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**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

DIGITAL ENTERPRISES, INC., d/b/a Movieland.com, a California Corporation; ALCHEMY COMMUNICATIONS, INC., a California Corporation; ACCESSMEDIA NETWORKS, INC., a Delaware Corporation; INNOVATIVE NETWORKS, INC., a California Corporation; EASTON A. HERD, individually and on behalf of his marital community; and ANDREW M. GARRONI, individually and on behalf of his marital community,

Defendants.

NO.

COMPLAINT FOR INJUNCTIVE AND ADDITIONAL RELIEF UNDER THE UNFAIR BUSINESS PRACTICES--CONSUMER PROTECTION ACT AND THE COMPUTER SPYWARE ACT

**COMES NOW**, Plaintiff, State of Washington (“the State” or “Plaintiff”), by and through its attorneys Rob McKenna, Attorney General; and Paula Selis, Senior Counsel, and brings this action against Defendants named herein. The State alleges the following on information and belief:

1 **I. INTRODUCTION**

2 **1.1** Plaintiff, State of Washington, brings this action pursuant to RCW 19.270, the  
3 Computer Spyware Act ("Spyware Act"). Plaintiff seeks a permanent injunction and other  
4 equitable relief, including damages and attorneys' costs and fees, based on violations of the  
5 Spyware Act.

6 **1.2** Plaintiff, State of Washington, also brings this action pursuant to RCW 19.86, the  
7 Unfair Business Practices-Consumer Protection Act ("Consumer Protection Act"). Plaintiff seeks  
8 a permanent injunction and other equitable relief, including damages, civil penalties, and  
9 attorneys' costs and fees, based on violations of the Consumer Protection Act.

10 **II. JURISDICTION AND VENUE**

11 **2.1** This Complaint is filed and these proceedings are instituted under the provisions  
12 of RCW 19.86, the Unfair Business Practices--Consumer Protection Act, and RCW 19.270, the  
13 Computer Spyware Act.

14 **2.2** Jurisdiction of the Attorney General to commence this action is conferred by  
15 RCW 19.86.080 and RCW 19.270.060.

16 **2.3** The violations alleged herein have been and are being committed in whole or in  
17 part in King County, in the State of Washington, by Defendants named herein or their agents.

18 **III. PLAINTIFF**

19 **3.1** Plaintiff, State of Washington, is authorized by RCW 19.86.080 to enjoin  
20 violations of the Consumer Protection Act, to obtain restitution on behalf of persons harmed by  
21 such violations, and to obtain such further and other relief as the Court may deem appropriate,  
22 including civil penalties and attorneys' fees. Pursuant to RCW 19.270.060, the Computer  
23 Spyware Act, Plaintiff is authorized to seek recovery for actual monetary loss or damages of up to  
24 \$100,000 per violation of RCW 19.270 on behalf of the residents of the State of Washington, and  
25 to obtain such further and other relief as the Court may deem appropriate, including treble  
26 damages and costs and attorneys' fees.

1 **IV. DEFENDANTS**

2 **4.1** Defendant Digital Enterprises, Inc. (hereinafter "Digital Enterprises") is a  
3 California corporation that has registered with the California Secretary of State a mail drop of  
4 23705 Vanowen Street #119, West Hills, CA 91307-3030 as its principle place of business. It  
5 has also transacted business at 6300 Canoga Ave, 15<sup>th</sup> Floor, Woodland Hills, California.  
6 Defendant transacts or has transacted business in the state of Washington.

7 **4.2** Defendant Alchemy Communications, Inc. (hereinafter "Alchemy") is a  
8 California corporation with its principal place of business at 1200 W. 7<sup>th</sup> Street, #L1-100, Los  
9 Angeles, 90017. It also transacts or has transacted business at 6300 Canoga Ave., 15<sup>th</sup> Floor,  
10 Woodland Hills, California. Defendant transacts or has transacted business in the state of  
11 Washington.

12 **4.3** Defendant AccessMedia Networks, Inc. (hereinafter "AccessMedia") is a  
13 Delaware corporation that has registered its place of business with the California Secretary of  
14 State as 8646 Edwin Drive, Los Angeles, California 90046. Defendant transacts or has  
15 transacted business in the state of Washington.

16 **4.4** Defendant Innovative Networks, Inc. (hereinafter "Innovative Networks") is a  
17 California corporation that transacts or has transacted business through a mail drop address  
18 located at 20841 Ventura Boulevard, #357, Woodland Hills, California 91634. Defendant  
19 transacts or has transacted business in the state of Washington.

20 **4.5** Defendant Easton A. Herd is now, and has been at all times relevant to this  
21 action, the sole officer of Digital Enterprises, Inc. In this role, he has formulated, controlled,  
22 directed, and participated in the policies, practices, and activities set forth in this Complaint.  
23 Defendant Herd resides at 10960 Ashton Avenue, Apt. 303, Los Angeles, CA 90024-4863.  
24 Defendant is married to Jane Doe Herd, and together they constitute a marital community. All  
25 actions taken by Defendant as alleged in the Complaint herein are for the benefit of his marital  
26 community. Defendant transacts or has transacted business in the state of Washington.

1           **4.6** Defendant Andrew M. Garroni is now, and has been at all times relevant to this  
2 action, an officer or director of Defendant Alchemy. In this role, he has formulated, controlled,  
3 directed, and participated in the policies, practices, and activities set forth in this Complaint.  
4 Defendant resides at 8646 Edwin Drive, Los Angeles, CA 90046. Defendant is married to  
5 Catherine Garroni, and together they constitute a marital community. All actions taken by  
6 Defendant as alleged in the Complaint herein are for the benefit of his marital community.  
7 Defendant transacts or has transacted business in the state of Washington.

