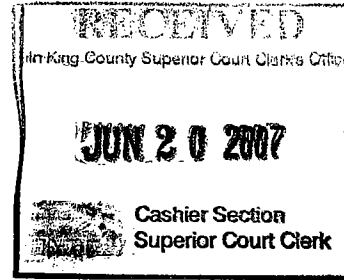


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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

CONSUMER DIGITAL SERVICES, LLC,
a Delaware limited liability company;
PRIVASAFE, LLC, a wholly owned
subsidiary of Consumer Digital Services;
SURFSAFE INTERNET SERVICES, a
wholly owned subsidiary of JSE Direct,
LLC; LEVERAGE-CDS, LLC, a Delaware
limited liability company and Member of
Consumer Digital Services; JSE DIRECT,
LLC, a wholly owned subsidiary and
Member of CONSUMER DIGITAL
SERVICES; CDS FAMILY TRUST, a
New Jersey Trust and Member of
Consumer Digital Services; AMP-CDS,
LLC, Delaware limited liability company
and Member of Consumer Digital Services;
JG-CDS, LLC, Member of Consumer
Digital Services, LLC; GARY SALMIRS,
Manager of Leverage-CDS, LLC,
individually and as a part of his marital
community;

Defendants.

07-2-20525-0SEA

COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF UNDER THE
CONSUMER PROTECTION ACT,
CHAPTER 19.86 RCW

COMES NOW PLAINTIFF, State of Washington, by and through its attorneys Robert
M. McKenna, Attorney General and Katherine M. Tassi, Assistant Attorney General, and

1 brings this action against Defendants named herein, alleging on information and belief as
2 follows:

3 **I. JURISDICTION AND VENUE**

4 **1.1** This Complaint is filed and these proceedings are instituted under the
5 provisions of the Unfair Business Practices – Consumer Protection Act, Chapter 19.86 RCW.
6

7 **1.2** The violations alleged in this Complaint have been and are being committed in
8 whole or in part in King County, Washington, by Defendants named herein.

9 **1.3** Authority of the Attorney General to commence this action is conferred by
10 RCW 19.86.080 and RCW 19.86.140.

11 **II. DEFENDANTS**

12 **2.1** Defendant CONSUMER DIGITAL SERVICES, LLC (“CDS”) is a Delaware
13 limited liability company. Its principal place of business is located at 2200 Fletcher Avenue,
14 5th Avenue Floor, Fort Lee, NJ 07024. At all times relevant to this action, CDS has been
15 engaged in the marketing and sale of email and security-related Internet services and products
16 over the Internet through its Web sites www.surfsafeinternetservices.com and
17 www.privasafe.com.
18

19 **2.2** Defendant PRIVASAFE, LLC (“Privasafe”) is a wholly owned subsidiary of
20 Consumer Digital Services. Its principal place of business is located at 2200 Fletcher Avenue,
21 5th Avenue Floor, Fort Lee, NJ 07024. At all times relevant to this action, Privasafe has been
22 engaged in the marketing and sale of email and security-related Internet services and products
23 over the Internet through its Web site www.privasafe.com.
24
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1 **2.3** Defendant SURFSAFE INTERNET SERVICES (“Surfsafe”) is a wholly owned
2 subsidiary of JSE Direct, LLC, which is a wholly owned subsidiary of CDS. Its principal place
3 of business is located at 2200 Fletcher Avenue, 5th Avenue Floor, Fort Lee, NJ 07024. At all
4 times relevant to this action, Surfsafe has been engaged in the marketing and sale of email and
5 security-related Internet services and products over the Internet through its Web site
6 www.surfsafeinternetservices.com.
7

8 **2.4** Defendant LEVERAGE-CDS, LLC (“Leverage”) is a Delaware limited liability
9 company and Member of Consumer Digital Services. Its principal place of business is located
10 at 2200 Fletcher Avenue, 5th Avenue Floor, Fort Lee, NJ 07024. At all times relevant to this
11 action, Leverage has participated in the marketing and sale of email and security-related
12 Internet services, including Privasafe and Surfsafe Internet Services, and products over the
13 Internet.
14

15 **2.5** Defendant JSE DIRECT, LLC (“JSE”) is a wholly owned subsidiary and
16 Member of Consumer Digital Services. Its principal place of business is located at 2200
17 Fletcher Ave., 5th Avenue Floor, Fort Lee, NJ 07024. At all times relevant to this action, JSE
18 has participated in the marketing and sale of email and security-related Internet services,
19 including Privasafe and Surfsafe Internet Services, and products over the Internet.
20

