

HONORABLE THOMAS S. ZILLY

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U.S. DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

RICHARD A. GEIER, individually and on behalf of all others similarly situated,

Plaintiff,

v.

M-QUBE, INC.; MOBILE MESSENGER AMERICAS, INC., d/b/a MOBILE MESSENGER; DARCY WEDD, individually and on behalf of the marital community of Darcy Wedd and Jane Doe Wedd; FRASER THOMPSON, individually and on behalf of the marital community of Fraser Thompson and Jane Doe Thompson; MICHAEL PAJACZKOWSKI, individually and on behalf of the marital community of Michael Pajaczkowski and Jane Doe Pajaczkowski; and JOHN DOES 1-16,

Defendants.

CLASS ACTION

NO. 2:13-cv-00354-TSZ

**SECOND AMENDED CLASS ACTION COMPLAINT**

**JURY DEMAND**

Plaintiff, by his undersigned attorneys, for his class action complaint against Defendants, alleges as follows:

**I. INTRODUCTION**

1.1 Defendants have designed and implemented a uniformly unfair and deceptive scheme utilizing the Internet and cell phone text messages that causes Washington consumers to become unknowingly and unwittingly subscribed to premium text message services.

1.2 Defendants have engaged in this predatory scheme to enrich themselves at the expense of Washington consumers by committing unfair and deceptive business practices in violation of Washington statutes designed to protect consumers.

1.3 Named Plaintiff Richard A. Geier brings this action on behalf of himself and all similarly situated Washington residents for purposes of securing the remedies provided for in the Washington Consumer Protection Act, Chapter 19.86 RCW, including monetary relief that will compensate Class members for their injuries and injunctive relief that will, among other things, prevent further injury to Washington consumers and enjoin Defendants' unfair and deceptive business practices.

**II. JURISDICTION AND VENUE**

2.1 Jurisdiction. Defendants are within jurisdiction of this Court. Defendants reside in Washington State, do business in Washington State, have engaged in conduct in violation of chapter 19.86 RCW and having an impact in Washington that the statute reprehends, or have obtained the benefits of the laws of Washington.

2.2 Venue. Venue is proper in King County because Defendants transact business in King County and thus reside there.

2.3 Governing Law. The claims of Plaintiff and Class members asserted in this class action complaint are brought solely under state law causes of action and are governed exclusively by Washington law. The claims of Plaintiff and Class members are individual claims and do not unite or enforce a single title or right to which Plaintiff and Class members have a common and undivided interest.

### III. PARTIES

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2           3.1     Plaintiff Richard A. Geier: Plaintiff Geier is domiciled in the State of  
3 Washington and a resident of Cowlitz County. Plaintiff Geier pays AT&T Mobility for cellular  
4 phone services that are provided to him, his wife, and his children.

5           3.2     Defendant M-Qube, Inc.: M-Qube, Inc. is a Delaware corporation and has its  
6 principal place of business in Boston, Massachusetts. Defendant M-Qube does business  
7 nationwide and in Washington as alleged specifically below. Defendant M-Qube markets,  
8 distributes and assists in the marketing and distribution of subscription-based content for  
9 mobile telephones, including ringtones, trivia games and text alerts. Defendant M-Qube also  
10 serves as a billing aggregator for mobile content promotions and assists other companies in  
11 building mobile campaigns. Defendant M-Qube has at all times relevant to this complaint  
12 directly engaged in the acts or practices described below, has directed and controlled others in  
13 committing the acts or practices described below, and has established, directed and/or ratified  
14 the unlawful business practices alleged in this complaint. Defendant M-Qube is owned by  
15 Defendant Mobile Messenger.