8                                   **V. NATURE OR TRADE OF COMMERCE**

9           **5.1** Defendants operate an Internet business that sells a subscription-based  
10 entertainment service. This business has had various Web domain names, including  
11 “movieland.com” and “moviepass.tv” and “popcorn.net.” The service includes video files,  
12 movie clips, Internet shopping information, Hollywood entertainment reviews, and adult  
13 content. Defendants charge between \$85.00 and \$99.00 for an annual subscription, and  
14 between \$19.95 and \$34.95 for a monthly subscription depending on the method of payment  
15 chosen. As a promotion for their service, Defendants advertise an offer for three days of free  
16 access to their members-only content. The advertisement is delivered through a pop-up that  
17 appears while the user is on the Internet. Users must download Defendants’ software in order  
18 to take advantage of this offer. Defendants require users to cancel the service by means of their  
19 customer service page on their Web site within the three-day trial period. Defendants’ service  
20 supposedly uses software called a “download manager,” that, once installed on a computer,  
21 will allow access to Defendants’ download service. Defendants have identified the download  
22 manager (the software that supposedly facilitates consumers’ access to Defendants’ Internet  
23 download service) by various names, including “MediaPipe,” “FileGrabber” and “Media  
24 Assistant.”

25           **5.2** Installation of Defendants’ download manager is merely a smokescreen  
26 concealing Defendants’ true purpose: to install software and other files onto consumers’

1 computers that enable Defendants to launch pop-up windows on consumers' computers  
2 demanding payments to Defendants. These pop-up windows, which display both textual and  
3 audiovisual payment demands, significantly disrupt consumers' use of their computers. They  
4 redisplay again and again. To get these aggressive and persistent pop-ups to stop appearing,  
5 many consumers give into Defendants' unfair tactics, and pay Defendants.

6 **5.3** To ensure that consumers cannot free their computers from the pop-up payment  
7 demands, Defendants install programs and computer code that prevent consumers from using  
8 reasonable means to uninstall Defendants' software.

9 **5.4** Defendants are in competition with others in the State of Washington engaged  
10 in similar business.

## 11 VI. FIRST CAUSE OF ACTION

### 12 **Taking Control of a User's Computer in Violation of the Spyware Act and the Consumer 13 Protection Act**

14 **6.1** Plaintiff realleges paragraphs 1.1 through 5.4 and incorporates them herein as if set  
15 forth in full.

16 **6.2** Defendants promote their paid service by offering users three days of free  
17 access to the members-only content of their online entertainment service. Defendants advertise  
18 the offer through pop-ups that appear while the user is on the Internet. The pop-ups tell users  
19 that there are "no forms to fill out," "no email (is) required," "3000 XXX movies" are available  
20 and that "no credit card is required to begin the free trial."

21 **6.3** The button which users must click to obtain the "free" service is situated above  
22 any disclosure regarding the terms of the service. The user may simply click on the button,  
23 which is placed in a position of prominence and primacy as compared to the terms of the  
24 service. Users are not required to personally identify themselves in order to obtain the free  
25 trial. To the average user, the sign-up process appears to be completely anonymous. Users  
26 must, however, download Defendants' software to use the free trial period. After the three-day

1 period has expired, Defendants remotely install, via the users' Internet service, billing software  
2 that delivers a payment demand to users telling them that the three-day trial has ended and that  
3 immediate payment is required. Defendants transmit the payment demand through a video  
4 pop-up message that takes over both the computer screen and the speakers. The pop-up  
5 window reads "Movieland.com," "Moviepass.tv," or "Popcorn.net" and "3 DAY TRIAL  
6 EXPIRED." A graphic on the left of the pop-up reads "STOP THESE REMINDERS NOW"  
7 and "CLICK CONTINUE." The text inside the pop-up reads substantially the same as  
8 follows:

9 On 2006-02-18 at XXXXXXXXX PST our content access software was installed  
10 on your system and your 3 day free trial began.  
Your I.P. address at the time was XXXXXXXXX. Your customer ID is  
XXXXXX.

11 Click "Continue" to purchase your license and stop these reminders.

12 (Information regarding time, I.P. address and customer ID are redacted for security and privacy  
13 purposes.) The date, time, IP address and customer ID listed in the pop-up window varies  
14 from consumer to consumer. Although Defendants have made some minor modifications in  
15 the pop-up window's text during the course of their scheme, the text has remained essentially  
16 the same.

17 **6.4** The pop-up "reminder" (reproduced as Figure 1 below) takes up much of the  
18 computer screen, obstructs consumers from working in other windows, and lacks any obvious  
19 way to permit consumers to minimize or close it, as it lacks the familiar "X" or "\_" symbols  
20 that often appears on pop-up windows. The only option this first pop-up offers to consumers is  
21 a button marked "CONTINUE."