21 **2.6** Defendant CDS FAMILY TRUST (“CDS Family Trust”) is a New Jersey Trust
22 and Member of Consumer Digital Services. Its principal place of business is located at 2200
23 Fletcher Ave., 5th Avenue Floor, Fort Lee, NJ 07024. At all times relevant to this action, CDS
24 Family Trust has participated in the marketing and sale of email and security-related Internet
25 services, including Privasafe and Surfsafe Internet Services, and products over the Internet.
26

1 2.7 Defendant JG-CDS, LLC (“JG-CDS”) is a Member of Consumer Digital
2 Services, LLC. Its principal place of business is located at 2200 Fletcher Avenue, 5th Avenue
3 Floor, Fort Lee, NJ 07024. At all times relevant to this action, JG-CDS has participated in the
4 marketing and sale of email and security-related Internet services, including Privasafe and
5 SurfSAFE Internet Services, and products over the Internet.
6

7 2.8 Defendant GARY SALMIRS (“Salmirs”) is a Manager of Leverage-CDS, LLC,
8 which is a Member of CDS, and, as such, controls CDS’s policies, activities, and practices,
9 including those alleged in the Complaint herein. Defendant is married to Jane Doe Salmirs and
10 together they constitute a marital community. All actions taken by Defendant Salmirs as
11 alleged in the Complaint herein are for the benefit of his marital community.
12

13 **III. NATURE OF TRADE OR COMMERCE**

14 3.1 At all times material to this action, and at least since January 2004, CDS,
15 Privasafe, SurfSAFE, Leverage, JSE, CDS Family Trust, JG-CDS, and Salmirs (together,
16 “Defendants”) have advertised, marketed, and offered for sale subscription-based Internet-
17 related services, including email accounts, increased Internet connection speed, ISP services,
18 and security-related software products. Defendants sell these services and products bundled
19 together under the names “Privasafe” and “SurfSAFE Internet Services” (hereinafter Privasafe
20 and SurfSAFE Internet Services will sometimes be referred to together as “the service” or “the
21 services”). Defendants own and operate www.privasafe.com and
22 www.surfsafeinternetservices.com, on which consumers access the services by downloading
23 software onto their computers.

24 3.2 Defendants market their services over the Internet in various ways, both
25 directly through their own Web sites and marketing company, and through third-party
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1 marketing companies. In many instances, the contracts with the marketing companies give
2 virtually total control to the marketing company over how to market Defendants' services. In
3 some cases, such marketing companies use affiliate networks, over which even the marketing
4 company has little to no control. Defendants therefore do not know all the ways that their
5 services are marketed to consumers on the Internet.

6 **3.3** One prominent way that Defendants market their services is through "offers"
7 for "free" products, such as a "free" \$25 Wal-Mart card or a "free" flat-screen monitor. The
8 "offers" have appeared on third-party Web sites and in electronic mail. The offers for "free"
9 items, however, are not associated, at least initially, with the sale of Defendants' services or
10 products.

11 **3.4** Defendants' "free item" marketing campaigns are designed to entice
12 consumers to submit personal information, including name, address, email address, telephone
13 number, and birth city, by offering consumers an allegedly free item of value. Defendants
14 mislead consumers into believing that they are transmitting their personal contact information
15 in order to receive the "free" item. The collection of consumers' personal information, in fact,
16 serves two purposes: first, Defendants collect consumers' personal information in order to use
17 or sell the information for marketing or other commercial purposes; and second, Defendants
18 use the information as a basis to bill consumers a recurring monthly charge on their telephone
19 bills for the services.

20 **3.5** Defendants' offer for a "free" item appears in a variety of ways. In many
21 instances, the offer appears in a pop-up advertisement or in a series of pop-up advertisements
22 while the consumer is browsing the Internet. In other cases, the offer for the free item comes
23 in an email message. In other instances, the offer appears as a banner ad on a Web site. In all
24 instances, the consumer clicks on the ad and follows directions for how to receive the
25 advertised "free" item. At some point during the process of trying to take advantage of the
26

1 offer for the “free” item, the consumer submits personal information that is transmitted to
2 Defendants and forms the basis for Defendants’ charging the consumer a recurring monthly
3 fee for one of the services.