16           3.3     Defendant Mobile Messenger Americas, Inc., d/b/a Mobile Messenger: Mobile  
17 Messenger Americas, Inc. d/b/a Mobile Messenger is a Delaware corporation and has its  
18 principal place of business in Los Angeles, California. Defendant Mobile Messenger does  
19 business nationwide and in Washington as alleged specifically below. Defendant Mobile  
20 Messenger markets and distributes subscription-based content for mobile telephones, including  
21 ringtones, trivia games and text alerts. Defendant Mobile Messenger also serves as a billing  
22 aggregator for mobile content promotions and assists other companies in building mobile  
23 campaigns. Defendant Mobile Messenger offers these companies a variety of services,  
24 including creative, consulting, content management, messaging connection, payment  
25 processing and analytical services. Defendant Mobile Messenger touts that it “enable[s]” the  
26 companies “to monetize and distribute content to mobile channels across 60 carrier networks  
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1 globally.” Defendant Mobile Messenger has at all times relevant to this complaint directly  
2 engaged in the acts or practices described below, has directed and controlled others in  
3 committing the acts or practices described below, and has established, directed and/or ratified  
4 the unlawful business practices alleged in this complaint. Defendant Mobile Messenger owns  
5 Defendant M-Qube.

6 3.4 Defendant Darcy Wedd: Darcy Wedd is a resident of Nevada. During all  
7 relevant times, Defendant Wedd acted as an agent or officer of Defendants M-Qube and Mobile  
8 Messenger, including as the Chief Executive Officer and Chief Operating Officer of Defendant  
9 Mobile Messenger. At all times material, Defendant Wedd directed the business affairs of  
10 Defendants M-Qube and Mobile Messenger and established, directed, participated in,  
11 approved, and/or ratified the unfair and deceptive business practices alleged in this Complaint.  
12 In this regard, Defendant Wedd has engaged in conduct in violation of chapter 19.86 RCW and  
13 having an impact in Washington that the statute reprehends. Moreover, Defendant Wedd acted  
14 both individually and on behalf of his marital community.

15 3.5 Defendant Fraser Thompson: Fraser Thompson is a resident of California.  
16 During all relevant times, Defendant Thompson acted as an agent or officer of Defendants M-  
17 Qube and Mobile Messenger, including as the Executive Vice President of Strategic Operations  
18 for Defendant Mobile Messenger. At all times material, Defendant Thompson directed the  
19 business affairs of Defendants M-Qube and Mobile Messenger and established, directed,  
20 participated in, approved, and/or ratified the unfair and deceptive business practices alleged in  
21 this Complaint. In this regard, Defendant Thompson has engaged in conduct in violation of  
22 chapter 19.86 RCW and having an impact in Washington that the statute reprehends.  
23 Moreover, Defendant Thompson acted both individually and on behalf of his marital  
24 community.

25 3.6 Defendant Michael Pajaczkowski: Michael Pajaczkowski is a resident of Texas.  
26 During all relevant times, Defendant Pajaczkowski acted as an agent or officer of Defendants  
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1 M-Qube and Mobile Messenger, including as the Vice President of Compliance and Consumer  
2 Protection for Defendant Mobile Messenger. At all times material, Defendant Pajaczkowski  
3 directed the business affairs of Defendants M-Qube and Mobile Messenger and established,  
4 directed, participated in, approved, and/or ratified the unfair and deceptive business practices  
5 alleged in this Complaint. In this regard, Defendant Pajaczkowski has engaged in conduct in  
6 violation of chapter 19.86 RCW and having an impact in Washington that the statute  
7 reprehends. Moreover, Defendant Pajaczkowski acted both individually and on behalf of his  
8 marital community.

9         3.7 Unnamed Defendants, Does 1 through 16: Unnamed Defendants, Does 1  
10 through 16, are additional persons, corporations, partnerships, companies or other entities who  
11 have acted or are continuing to act in concert with, in partnership with, or as agents of named  
12 Defendants, who have participated in the acts and transactions alleged in this Complaint and  
13 who have responsibility for said acts and transactions. The true names, identities, and  
14 capacities of Does 1 through 16 are presently unknown to Plaintiff, but are the subject of  
15 discovery anticipated in this action.

#### 16 **IV. CLASS ACTION ALLEGATIONS**

17         4.1 Class Definition: Pursuant to Rule 23 of the Federal Rules of Civil Procedure,  
18 Plaintiff brings this case as a class action on behalf of a Class defined as follows:

19                 All residents of Washington who, at any time from October 17,  
20                 2008 to the present, were enrolled through a website for one of  
21                 Mobile Messenger's white-label PSMS programs.