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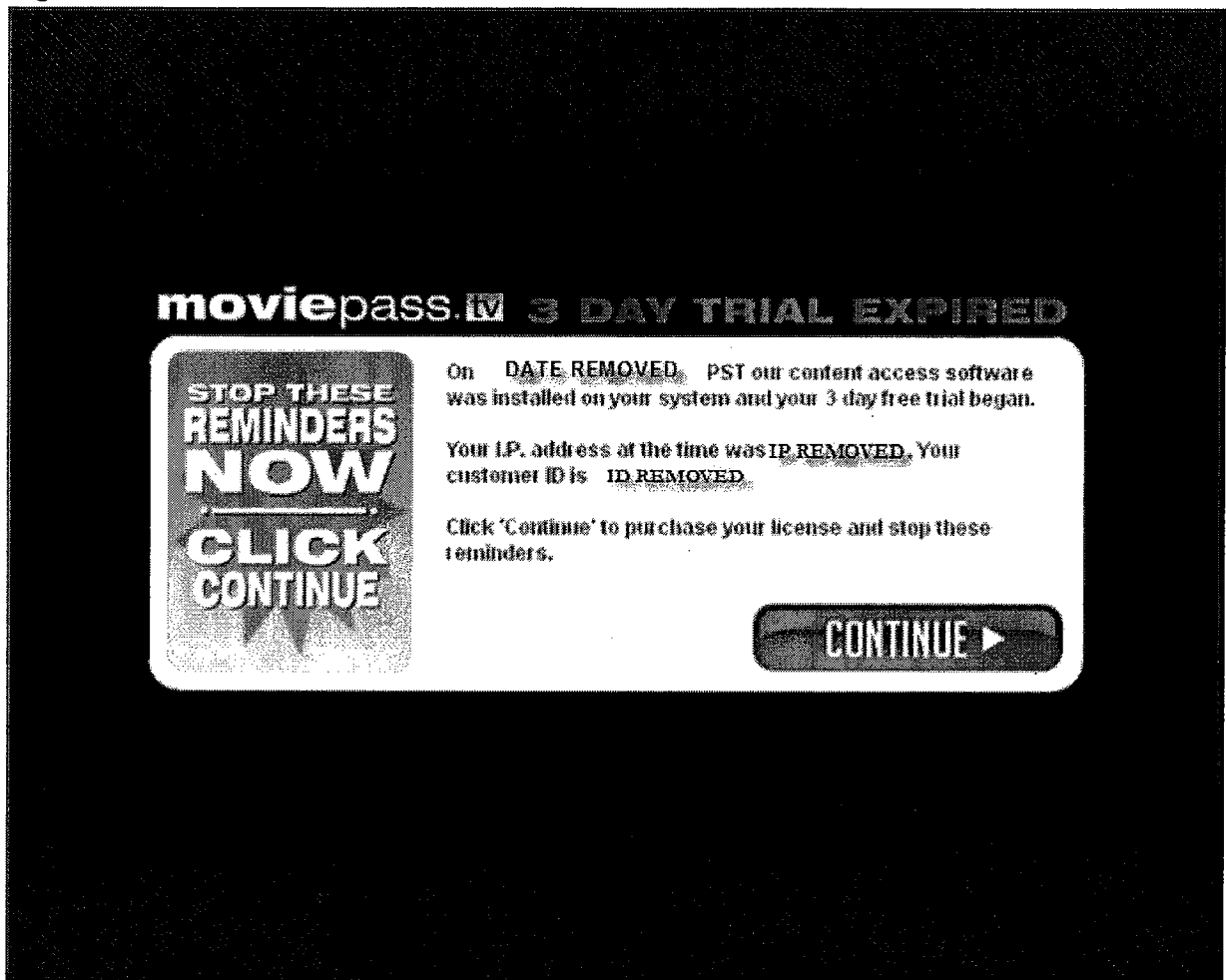
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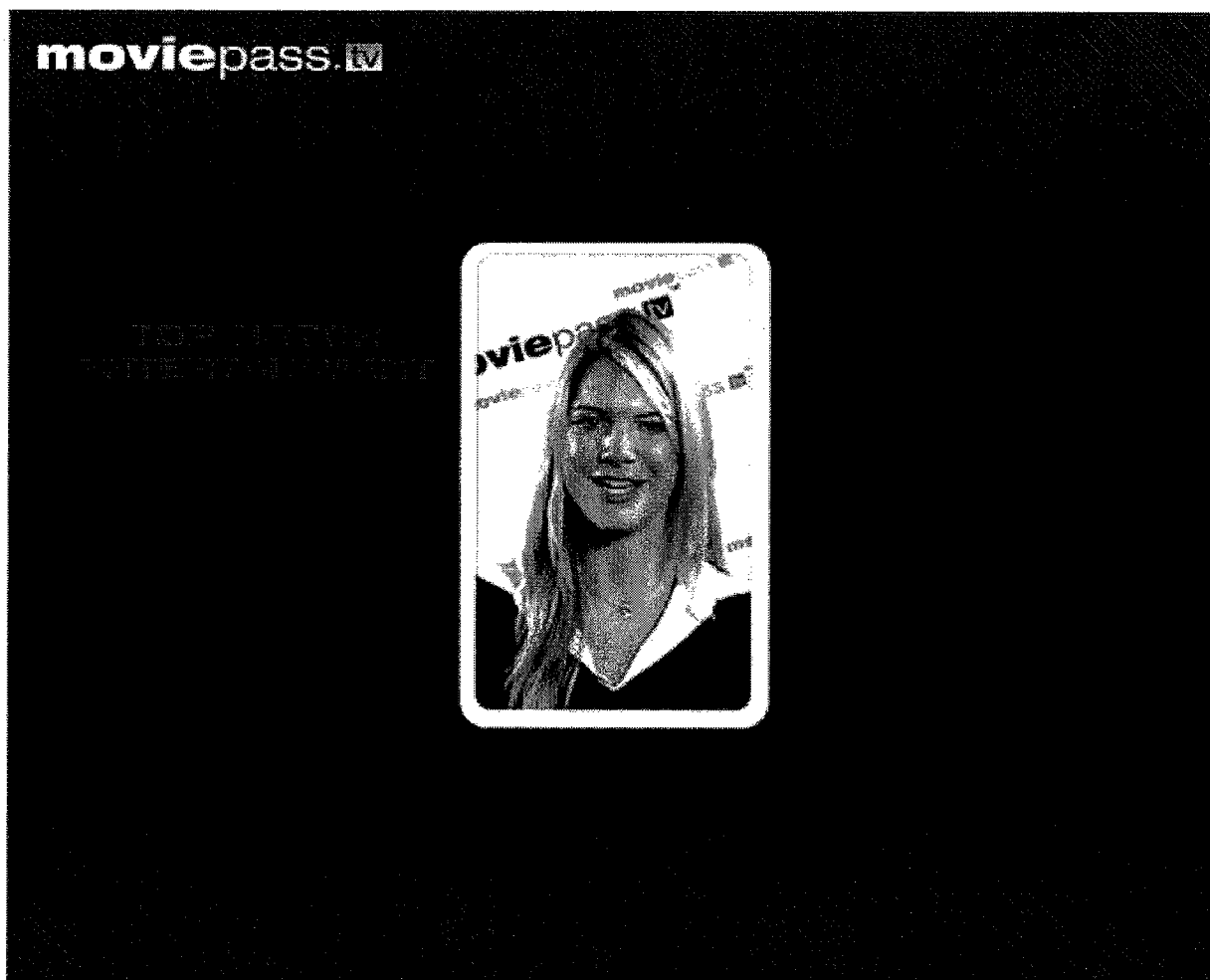
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1 Figure 1



