amount of damage Plaintiffs suffer each day at the hands of Defendants, this order should be granted without notice to Defendants.

*CONCLUSION*

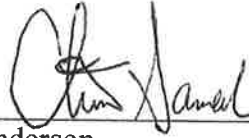
Based upon the forgoing reasons, the Court should grant StoresOnline' Motion for Temporary Restraining Order and Preliminary Injunction and restraining order and preliminary injunction enjoining Defendant, and their agents, employees, and all others acting in concert with any of them from contacting StoresOnline' clients for the purpose of offering its products and services, and/or to harm or defame StoresOnline, or discuss StoresOnline' business, in any way. Furthermore, StoresOnline seek a temporary restraining order and preliminary injunction enjoining Defendant from assisting, directing, or submitting complaints on behalf of itself or any of StoresOnline' customers with any government or non-government regulatory agency.

DATED this 22<sup>nd</sup> day of December, 2009.

CHRISTIANSEN & JACKSON, P.C.

  
Gregory J. Christiansen  
*Attorneys for Plaintiff*

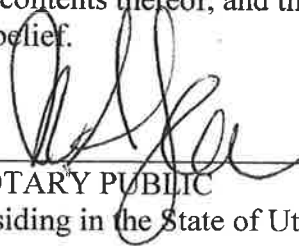
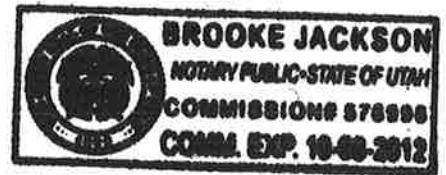
**VERIFICATION**



\_\_\_\_\_  
Clint Sanderson,  
President, StoresOnline, Inc..  
Vice President Sales, iMergent, Inc.

STATE OF UTAH            )  
                                      : ss  
COUNTY OF UTAH        )

On the 22<sup>nd</sup> day of DECEMBER, 2009, personally appeared before me Clint Sanderson, who after being duly sworn upon his oath, did state that he is an authorized agent for Plaintiff in the above-entitled action, that he has read the foregoing Memorandum in Support of Ex Parte Restraining Order and understands the contents thereof, and that the same is true and correct of his own knowledge, information and belief.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing in the State of Utah

Gregory J. Christiansen (10755)  
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*Attorneys for Plaintiff*

IN THE FOURTH DISTRICT COURT, UTAH COUNTY  
STATE OF UTAH – PROVO DEPARTMENT

<p>IMERGENT, INC., and STORESONLINE, INC.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BUSINESS RECOVERY SERVICES, LLC., and BRIAN HESSLER,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;"><b>MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER</b></p> <p>CASE No. 0904104631</p> <p>HONORABLE JUDGE: <i>McVey</i></p>
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PLAINTIFFS, iMergent, Inc. and StoresOnline, Inc., by (Collectively Referred to as “StoresOnline”) and through their attorney of record, Gregory J. Christiansen, hereby moves this Court for entry of a Temporary Restraining Order.

Defendants, Business Recovery Services, LLC (“BRS”) and Brian Hessler (“Hessler”) (Collectively referred to as “Defendants”) are located in Mesa, Arizona. Defendants purport to assist consumers in obtaining refunds from various companies for previous purchases made for a nominal fee. Generally, Defendants charges a client an upfront fee of approximately two hundred and fifty dollars (\$250.00) or more, plus a back end fee of twenty-five percent (25%) of any refund amount received.

Since early 2009, Defendants has purchased purchase and/or uncover data files including StoresOnline's customers. These data files include the name, address, telephone number and e-mail addresses of StoresOnline' customers. Defendants use this information to contact customers to push its "refund kits" and other products and services. Upon contacting StoresOnline customers, Defendants claims StoresOnline' businesses are "scams" and incites StoresOnline customers to terminate their business relationship with StoresOnline. During these calls Defendants uses harassing and degrading information in an attempt to get StoresOnline customers to purchase its products and services. Several of StoresOnline customers have complained of and forwarded recordings of these harassing conversations to StoresOnline.

In addition to defaming StoresOnline's name in the business community, Defendants assume numerous aliases to file false complaints with various government and non-government consumer protection entities. These false complaints cause confusion to these consumer establishments who desire to handle legitimate customer concerns. In the month of December alone, the Utah Department of Consumer Protection received over seventy-five (75) of these fraudulent complaints against StoresOnline from Defendants. Other organizations, such as the Better Business Bureau ("BBB") have experienced similar increases of complaints against StoresOnline which it attributes to Defendants.