22         4.2 Excluded from the Class are Defendants, any entity in which Defendants have a  
23 controlling interest or which has a controlling interest in Defendants, and Defendants' legal  
24 representatives, assignees, and successors. Also excluded are the judge to whom this case is  
25 assigned and any member of the judge's immediate family.

26         4.3 Numerosity. On information and belief, there are thousands of Washington  
27 consumers who have been enrolled through a website for one of Mobile Messenger's white-

1 label PSMS programs. The members of the Class are so numerous that joinder of all members  
2 is impracticable. Moreover, the disposition of the claims of the Class in a single action will  
3 provide substantial benefits to all parties and the Court.

4 4.4 Commonality. There are numerous questions of law and fact common to  
5 Plaintiff and Class members. These questions include, but are not limited to, the following:

6 a. Whether Defendants systematically engaged in widespread unfair and  
7 deceptive acts and practices in relation to mobile content programs and consumer enrollments;

8 b. Whether Defendants enrolled consumers through common unfair and  
9 deceptive advertising and landing pages;

10 c. Whether Defendants created, controlled, and sent common unfair and  
11 deceptive text messages to consumers during the enrollment process;

12 d. Whether Defendants unfairly and deceptively manipulated refund rates  
13 on a systematic basis;

14 e. Whether Defendants unfairly and deceptively circumvented short code  
15 suspensions and terminations on a systematic basis;

16 f. Whether Defendants uniformly employed unfair and deceptive billing  
17 descriptors;

18 g. Whether Defendants have unfairly and deceptively utilized the “double  
19 opt-in” process as a shield against consumer complaints;

20 h. Whether the individual Defendants participated in, approved, or ratified  
21 the unfair and deceptive business practices of Defendants M-Qube and Mobile Messenger;

22 i. Whether Defendants’ unfair and deceptive business practices occurred in  
23 the course of Defendants’ trade or commerce;

24 j. Whether Defendants’ unfair and deceptive business practices impacted  
25 the public interest;

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1 k. Whether Plaintiff and Class members were injured in their business or  
2 property;

3 l. Whether Defendants' unfair and deceptive acts or practices proximately  
4 caused the injuries sustained by Plaintiff and Class members;

5 m. Whether it is appropriate for the Court to declare Defendants' business  
6 practices to be unfair and deceptive;

7 n. Whether it is appropriate for the Court to prohibit Defendants from using  
8 the "double opt-in" process as a shield against complaints and refund requests by Washington  
9 consumers;

10 o. Whether it is appropriate for the Court to require Defendants to notify  
11 each Class member of the company's unfair and deceptive business practices and the charges  
12 that member incurred;

13 p. Whether it is appropriate for the Court to require Defendants to obtain  
14 actual or express consent before subscribing any consumer to a paid subscription service;

15 q. Whether Defendants M-Qube and Mobile Messenger have assumed and  
16 exercised the right of ownership over the fees taken from Plaintiff and Class members, in  
17 hostility to the rights of Plaintiff and Class members, in an unauthorized manner and without  
18 legal justification;

19 r. Whether Defendants M-Qube and Mobile Messenger received a benefit  
20 in the form of fees from Plaintiff and Class members because of Defendants' policies and  
21 practices, under circumstances that make it unjust for Defendants to retain the fees; and

22 s. The nature and extent of Class-wide injury and the measure of  
23 compensation for such injury; and

24 t. Whether preliminary or final injunctive relief is appropriate as to the  
25 Class so as to protect Washington consumers from the illicit business activities of Defendants.  
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1           4.5     Typicality. The claims of the representative Plaintiff are typical of the claims of  
2 the Class. Plaintiff's claims, like the claims of the Class, arise out of the same common course  
3 of conduct by Defendants and are based on the same legal and remedial theories.