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19 6.5 Consumers who click on the "CONTINUE" button find their computers  
20 launching an audiovisual file that features a woman speaking over background music in front  
21 of a display of the words "MovieLand.com," "Moviepass.tv," or "Popcorn.net." On the video,  
22 a woman calling herself "Kate" (or "Maria," in case of the "reminder" from "Popcorn.net,")  
23 explains to users that their "free" trial period has expired, that they did not cancel the service,  
24 and that they are now legally obligated to purchase a license for the use of the software that  
25 they downloaded for the trial period. See, figure 2.  
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1 Figure 2

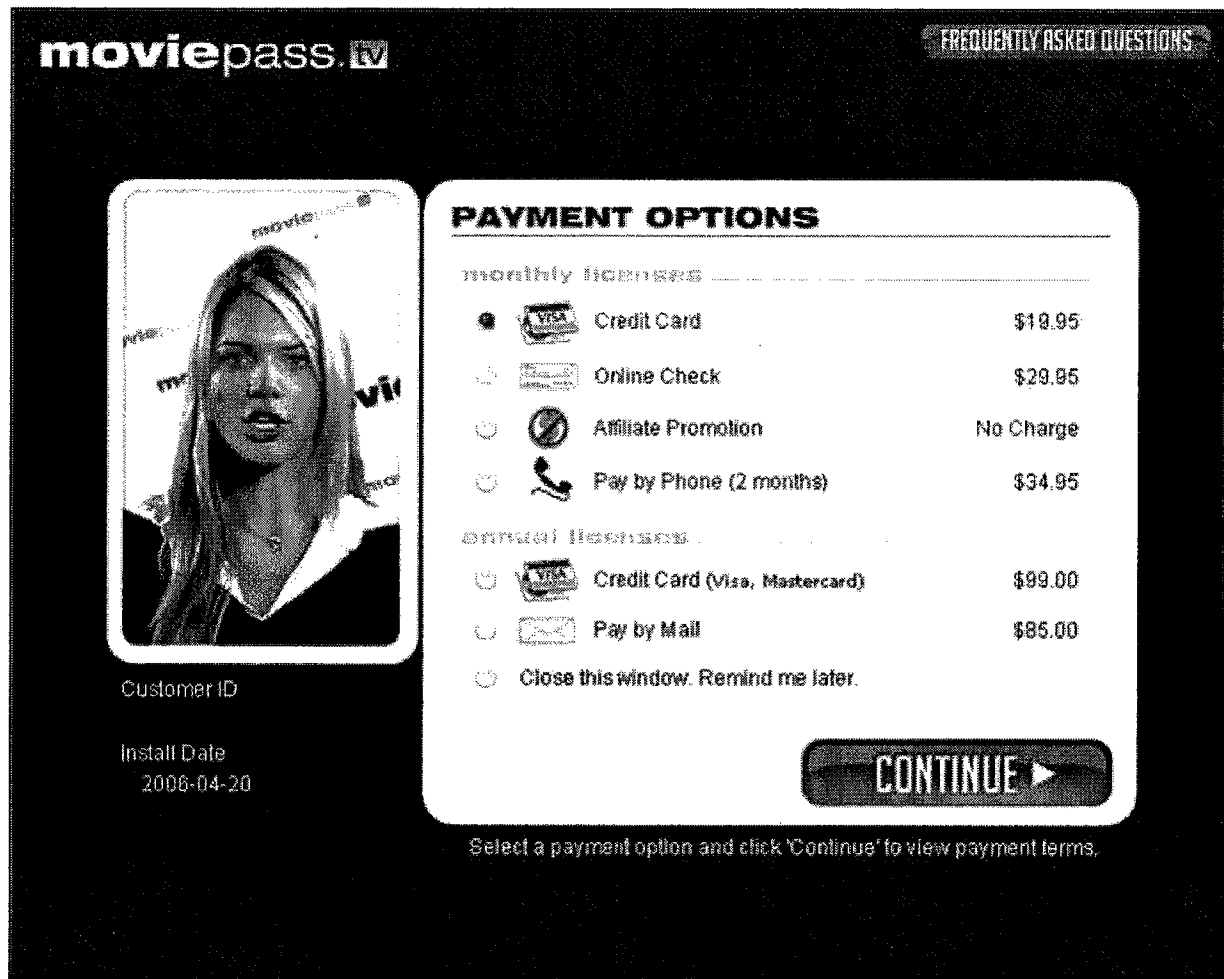


18  
19 6.6 The video lasts approximately 40 seconds. The user cannot close the video or  
20 stop the music that plays both during and after “Kate’s” presentation. During that time, the  
21 typical user cannot, in fact, effectively use the computer. After the first portion of video is  
22 finished, the screen remains on top of the user’s computer screen and the music continues to  
23 play through the speakers, continuing to make it impossible for the typical user to effectively  
24 use the computer. The next video screen that confronts the user contains only two options for  
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1 action: either to click on “Close this window. Remind me later,” or select a payment method  
2 and continue with the payment process. See, figure 3.  
3  
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5 Figure 3



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22 **6.7** If the user chooses the option to be reminded later, every time the user goes  
23 onto the Internet, Defendants transmit to the computer the exact same series of payment  
24 demands that effectively disable the functioning of the computer for their duration. They  
25 appear at least once per hour, beginning with a first viewing when the user boots up the  
26

1 computer and connects to the Internet. Defendants keep sending the payment demands until or  
2 unless the user pays either a monthly or annual license fee for the use of Defendants' software.

3 **6.8** The practices described above constitute violations of RCW 19.270.040(1), which  
4 makes it unlawful for a person who is not an owner or operator of a user's computer to take  
5 control of the user's computer by using the Internet service for such computer to cause damage  
6 to the computer.

7 **6.9** Taking control of the user's computer by means of pop-up videos that the user  
8 cannot close out of and thereby obstructing the user's access to the computer and disabling the  
9 functionality of the computer constitutes unfair and deceptive acts or practices in trade or  
10 commerce and unfair methods of competition in violation of the Consumer Protection Act, RCW  
11 19.86.020.

12 **VII. SECOND CAUSE OF ACTION**

13 **Misrepresenting Uninstallation Option in Violation of the Spyware Act and the**  
14 **Consumer Protection Act**

15 **7.1** Plaintiff realleges paragraphs 1.1 through 6.9 and incorporates them herein as if set  
16 forth in full.