StoresOnline seeks to enjoin Defendants from contacting its clients for the purpose of offering its products and services, and/or to harm or defame StoresOnline in any way. Furthermore, StoresOnline seeks to enjoin Defendants from assisting, directing, or submitting complaints on behalf of itself or any of StoresOnline' customers with any government or non-government regulatory agency.

DATED this 18<sup>th</sup> day of December, 2009.

CHRISTIANSEN & JACKSON, P.C.

  
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*Attorneys for Plaintiff*

IN THE FOURTH DISTRICT COURT, UTAH COUNTY  
STATE OF UTAH – PROVO DEPARTMENT

IMERGENT, INC., and STORESONLINE, INC.,	<b>TEMPORARY RESTRAINING ORDER</b>
Plaintiffs,	
v.	
BUSINESS RECOVERY SERVICES, LLC. and BRIAN HESSLER,	CASE No. 090404631
Defendants.	HONORABLE JUDGE: McVEY

PLAINTIFFS' request for Temporary Restraining Order was submitted to the court on December 18, 2009.

FINDINGS

1. Defendants, Business Recovery Services and Brian Hessler (collectively referred to as "BRS" or "Defendants") generate revenue by offering "refund kits" to individuals for two hundred and fifty dollars (\$250.00) or more.
2. The purpose of these kits is to assist individuals, legitimately or not, in obtaining a refund from a company whom they made a purchase.

3. In addition to the initial charge of two hundred and fifty dollars (\$250.00), BRS also takes a fee equalling twenty-five percent (25%) or more of the refunded amount obtained.

4. BRS generates “leads” to contact Plaintiffs’ customers in two ways.

5. First, BRS buy’s data files from lead brokers which contain the names, addresses, e-mail addresses, telephone numbers, and other contact information of Plaintiffs’ customers.

6. Second, BRS discovers Plaintiffs’ customers contact data by purchasing reports of all websites hosted on Plaintiffs’ servers.

7. After obtaining Plaintiffs, iMergent, Inc. and StoresOnline, Inc. (collectively referred to as “StoresOnline”) customers’ data files and contact information, BRS directs sales agents to contact StoresOnline’s customers via telephone or e-mail.

8. Because BRS profits from obtaining refunds, legitimate or not, it begins its conversations with StoresOnline’s customers by stating StoresOnline are a scam, using defamatory language, harassing techniques, and creating a hostile environment.

9. Several of StoresOnline’s customers have complained about BRS’s actions.

10. StoresOnline’s relationship with its current customers will continued to be damaged should Defendants be allowed to continue to contact them.

11. Furthermore, BRS uses deceptive measures filing illegitimate, alleged consumer complaints with the Utah Division of Consumer Protection, Better Business Bureau, and other local, state, and federal government and private consumer advocate agencies.

12. These complaints have bogged down these agencies and have taken the focus away from valid concerns to deal with a bundle of invalid complaints.

13. StoresOnline’s relationship with these government and private consumer groups

will continue to suffer should Defendants be allowed to continue filing and directing consumer complaints to these government and private organizations.

14. StoresOnline will suffer irreparable injury should Defendants be allowed to contact its customers and file, direct, and/or publish complaints with local, state, and/or federal consumer advocacy entities.

15. StoresOnline has reasonably initiated, attempted, and described its efforts to serve Defendants a copy of its Complaint, Motion for Temporary Restraining Order, and associated pleadings and and sufficient irreparable harm exists to grant injunctive relief.

16. Based upon the information received, and good cause appearing, it is hereby:

ORDERED, ADJUDGED, AND DECREED

1. Defendants, Business Recovery Services, LLC and Brian Hessler are hereby temporarily enjoined from contacting StoresOnline's customers, via letter, e-mail, telephone, or any other means of correspondence.

2. It is Further Ordered, Defendants are hereby temporarily enjoined from directly, publishing, forwarding, or being involved in any manner with consumer complaints forwarded to local, state, and/or federal government or private consumer advocacy entities, including but not limited to, the Utah Division of Consumer Protection, the Better Business Bureau, Attorney General's Offices, the Federal Trade Commission.

3. It is Further Ordered, unless otherwise ordered, this temporary restraining order shall remain in effect for the earlier of ten (10) days or when a hearing is held on Plaintiffs' motion for preliminary injunction, is held which shall be January 14, 2010, at 2:00 p.m.

\_\_\_\_\_, in room 302, of the Provo Division, of the Fourth District Court,  
located at 125 North 100 West, Provo, Utah, 84601.

DATED this 23, day of December, 2009.

ISSUED at 8:35, A.m.

BY THE COURT

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