4           4.6     Adequacy. Plaintiff will fairly and adequately protect the interests of the Class.  
5 Plaintiff has retained competent and capable attorneys who are experienced trial lawyers with  
6 significant experience in complex and class action litigation, including consumer law. Plaintiff  
7 and his counsel are committed to prosecuting this action vigorously on behalf of the Class and  
8 have the financial resources to do so. Neither Plaintiff nor his counsel have interests that are  
9 contrary to or that conflict with those of the proposed Class.

10          4.7     Predominance. Defendants engaged in a common course of unfair or deceptive  
11 acts or practices targeted at Plaintiff and members of the Class. The common issues arising  
12 from this conduct that affect Plaintiff and members of the Class predominate over any  
13 individual issues. Adjudication of these common issues in a single action has important and  
14 desirable advantages of judicial economy.

15          4.8     Superiority. Plaintiff and Class members have suffered and will continue to  
16 suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. Absent a  
17 class action Class members likely would find the cost of litigating their claims prohibitive.  
18 Most Class members are unaware that Defendants' conduct is illegal and that they have been  
19 financially victimized. Class treatment is superior to multiple individual suits or piecemeal  
20 litigation because it conserves judicial resources, promotes consistency and efficiency of  
21 adjudication, provides a forum for small claimants, and deters illegal activities. Litigation of  
22 the claims should occur in this Court as all claims are brought under Washington law. There  
23 will be no significant difficulty in the management of this case as a class action.

24          4.9     Appropriateness of Injunctive and Declaratory Relief. Defendants have acted on  
25 grounds generally applicable to the Class, thereby making final injunctive relief or  
26 corresponding declaratory relief appropriate with respect to the Class as a whole. Prosecution  
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1 of separate actions by individual members of the Class would create the risk of inconsistent or  
 2 varying adjudications with respect to individual members of the Class that would establish  
 3 incompatible standards of conduct for Defendants.

## 4 **V. SUMMARY OF FACTUAL ALLEGATIONS**

### 5 **Overview of Defendants' Unfair and Deceptive Scheme**

6 5.1 "[M]obile cramming—the unlawful practice of placing unauthorized third-party  
 7 charges on mobile phone accounts—is a significant concern," according to a July 2014 report  
 8 from the Federal Trade Commission.<sup>1</sup> "Mobile cramming occurs when consumers are enrolled  
 9 and billed for third-party services, such as ringtones and recurring text messages containing  
 10 trivia or horoscopes, without their knowledge or consent."<sup>2</sup> The July 2014 report states that  
 11 "[i]n six recent enforcement actions, the Commission has alleged that such practices have cost  
 12 consumers many millions of dollars, and in just three of these actions, defendants have agreed  
 13 to orders imposing judgments totaling more than \$160 million."<sup>3</sup>

14 5.2 Mobile cramming has become a widespread problem in recent years because it  
 15 "takes advantage of the fact that many consumers do not know that third-party charges can  
 16 appear on their phone bills; do not notice the charges, which are often buried in the bill under  
 17 vague terms . . . ; or, in the case of consumers with prepaid plans, do not receive a bill at all."<sup>4</sup>  
 18 Analysts have pointed out that "this ability to charge many consumers without their detecting it  
 19 makes mobile cramming 'almost the perfect scam.'"<sup>5</sup>

20 5.3 Defendants are the central players in one of the largest cramming schemes in the  
 21 country.

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24 <sup>1</sup> Federal Trade Commission, *Mobile Cramming* (available at <http://www.ftc.gov/reports/mobile-cramming-federal-trade-commission-staff-report-july-2014>), at i.

25 <sup>2</sup> *Id.*

26 <sup>3</sup> *Id.*

27 <sup>4</sup> *Id.* at 7.

<sup>5</sup> *Id.* at 8.

1           5.4     Defendants have long been engaged in the business of creating subscription-  
2 based “mobile content” programs and working with partners to market those programs to  
3 consumers and generate subscription charges. Among other things, Defendants have facilitated  
4 the marketing, distribution, and monetization of digital content to mobile devices.