17 **7.2** Defendants' software contains code that displays the existence of the program in  
18 the "Add/Remove Programs" section of the user's computer. See, figure 4.

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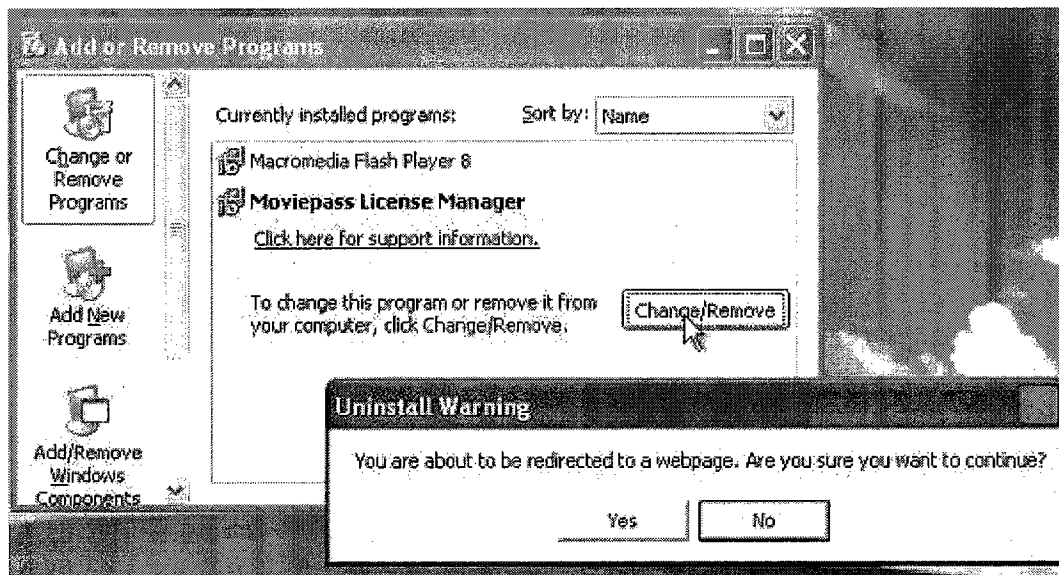
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1 Figure 4



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11 The “Add/Remove” function featured on the control panel of the Windows Operating System  
12 provides the user the ability to remove unwanted programs from the computer. After the three-  
13 day trial period has expired, the listing for Defendants’ software program remains listed in that  
14 section. However, when the user clicks to remove the program, an “installation warning”  
15 dialogue box appears stating that the user is going to be re-directed to another Web site. The user  
16 is given the option to click either “yes” or “no.” If the user clicks “no,” the dialogue box  
17 disappears, but the user cannot uninstall the program. If the user clicks “yes,” the user is taken to  
18 a payment page. Although Defendants’ software appears in the “Add/Remove” section of the  
19 computer, which represents to users that they can remove the program, Defendants’ software  
20 cannot be uninstalled.  
21

22  
23 7.3 The practices described above constitute violations of RCW 19.270.020(4), which  
24 makes it unlawful for a person who is not an owner or operator of a user’s computer to  
25 misrepresent that computer software will be uninstalled or disabled by an owner’s or operator’s  
26 action.

1           7.4    The conduct described above constitutes unfair or deceptive acts or practices in  
2 trade or commerce and unfair methods of competition in violation of the Consumer Protection  
3 Act, RCW 19.86.020.

#### 4                                 **VIII. THIRD CAUSE OF ACTION**

##### 5    **Unconscionable Business Practices in Violation of the Consumer Protection Act 8.1**

6           Plaintiff realleges paragraphs 1.1 through 7.4 and incorporates them herein as if set  
7 forth in full.

8           8.2    In the course of doing business, Defendants engage in numerous  
9 unconscionable practices, including, but not limited to, the unconscionable practices described  
10 in the following paragraphs.

11           8.3    When users agree to accept a three-day trial offer from Defendants, they click on a  
12 button on the pop-up advertisement that states "Begin Free Trial." The pop-up advertisement also  
13 contains language which discloses that users will receive "payment reminders" if there is no  
14 cancellation within the three-day trial period, but fails to disclose the unconscionable tactics that  
15 Defendants employ to force users to pay. Additionally, Defendants' Terms of Service state that  
16 the consumer will receive pop-up payment notices until the consumer has "satisfied" his alleged  
17 legal obligations.

18           8.4    The "payment reminders" used by Defendants are unlike other billing notices sent  
19 via the Internet. Unlike emails or other individualized contacts, they take over the user's  
20 computer, rendering it useless for periods of time on an hourly basis until the consumer agrees to  
21 pay. They essentially hold the consumer's computer hostage until payment is made. Consumers  
22 who have never encountered this aggressive and harassing billing method neither intend nor  
23 expect that by downloading a free-trial service in a seemingly anonymous context they will be  
24 hounded relentlessly for payment and deprived of the use of their computers.

1           **8.5** Defendants fail to give consumers a reasonable opportunity to understand the  
2 terms of their contract, thus unconscionably depriving them of a meaningful choice in entering  
3 into its terms. The formation of the contract with consumers is procedurally unconscionable.  
4 Additionally, Defendants use an overly harsh billing method that forces payment by completely  
5 obstructing users' access to their computers. This method of billing, which constitutes a term of  
6 Defendants' Terms of Service, is substantively unconscionable.

7           **8.6** When Defendants send repeated payment reminders to consumers who have failed  
8 to cancel within the three-day period, they offer a method by which the consumer can pay a  
9 reduced amount to avoid being required to pay for an annual subscription. In order to stop the  
10 payment reminders, the consumer is given two options, either "purchase the license that was  
11 agreed to upon installation of the software and have continued access to the  
12 product," or "purchase a 30 day license to the software."

13 <http://members.movieland.com/customerservice/?spage=explanation1>, March 20, 2006.

14 Defendants state that paying for the 30-day option rather than the annual contract will "satisfy (the  
15 consumer's) obligation and stop future payment reminders."

16 <http://www.movieland.com?join/?tmpl=cancelcontract.tmpl&CID=67280414>, March 20, 2006.