4 **3.6** In some instances, in following the directions to receive the “free” item,
5 consumers are re-directed to one of Defendants’ Web sites, on which Defendants feature the
6 “free” item and request personal information to be transmitted by the consumer in order for
7 the consumer to receive the “free” item. When consumers fill in the form to receive the item,
8 their personal information is transmitted to, and stored by, Defendants. Rather than
9 associating the “free” item with the sale of the service, Defendants bury the information
10 relating to the charges for the service in a part of the Web page that is not viewable to the
11 consumer without the consumer scrolling to the bottom of the page. Defendants’ Web page
12 design, however, discourages such scrolling by placing a large button stating “Click Here to
13 Continue” at the bottom of the viewable portion of the Web page, directly beneath the fields
14 in which consumers enter their personal information. Defendants also do not disclose on the
15 viewable portion of the Web page the terms and conditions of the offer for the “free” item,
16 which, in fact, is not free. Defendants require the consumer to subscribe to the service for
17 \$14.95 a month, which is charged on the consumer’s telephone bill, and to remain a customer
18 in good credit standing for ninety days. Any other disclosures relating to the offer for the
19 “free” item are made, if at all, subsequent to the collection of consumers’ personal
20 information.

21 **3.7** Defendants consider consumers bound by their privacy policy when consumers
22 enter and transmit their personal information. The hyperlink to Defendants’ privacy policy,
23 however, is not visible on the screen on which consumers enter their personal information. In
24 fact, Defendants do not disclose that consumers will be bound to a privacy policy when
25 Defendants collect their personal information. There is no option for consumers to indicate
26

1 affirmatively that they have read and agreed to the privacy policy. Indeed, most consumers
2 would never even know that a privacy policy existed at the time they were submitting their
3 personal information. Defendants' privacy policy includes a waiver of the consumer's rights
4 under the Amended Telemarketing Sales Rule, 16 CFR §310 et seq. and authorizes
5 Defendants to use, transfer, sell, or license the consumer's personal information. Defendants
6 have licensed, i.e., sold, the personal information of thousands of Washington consumers to
7 numerous third parties for marketing and other purposes based upon the consumers'
8 transmission of such information in the context of responding to an offer for a free item.

9 **3.8** In some instances, consumers sign up for a "free" item on a third-party Web
10 site and their personal information is transmitted to Defendants by the marketing company
11 responsible for the sign-up. It is unknown what types of disclosures are or are not made to
12 consumers regarding the information collected on those sites. However, consumers have
13 been, in most instances, completely unfamiliar with Privasafe or SurfSAFE Internet Services
14 when they discovered a charge for either service on their telephone bill and maintain that they
15 never signed up for the service.

16 **3.9** In still other instances, consumers who have been billed for the services do not
17 even have Internet access and therefore could not have signed up for the services or
18 authorized the billing.

19 **3.10** By completing the process to receive the "free" item, consumers have been
20 subscribed to Defendants' service without their knowledge or authorization. Consumers have
21 been billed a recurring monthly fee of at least \$14.95 through their telephone bills for the
22 services. Since January 2004, over thirteen thousand Washington consumers have been billed
23 for Privasafe and SurfSAFE Internet Services. Defendants have billed Washington consumers
24 over \$750,000.00. Over fifty percent of Washington consumers requested refunds for the
25 service when they discovered the charges on their telephone bills. Less than five percent of
26

1 Washington consumers billed for Defendants' services ever downloaded the software
2 necessary to use the service. Only one Washington consumer received the "free" item.

3 **3.11** Defendants use third-party billing companies such as ACI Billing Services,
4 Inc. and ILD Telecommunications, Inc. to place the charges for their services on consumers'
5 telephone bills. In many instances, confronted with mysterious charges on their telephone
6 bills, consumers have been unable to reach Defendants to dispute the charges. In fact, in most
7 instances, consumers have no idea what the charges are for or what entity has placed the
8 charges on their telephone bills. Typically, consumers have had to call their telephone
9 company and then the third-party billing company in order to ascertain the source of the
10 charges.

11 **3.12** Defendants have advertised, marketed, and sold Privasafe and SurfSAFE Internet
12 Services in Washington, including in King County. Defendants are in competition with others
13 engaged in the sale and marketing of similar services and products in and from Washington.

14 **IV. FIRST CAUSE OF ACTION – FAILURE TO DISCLOSE MATERIAL TERMS**

15 **4.1** Plaintiff realleges paragraphs 1.1 through 3.12 above and incorporates them as
16 though fully set forth herein.

17 **4.2** During the course of advertising, marketing, promoting, and selling Privasafe
18 and SurfSAFE Internet Services on the Internet, Defendants fail to disclose or to disclose
19 adequately numerous material terms, including:

20 1. Terms and Conditions of "Free" Item. Defendants fail to disclose or to
21 disclose adequately material terms and conditions of their promotional offer for a "free item,"
22 including the condition that to receive the allegedly "free" item, the consumer must subscribe
23 to the service for \$14.95 a month and remain a customer in good credit standing for ninety
24 days.