5           5.5     Mobile content programs are commonly referred to as PSMS or premium short  
6 message service programs because the subscription enrollment procedure has a text-messaging  
7 component, whereby information is delivered via text to a consumer using a particular five-  
8 digit number known as a “short code.” Each short code is typically associated with a particular  
9 promotional campaign and when a consumer is charged for the mobile content, the short code  
10 will appear on his or her cellphone bill.

11          5.6     The process of placing a charge for third-party services on mobile phone  
12 accounts typically involves a number of parties, including merchants, billing intermediaries,  
13 and mobile carriers. Merchants provide the digital content (such as ringtones or text alerts) for  
14 which consumers are charged and are thus referred to as “content providers.” Billing  
15 intermediaries, also known as “aggregators,” have contractual agreements with mobile carriers  
16 that allow those charges to be billed directly to the consumers’ mobile phone accounts.

17          5.7     Defendant Mobile Messenger occupied a unique position in the PSMS world,  
18 acting both as the content provider and billing aggregator. The companies with which  
19 Defendant Mobile Messenger partnered were ostensibly referred to as “content providers,” but  
20 Mobile Messenger actually created, controlled, and delivered all of the mobile content used in  
21 its white-label PSMS programs. The sole responsibility of Defendant Mobile Messenger’s  
22 partners was to market the company’s mobile content programs to the public.

23          5.8     Defendant Mobile Messenger developed at least three white-label mobile  
24 content programs for its partners to promote to consumers via the internet: (1) a “reverse  
25 auction” or sweepstakes program; (2) a “coupon” program; and (3) a “ringtone” program that  
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1 included a combination of ringtones, digital wallpaper, and text alerts. Dozens of partners were  
2 enlisted to market these three programs through advertising campaigns.

3         5.9 Defendants systematically engaged in widespread unfair and deceptive acts and  
4 practices in relation to Mobile Messenger’s white-label PSMS programs and consumer  
5 enrollments. That course of common unfair and deceptive acts and practices harmed  
6 Washington consumers.

7         5.10 Defendants utilized a common website enrollment process—also known as a  
8 “double opt-in” process—to subscribe consumers to Defendant Mobile Messenger’s white-  
9 label PSMS programs. The process typically began with an advertisement that led the  
10 consumer to a “landing page,” which is a webpage with a field for entering information. The  
11 consumer was prompted to enter his or her cellphone number into a field. Defendants would  
12 then send the consumer a personal identification number or PIN, and the consumer was  
13 prompted to enter that PIN into a second field. Once the PIN was entered, the consumer was  
14 enrolled into one of Defendant Mobile Messenger’s white-label PSMS programs.

15         5.11 The common advertising and landing pages through which Defendants enrolled  
16 consumers were unfair and deceptive. Industry and carrier standards require clear disclosures  
17 to consumers who are being enrolled in mobile content programs. The goal of these standards  
18 is to clearly communicate to each subscriber the financial obligation he or she will incur once  
19 enrolled. Among other things, advertising and landing pages must clearly disclose the  
20 subscription term, billing interval, and information on how the charges will be applied—that is,  
21 that the charges will be billed to the consumer’s wireless phone bill or deducted from the  
22 consumer’s prepaid balance. Advertising and landing pages must also avoid deception about  
23 functionality, features, or content of the underlying program. The word “free” must not be  
24 used, and there should be no unapproved, inappropriate, or distractive information on the pages  
25 to enroll consumers.

1           5.12   Between 2008 and 2013, Defendants received tens of thousands of violation  
2 notices from carriers and auditing companies citing non-compliant advertising and landing  
3 pages used to enroll consumers. Among other things, those violation notices informed  
4 Defendants that the advertising and landing pages used to enroll consumers were associated  
5 with “stacked marketing,” a deceptive form of advertising that involves cross-selling several  
6 PSMS promotion from the same or different sponsors in one flow, sometimes with mobile  
7 phone numbers prepopulated in successive pages; that those advertising and landing pages  
8 improperly used the term “free”; that those advertising and landing pages failed to place  
9 authorization disclosures in a conspicuous location; that those advertising and landing pages  
10 omitted or failed to adequately disclose pricing and billing terms; and that those advertising and  
11 landing pages were associated with unapproved marketing practices or content.