17 The least amount a consumer can pay to avoid receiving future payment reminders is \$19.95, with  
18 an automatic monthly renewal of \$19.95.

19           **8.7** When consumers receive this option from Defendants, they have already been  
20 bombarded with payment reminders. They are desperate to stop Defendants from taking control of  
21 their computers and are essentially without recourse. Their bargaining power is essentially non-  
22 existent; they have no meaningful choice between the various options Defendants offer. They  
23 must either make a payment or continue to be harassed. Defendants' voluntary change in the  
24 terms of the contract, which purportedly represents a bargain to the consumer, constitutes an  
25 unconscionable attempt to extract payment for a debt that was originally based on unconscionable  
26 conduct.

1           **8.8**     The acts and practices described above constitute unfair or deceptive acts or  
2 practices in trade or commerce and unfair methods of computation in violation of the  
3 Consumer Protection Act, RCW 19.86.020.

4   **IX. FOURTH CAUSE OF ACTION**

5           **Threats, Harassment and Intimidation in Billing Practices**

6           **9.1**     Plaintiff realleges paragraphs 1.1 through 8.8 and incorporates them herein as if  
7 set forth in full.

8           **9.2**     In the context of Defendants' attempts to bill consumers for their service, they  
9 engage in a number of practices that threaten, harass or intimidate consumers. These practices  
10 include, but are not limited to the following:

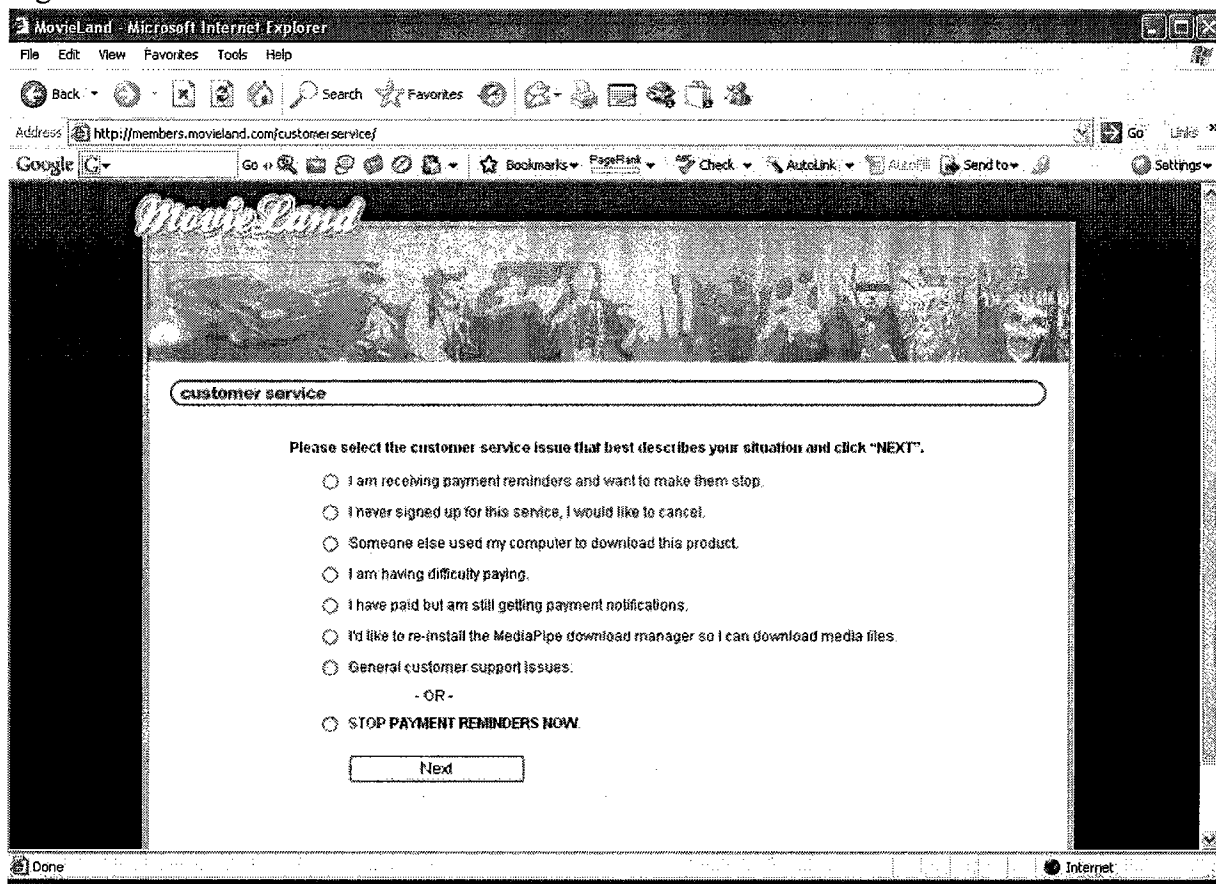
11                   **9.2.1** Defendants represent that "failure to satisfy (the consumer's) obligation  
12 may result in an escalation of collection proceedings that could have  
13 an adverse effect on (the consumer's) credit record."  
14 <http://members.moviepass.tv/customerservice/?spage=explanation3>, April 14, 2006. In fact,  
15 Defendants are unable to affect the consumer's credit record; they do not know the consumer's  
16 name and have no means to personally identify him or her. Their threat is an empty one.

17                   **9.2.2** Defendants refer to consumers' "contractual obligation" in the text of  
18 their payment reminders. In the video portion of their payment reminders, the speaker informs  
19 the user that he or she is "legally obligated" to pay. In fact, Defendants' method of  
20 "contracting" does not create a legally binding contract between the parties. The terms of the  
21 contract are not meaningfully disclosed, and the consumer is not obligated to pay.  
22 Additionally, the person who downloaded Defendants' "free trial" offer may not have been  
23 legally competent to enter into a supposed "contract" with Defendants, by virtue of being a  
24 minor or an unauthorized user of the consumer's computer. The simple fact that the  
25 consumer's computer may have been used to download Defendants' "free trial" does not give  
26 rise to the consumer's automatic "legal obligation." Defendants' invocation of the consumer's

1 alleged “legal obligation” attempts to give their unconscionable practices the patina of legal  
2 sanction, and impliedly threatens that the law will force the consumer’s compliance.