1 2. Cost and Billing Method. Defendants fail to disclose or to disclose adequately
2 the material term that the consumer will be automatically billed at a cost of \$14.95 a month on
3 the consumer's telephone bill for the service.

4 3. Conditions of Transmission of Personal Information. Defendants fail to
5 disclose or to disclose adequately material terms and conditions relating to the consumer's
6 transmission of his or her personal information to Defendants, including, but not limited to,
7 the material fact that the consumer will be bound by Defendants' privacy policy even if he or
8 she never purchases Defendants' service. The privacy policy includes provisions authorizing
9 Defendants' use of the consumer's personal information, including name, address, electronic
10 mail address, phone number, and birthplace, for commercial purposes, including using the
11 information, sharing the information with, and selling or licensing it to, third parties, for
12 marketing purposes, and a provision that the consumer has waived some of his or her rights
13 under the Amended Telemarketing Sales Rule, 16 CFR §310 et seq.

14 4.3 The conduct described above constitutes a failure to disclose material terms,
15 which is likely to affect the consumer's decision to purchase Defendants' services.
16 Defendants' conduct has the capacity to mislead and deceive, and therefore constitutes unfair
17 or deceptive acts or practices in trade or commerce, and unfair methods of competition in
18 violation of RCW 19.86.020.

19 **V. SECOND CAUSE OF ACTION - MISREPRESENTATIONS**

20 5.1 Plaintiff realleges paragraphs 1.1 through 4.3 above and incorporates them as
21 though fully set forth herein.

22 5.2 In advertising and marketing their services, Defendants misrepresent that an
23 item they are offering is "free." In fact, the item is not free. The consumer must subscribe to
24 a service for \$14.95 a month and remain a customer in good credit standing for at least ninety
25 days in order to receive the item.

1 **5.3** The conduct described above constitutes unfair or deceptive acts or practices in
2 trade or commerce, and unfair methods of competition in violation of RCW 19.86.020.

3 **VI. THIRD CAUSE OF CAUSE OF ACTION – UNAUTHORIZED BILLING**

4 **6.1** Plaintiff realleges paragraphs 1.1 through 5.3 above and incorporates them as
5 though fully set forth herein.

6 **6.2** In numerous instances, in connection with the marketing of the services,
7 Defendants have caused monthly charges of at least \$14.95 to be assessed on consumers'
8 telephone bills without the express, informed consent of the consumers.

9 **6.3** Defendants' practice of having caused monthly charges of at least \$14.95 to be
10 assessed on consumers' telephone bills without the express, informed consent of the
11 consumers has the capacity to mislead and deceive consumers and is an unfair practice.

12 **6.4** The conduct described above therefore constitutes unfair or deceptive acts or
13 practices in trade or commerce, and unfair methods of competition in violation of RCW
14 19.86.020.

15 **VII. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, State of Washington, prays for relief as follows:

17 **7.1** That the Court adjudge and decree that Defendants have engaged in the
18 conduct complained of herein.

19 **7.2** That the Court adjudge and decree that the conduct complained of herein
20 constitutes unfair or deceptive acts and practices and unfair methods of competition in
21 violation of the Consumer Protection Act, Chapter 19.86 RCW.

22 **7.3** That the Court issue a permanent injunction enjoining and restraining
23 Defendants, and their representatives, successors and assigns, officers, agents, servants,
24 employees and all other persons acting or claiming to act for, or on behalf of, or in active
25

1 concert or participation with Defendants, from continuing or engaging in unlawful conduct
2 complained of herein.

3 7.4 That the Court assess a civil penalty, pursuant to RCW 19.86.140, of up to
4 \$2,000 per violation against each of the Defendants for each violation of RCW 19.86.020
5 caused by the conduct complained of herein.

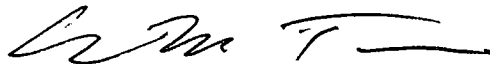
6 7.5 That the Court make such orders pursuant to RCW 19.86.020 as it deems
7 appropriate to provide for restitution to consumers for money or property acquired by
8 Defendants as a result of the conduct complained of herein.

9 7.6 That the Court make such orders pursuant to RCW 19.86.020 to provide that
10 Plaintiff, State of Washington, have and recover from Defendants the costs of this action,
11 including reasonable attorneys' fees.

12 7.7 That the Court order such other relief as it may deem just and proper to fully
13 and effectively dissipate the effects of the conduct complained of herein, or which may
14 otherwise seem proper to the Court.

15
16 DATED this 8th day of June, 2007.

17
18 ROBERT M. MCKENNA
Attorney General

19
20 
KATHERINE M. TASSI, WSBA #32908
Assistant Attorney General
Attorneys for Plaintiff
State of Washington