12           5.13   Defendants were responsible for ensuring that the violations noted were  
13 corrected and that industry standards were complied with going forward. Defendants, however,  
14 systematically failed to take any meaningful action to address the issues raised in the program  
15 violation notices and continued to allow consumers to be enrolled through unfair and deceptive  
16 advertising and landing pages. Defendants also uniformly failed to implement technology that  
17 would prevent unauthorized subscriptions. Defendants also systematically failed to identify,  
18 notify, or refund consumers enrolled as a result of unfair and deceptive advertising and landing  
19 pages.

20           5.14   Defendants failed to provide consumers with any “content” at the time of  
21 enrollment, but the consumers were charged immediately for their subscription. Each charge  
22 was typically \$9.99 per month, and the subscriptions usually renewed automatically until  
23 terminated. The charges were placed directly on the consumers’ cellphone bills, and  
24 consumers paid the charges whenever they paid their phone bills. Once consumers were  
25 enrolled, the only “content” actually delivered to them, if anything, consisted of “text alerts,”  
26 often nothing more than trifling trivia sent via text message to a subscribed consumer’s phone.  
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1           5.15 Defendants created, controlled, and sent common unfair and deceptive text  
2 messages to consumers during the enrollment process. Defendants were obligated to send text  
3 messages that complied with industry rules and regulations, including rules that required the  
4 price and duration of a PSMS program to come before the PIN, but Defendants regularly failed  
5 to do so. Defendants received numerous program violation notices citing the use of non-  
6 compliant PIN messages. Despite this, however, Defendants systematically failed to take any  
7 meaningful action to address the issues raised in those notices. Defendants also failed to  
8 implement technology that would prevent the sending of non-compliant messages. Instead,  
9 Defendants continued for years to send unfair and deceptive text messages to consumers.

10           5.16 Wireless carriers tracked the rates at which consumers sought refunds for  
11 Defendant Mobile Messenger's white-label PSMS programs, and carriers would suspend or  
12 even terminate short codes associated with high refund rates. Defendants were aware of this  
13 and worked with their partners to unfairly and deceptively manipulate refund rates on a  
14 systematic basis so as to avoid suspensions and terminations.

15           5.17 For short codes that were suspended or terminated by carriers, Defendants  
16 systematically worked to unfairly and deceptively circumvent those carrier suspensions and  
17 terminations so that partners could continue garnering subscriptions to Defendant Mobile  
18 Messenger's white-label PSMS programs. The primary manner in which this was done was to  
19 have a partner move its advertising traffic (that is, the enrollments it was obtaining through  
20 unfair and deceptive advertising and landing pages) to a new short code.

21           5.18 Defendants were responsible for establishing the descriptors that appeared on  
22 the cellphone bills of consumers who were enrolled in Defendant Mobile Messenger's white-  
23 label PSMS programs, and those descriptors were supposed to be clear and consumer friendly.  
24 Instead, Defendants uniformly employed unfair and deceptive billing descriptors.

25           5.19 Defendants have a long history of knowingly engaging in unfair and deceptive  
26 acts and practices in relation to PSMS programs.

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1           5.20    In a uniform and systematic manner, Defendants unfairly and deceptively utilize  
2 the “double opt-in” process as a shield against consumer complaints. Specifically, Defendants  
3 respond to consumer complaints by maintaining the consumer knowingly subscribed to the  
4 PSMS program by entering his or her cellphone number and a unique PIN from a specific  
5 computer. Extensive evidence shows Defendants were able obtain all such information from  
6 unfair and deceptive advertising and landing pages and that consumers were commonly  
7 enrolled without their authorization.

8           5.21    The individual Defendants participated in, approved, and/or ratified the acts and  
9 practices associated with Defendant Mobile Messenger’s business. For example, the individual  
10 Defendants participated in and approved Mobile Messenger’s practice of enrolling consumers  
11 through common unfair and deceptive advertising and landing pages. The individual  
12 Defendants also participated in and approved of Mobile Messenger’s practice of unfairly and  
13 deceptively manipulating refund rates so as to avoid efforts by wireless carriers to police the  
14 industry. The individual Defendants also participated in and approved Mobile Messenger’s  
15 practice of unfairly and deceptively circumventing short code suspensions and terminations on  
16 a systematic basis.