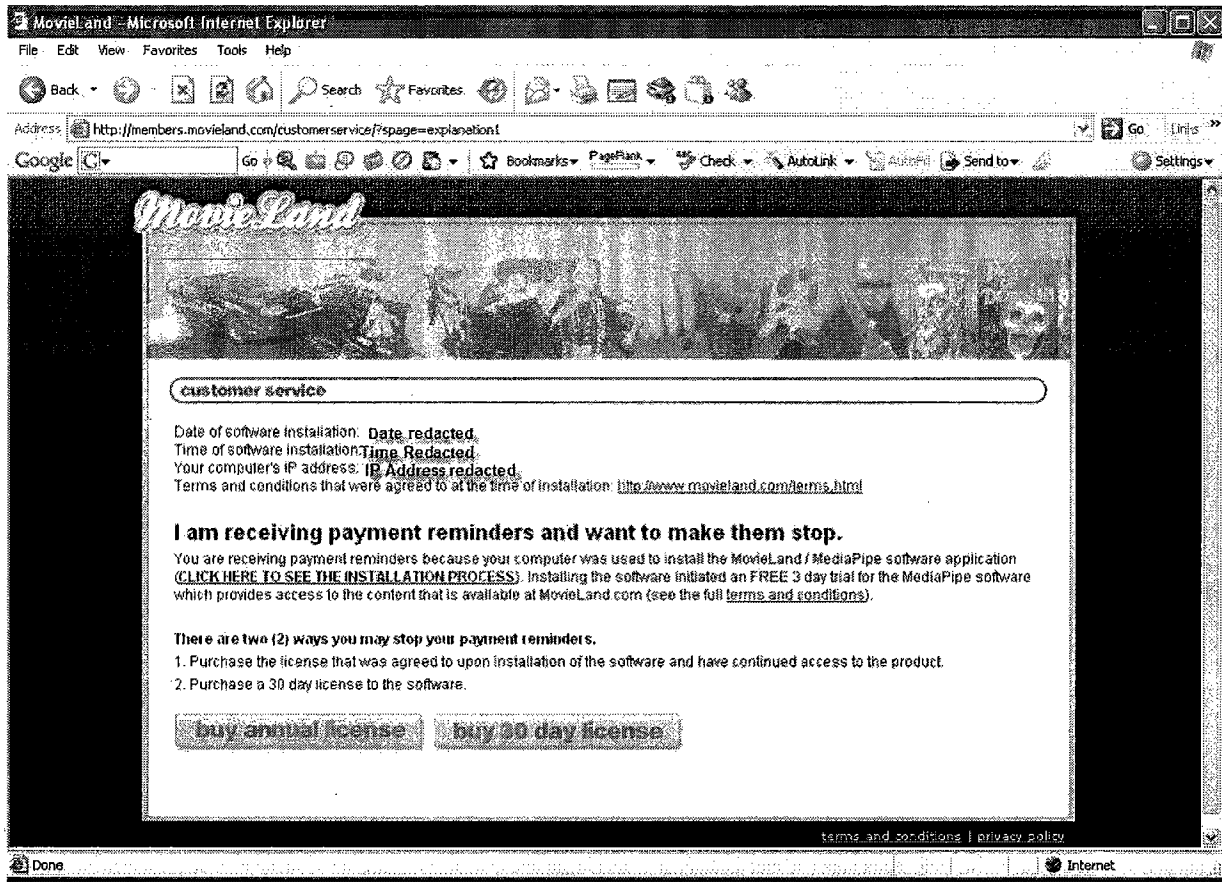
3           **9.2.3** When Defendants send payment reminders to consumers, they present  
4 them with a series of screens which purportedly give them various “customer service options”  
5 to address specific issues. See, figure 5.

6 **Figure 5**



21 While these options purport to allow the consumer to choose the circumstance which most fits  
22 his or her situation, i.e. “I never signed up for this service, I would like to cancel,” each of the  
23 options, if chosen, directs the consumer to another web page which only gives him or her the  
24 option to pay. See, figure 6.

1 Figure 6



16 By so limiting consumers' options, Defendants attempt to intimidate them into believing that  
17 even if they did not order the service, they are required to pay for it.

18 **9.2.4** Defendants' software, when downloaded and installed on the user's  
19 computer, enables Defendants to remotely transmit additional software that executes when the  
20 user goes onto the Internet. When the trial period has expired, the first time the user goes onto the  
21 Internet, Defendants transmit their payment-demand software onto the user's computer. This  
22 software causes payment demands to launch on the user's computer and takes over the user's  
23 computer at least once every hour until or unless the user pays the license fee. Defendants'  
24 software also disables the user's ability to access the paid subscribers-only features of the service,  
25 the very service for which Defendants are attempting to extract payment. Furthermore,  
26



1 Defendants disable the uninstall function on the user's computer as it pertains to their software.  
2 Defendants demand payment for a service that the user no longer can access and continue  
3 nevertheless to harass the user by bombarding him or her with pop-up video/audio messages that  
4 effectively deny access to the computer.

5 **9.3** The conduct described above constitutes unfair and deceptive acts or practices  
6 in trade or commerce and unfair methods of competition in violation of the Consumer  
7 Protection Act, RCW 19.86.020.

8 **X. FIFTH CAUSE OF ACTION**

9 **Failure to Disclose Material Facts in Violation of the Consumer Protection Act**

10 **10.1** Plaintiff realleges paragraphs 1.1 through 9.3 and incorporates them herein as if  
11 set forth in full.

12 **10.2** Defendants' Terms of Service fail to disclose a material term that accurately  
13 describes the means by which they collect payment from the user. The Terms of Service  
14 disclose that Defendants will deliver "pop-up windows" to the consumer until he or she pays  
15 for Defendants' service, but fail to describe accurately the aggressive, relentless, threatening  
16 form of payment demands used by Defendants. Defendants fail to disclose that the "pop-up  
17 windows" will be in the form of videos with an audio component. They fail to disclose that the  
18 "pop-up windows" will take over the user's computer for periods of time, rendering it  
19 temporarily unavailable to the user. They fail to disclose that the user cannot close out of their  
20 payment "reminders." Additionally they fail to disclose that the uninstallation option for the  
21 software will be disabled.