17           5.22    Moreover, the individual Defendants were undoubtedly made aware of the  
18 unfair and deceptive nature of Mobile Messenger’s common practices through consumer  
19 complaints, compliance violation notifications from carriers and regulating agencies, Mobile  
20 Messenger’s own internal issue and audit tracking, as well as lawsuits and investigations by  
21 government agencies. Likewise, these agents and officers were undoubtedly consulted by  
22 Mobile Messenger’s employees on a regular basis regarding suspensions and terminations for  
23 compliance violations resulting from unfair and deceptive campaigns. Despite their knowledge  
24 of Mobile Messenger’s common unfair and deceptive acts and practices, the individual  
25 Defendants orchestrated an elaborate dance with carriers and regulators to perpetuate the  
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1 overall scheme so that Mobile Messenger could reap considerable profits from unwitting  
2 consumers.

3 5.23 Defendants have unfairly and deceptively enrolled thousands of Washington  
4 consumers in Defendant Mobile Messenger's white-label PSMS programs. As a result of  
5 Defendants' unfair and deceptive acts and practices, these Washington consumers have been  
6 billed millions of dollars.

7 5.24 Defendants have attempted to hide themselves and conceal the nature of their  
8 unfair and deceptive scheme from regulators, wireless service providers, and consumers.

9 5.25 As a result of Defendants' unfair and deceptive acts and practices, Plaintiff  
10 Geier and his wife were enrolled in one of Defendant Mobile Messenger's white-label PSMS  
11 programs without knowledge or authorization.

12 5.26 In January 2012, Plaintiff Geier received three third-party charges on his cell  
13 phone bill, each in the amount of \$9.99 plus tax. The following information was stated in  
14 regard to a charge made through Defendants' mobile transaction network:

SUBSCRIPTION NAME	SHORT CODE	TYPE	CONTENT PROVIDER	ID
Ringtone/Auction	26235	MT	WebDirect For assistance contact: <a href="http://www.M-Qube.com">http://www.M-Qube.com</a>	19234

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20 5.27 Plaintiff Geier received the same third-party charges on his cell phone bill in  
21 both February and March 2012.

22 5.28 The charges were made in relation to the cell phone number assigned to  
23 Plaintiff's wife, Margaret Wells. Ms. Wells did not authorize any of the charges.

24 5.29 The unauthorized third-party charges billed to Mr. Geier in January, February,  
25 and March 2012 totaled \$96.75.  
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1           5.30 But for Defendants’ unfair and deceptive acts and practices, Plaintiff Geier  
2 would not have been billed for and would not have paid these charges.

3                                   **VI. FIRST CLAIM FOR RELIEF**  
4                                   **(Violation of Washington’s Consumer Protection Act—All Defendants)**

5           6.1 Plaintiff and the Class re-allege and incorporate the facts set forth herein as if set  
6 forth in their entirety.

7           6.2 Defendants’ business practices constitute unfair acts or practices committed in  
8 trade or commerce directed at Plaintiff and members of the Class.

9           6.3 Defendants’ business practices constitute deceptive acts or practices committed  
10 in trade or commerce directed at Plaintiff and members of the Class.

11           6.4 Defendants have violated Washington’s unsolicited goods statute, RCW  
12 19.56.020, by charging fees to Plaintiff and Class members for unsolicited goods or services  
13 that Plaintiff and Class members did not affirmatively order or request orally or in writing.  
14 This conduct affects the public interest *per se* and also constitutes a *per se* violation of the  
15 Consumer Protection Act. RCW 19.56.030.

16           6.5 Defendants have aided and abetted each other’s unfair and deceptive business  
17 practices by knowingly providing substantial assistance to each other, and this conduct also  
18 constitutes unfair and deceptive business acts or practices.

19           6.6 Defendants’ unfair and deceptive conduct impacts the public interest because it  
20 violates RCW 19.56.020 and has injured, or has had the capacity to injure, other persons.

21           6.7 Defendants’ unfair and deceptive conduct has proximately caused injury or harm  
22 to Plaintiff and members of the Class in their business or property. But for Defendants’ unfair  
23 and deceptive acts or practices, Plaintiff Geier and members of the Class would not have been  
24 billed for and would not have paid the charges related to Defendants’ scheme.



**VII. SECOND CLAIM FOR RELIEF**  
**(Conversion—Defendants M-Qube and Mobile Messenger)**

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3 7.1 Plaintiff and the Class re-allege and incorporate the facts set forth herein as if set  
4 forth in their entirety.

5 7.2 Defendants M-Qube and Mobile Messenger have wrongfully collected fees from  
6 Plaintiff and Class members and have taken specific and readily identifiable funds from  
7 Plaintiff and Class members in payment of those fees.

8 7.3 Defendants M-Qube and Mobile Messenger have assumed and exercised the  
9 right of ownership over the funds taken, in hostility to the rights of Plaintiff and the members of  
10 the Class, in an unauthorized manner and without legal justification.

11 7.4 Defendants M-Qube and Mobile Messenger continue to retain these funds  
12 unlawfully without the consent of Plaintiff or Class members.

13 7.5 Defendants M-Qube and Mobile Messenger intend to permanently deprive  
14 Plaintiff and Class members of these funds.

15 7.6 These funds are properly owned by Plaintiff and Class members, not Defendants  
16 M-Qube and Mobile Messenger, which now claim that they are entitled to ownership of the  
17 funds, contrary to the rights of Plaintiff and Class members.

18 7.7 Plaintiff and Class members are entitled to the immediate possession of these  
19 funds.

20 7.8 Defendants M-Qube and Mobile Messenger have wrongfully converted these  
21 specific and readily identifiable funds in violation of law.

22 7.9 The wrongful conduct of Defendants M-Qube and Mobile Messenger is  
23 continuing.

24 **VIII. THIRD CLAIM FOR RELIEF**  
**(Unjust Enrichment—Defendants M-Qube and Mobile Messenger)**

25 8.1 Plaintiff and the Class re-allege and incorporate the facts set forth herein as if set  
26 forth in their entirety.  
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1 8.2 Defendants M-Qube and Mobile Messenger received a benefit in the form of  
2 fees from Plaintiff and Class members because of the policies and practices of Defendants M-  
3 Qube and Mobile Messenger.

4 8.3 Defendants M-Qube and Mobile Messenger received the benefit at the expense  
5 of Plaintiff and Class members.

6 8.4 The circumstances make it unjust for Defendants M-Qube and Mobile  
7 Messenger to retain the benefit.

8 **IX. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, on his own behalf and on behalf of the members of the Class,  
10 prays for judgment against Defendants as follows:

11 A. Certification of the proposed plaintiff Class;

12 B. A final order and/or judgment against Defendants, jointly and severally, that  
13 Class members are entitled to an amount equal to all payments received;

14 C. An award of exemplary damages, jointly and severally, in the amount of three  
15 times the value of each payment made by a Class member;

16 D. Preliminary and final injunctive relief that forestalls continuing injury to Class  
17 members and protects the Washington public by enjoining Defendants from activities that  
18 violate 19.86 RCW;

19 E. Preliminary and final injunctive relief that requires Defendants to notify Class  
20 members of the availability of refunds from wireless service providers;

21 F. An award of prejudgment interest;

22 G. An award of costs of litigation;

23 H. An award of attorney fees pursuant to RCW 19.86; and

24 I. Such other and further relief as the Court deems just or equitable.

25 **X. DEMAND FOR JURY TRIAL**

26 Plaintiff demands a jury for all issues so triable.  
27

1 RESPECTFULLY SUBMITTED AND DATED this 7th day of January, 2015.

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3  
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CERTIFICATE OF SERVICE

I, Toby J. Marshall, hereby certify that on January 7, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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