22 **10.3** The Terms of Service additionally fail to disclose the material term describing  
23 the significant amount of computer memory Defendants' software will consume on the user's  
24 computer – at least 27 megabytes of RAM.

1           **10.4** Defendants' Terms of Service fail to disclose that they transmit software to the  
2 user's computer surreptitiously, and activate it without the consumer's knowledge or  
3 permission.

4           **10.5** Defendants fail to reveal material facts to consumers, which, if communicated  
5 to the consumers, would render Defendants' service substantially less desirable. This  
6 constitutes unfair and deceptive acts or practices in trade or commerce and unfair methods of  
7 competition in violation of the Consumer Protection Act, RCW 19.86.020.

8                           **XI. SIXTH CAUSE OF ACTION**

9           **Misrepresentations in Violation of the Consumer Protection Act**

10           **11.1** Plaintiff realleges paragraphs 1.1 through 10.5 and incorporates them herein as  
11 if set forth in full.

12           **11.2** During the course of doing business, Defendants make numerous  
13 misrepresentations, including, but not limited to, the misrepresentations described in the  
14 following paragraphs.

15           **11.3** Defendants' pop-up advertisements represent that the cost of their service will be  
16 \$81.36 if consumers do not cancel the within the three-day trial period. In fact, the actual cost of  
17 the service can be as little as \$29.95 and Defendants are always willing to accept this smaller  
18 amount in lieu of the \$81.36 they claim will be owed. As a practical matter, the true cost of the  
19 service can range from \$29.95 to \$99.00, depending on the method of payment chosen and the  
20 term of service ordered

21           **11.4** Defendants represent that their software will allow the user to watch videos or  
22 other entertainment downloaded from Defendants' web site "at extreme speed."  
23 <http://www.movieiland.com>, March 20, 2006. In fact, the speed of the download depends on the  
24 type of connection the user has to the Internet. A user with a dial-up connection will not receive  
25 downloaded files at "extreme speed."

1           **11.5** Defendants represent that their software contains “no spyware”.  
2 <http://www.movieiland.com>, March 20, 2006. In fact, Defendants’ software itself constitutes  
3 “spyware,” insofar as it places files on the user’s computer which send repeated, harassing notices  
4 that interfere with use of the computer; prevents the user from uninstalling the offending files; and  
5 if, in fact, if the files are uninstalled, leaves parts of Defendants’ software on the user’s computer.

6           **11.6** Defendants represent that “failure to satisfy (the consumer’s)  
7 obligation may result in an escalation of collection proceedings that could  
8 have an adverse effect on (the consumer’s) credit record.”  
9 <http://members.moviepass.tv/customerservice/?spage=explanation3>, April 14, 2006. In fact,  
10 Defendants are unable to affect the consumer’s credit record; they do not know the consumer’s  
11 name and have no means to personally identify him or her. Their threat is an empty one.

12           **11.7** Defendants refer to consumers’ “contractual obligation” in the text of their  
13 payment reminders. In the video portion of their payment reminders, the speaker informs the  
14 user that he or she is “legally obligated” to pay. In fact, Defendants’ method of “contracting”  
15 does not create a legally binding contract between the parties. The terms of the contract are not  
16 meaningfully disclosed, and the consumer is not obligated to pay. Additionally, the person  
17 who downloaded Defendants’ “free trial” offer may not have been legally competent to enter  
18 into a supposed “contract” with Defendants, by virtue of being a minor or an unauthorized user  
19 of the consumer’s computer. The simple fact that the consumer’s computer may have been  
20 used to download Defendants’ “free trial” does not give rise the consumer’s automatic “legal”  
21 or “contractual obligation.”

22           **11.8** Defendants’ initial pop-up advertisement for services represents that the  
23 consumer can watch “over 3,000” movies or “download them to keep forever.” No limitation  
24 on the number of downloads permitted is disclosed in the context of the advertisement. In fact,  
25 consumers who attempt to download more than five movies during the three-day trial period  
26 are informed that “trial users” are only permitted to download a maximum of five movies.

1 11.9 The misrepresentations described above constitute unfair and deceptive acts or  
2 practices in trade or commerce and unfair methods of competition in violation of the Consumer  
3 Protection Act, RCW 19.86.020.

4 **XII. PRAYER FOR RELIEF**

5 12.1 WHEREFORE, Plaintiff, STATE OF WASHINGTON, prays that this Court grant  
6 the following relief:

7 a. Adjudge and decree that Defendants have engaged in the conduct  
8 complained of herein;

9 b. Adjudge and decree that the conduct complained of in paragraphs 6.1  
10 though 7.2 constitutes violations of the Computer Spyware Act, RCW 19.270, *et seq.*;

11 c. Adjudge and decree that the conduct complained of in paragraphs 6.1  
12 through 11.8 constitutes unfair or deceptive acts or practices in violation of the Consumer  
13 Protection Act, RCW 19.86;

14 e. Permanently enjoin Defendants and their representatives, successors,  
15 assigns, officers, agents, servants, employees, and all other persons acting or claiming to  
16 act for, on behalf of, or in active concert or participation with Defendants from continuing  
17 or engaging in the unlawful conduct complained of herein;

18 f. Award such relief as the Court finds necessary to redress injury to  
19 consumers resulting from Defendants' violations of the Computer Spyware Act and the  
20 Consumer Protection Act;

21 g. Assess a civil penalty, pursuant to RCW 19.86.140, of up to \$2,000 for  
22 each violation of RCW 19.86.020 caused by the conduct herein; and

23 ///

24 ///

25 ///

26 ///

1 h. Award Plaintiff the costs of bringing this action, pursuant to  
2 RCW 19.86.090 and 19.270.060, as well as such other and additional relief as the Court  
3 may determine to be just and proper.

4 DATED this 4<sup>th</sup> day of August, 2006.

5  
6 Presented by:

7 ROB MCKENNA  
8 Attorney General

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