

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARIA AGNE, on her own behalf and on  
behalf of other similarly situated persons,

Plaintiff,

v.

RAIN CITY PIZZA, L.L.C., an unknown  
business entity; EDWARD TALIAFERRO,  
individually and doing business as RAIN  
CITY PIZZA, L.L.C. and ROSE CITY PIZZA,  
L.L.C.; KEVIN SONNEBORN, individually  
and doing business as RAIN CITY PIZZA,  
L.L.C., ROSE CITY PIZZA, L.L.C.,  
SEATTLE PJ PIZZA, L.L.C., PJ SOUND  
PIZZA, L.L.C., PAPA WASHINGTON,  
L.L.C., and PAPA WASHINGTON II, L.L.C.;  
ROSE CITY PIZZA, L.L.C., an Oregon  
limited liability company; SEATTLE PJ  
PIZZA, L.L.C., a Washington limited liability  
company; PJ SOUND PIZZA, L.L.C., a  
Kansas limited liability company; PAPA  
WASHINGTON, L.L.C., a Washington limited  
liability company; PAPA WASHINGTON II,  
L.L.C., a Washington limited liability  
company; PAPA JOHN'S USA, INC., a  
Kentucky corporation; and PAPA JOHN'S  
INTERNATIONAL, INC., a Delaware  
corporation,

Defendants.

Case No. 2:10-cv-01139-JCC

**PLAINTIFF'S FIRST AMENDED  
COMPLAINT – CLASS ACTION**

JURY DEMAND

Plaintiff MARIA AGNE (“Representative Plaintiff”), on her own behalf and on behalf of  
all other similarly situated persons (collectively “Plaintiffs”), by and through their counsel, bring

PLAINTIFF'S FIRST AMENDED COMPLAINT  
(Case No. 2:10-cv-01139-JCC)

1 the following First Amended Complaint against Defendants RAIN CITY PIZZA, L.L.C.,  
2 EDWARD TALIAFERRO, KEVIN SONNEBORN, ROSE CITY PIZZA, L.L.C., SEATTLE PJ  
3 PIZZA, L.L.C., PJ SOUND PIZZA, L.L.C., PAPA WASHINGTON, L.L.C., PAPA  
4 WASHINGTON II, L.L.C., PAPA JOHN'S USA, INC., and PAPA JOHN'S  
5 INTERNATIONAL, INC. (collectively "Defendants") to obtain from each of them all damages,  
6 injunctive relief, attorney fees, costs, and other remedies which Plaintiffs are entitled to recover  
7 under law and equity.

## 8 **I. JURISDICTION AND VENUE**

9 1. Defendants maintain that the jurisdiction of the United States District Court for  
10 the Western District of Washington at Seattle is appropriate under the Class Action Fairness Act.

11 2. Representative Plaintiff is a resident of King County in Washington State.

12 3. Many of the wrongful acts and omissions referenced in this Complaint occurred,  
13 were initiated, were furthered, or were given assistance in King County and Washington State.

14 4. Most of the Defendants domicile in King County of Washington State.

15 5. Defendants do business in King County and Washington State.

## 16 **II. THE DEFENDANTS**

17 6. PAPA JOHN'S INTERNATIONAL, INC. ("PJ'S INTERNATIONAL") purports  
18 to be a Delaware corporation domiciled in Kentucky. PAPA JOHN'S USA, INC. ("PJ'S USA")  
19 purports to be a Kentucky corporation domiciled in Kentucky. PJ'S USA is an alter ego and/or  
20 agent of PJ'S INTERNATIONAL. For example:

21 a. All of PJ'S USA officers are contemporaneously officers of PJ'S  
22 INTERNATIONAL. As of June 29, 2010, the two CEOs of PJ'S USA were  
23 contemporaneously CEOs of PJ'S INTERNATIONAL; the president of PJ'S  
24 USA was contemporaneously the president of PJ'S INTERNATIONAL; the  
25 thirty vice-presidents of PJ'S USA were contemporaneously vice-presidents of  
26 PJ'S INTERNATIONAL; the secretary and assistant secretaries of PJ'S USA

1 were contemporaneously the secretary and assistant secretaries of PJ'S  
2 INTERNATIONAL; the treasurer and assistant treasurer of PJ'S USA were  
3 contemporaneously the treasurer and assistant treasurer of PJ'S  
4 INTERNATIONAL.

5 b. For at least five years, PJ'S USA and PJ'S INTERNATIONAL have filed  
6 all of their reports and disclosures with the Kentucky Secretary of State on the  
7 same days and even at the same times.

8 c. The officers of PJ'S INTERNATIONAL enjoy and assert complete and  
9 exclusive control over the daily operations and business of PJ'S USA.

10 d. The business of PJ'S USA by and through its officers is conducted at the  
11 same places, and at the same times, and by the same people as the business of  
12 PJ'S INTERNATIONAL.

13 e. If a distinction can be made between PJ'S USA and PJ'S  
14 INTERNATIONAL, then PJ'S USA is an agent of PJ'S INTERNATIONAL. For  
15 example, service of a complaint and summons upon PJ'S USA's registered agent  
16 in Washington State was followed by PJ'S INTERNATIONAL filing a notice of  
17 appearance before PJ'S USA did the same even though PJ'S  
18 INTERNATIONAL's registered agent had not been served with the complaint or  
19 summons.

20 7. PJ'S INTERNATIONAL asserts and exerts such complete direction, supervision,  
21 and control over the daily operations and business of PJ'S USA, intermixing and intermingling  
22 the business of PJ'S INTERNATIONAL and PJ'S USA so thoroughly, that no genuine  
23 distinction can be made between the two purportedly different entities with regard to the issues  
24 which are the subject matter of this complaint. Thus, PJ'S INTERNATIONAL and PJ'S USA  
25 are referenced hereon together as PJ'S CORPORATE.  
26

1           8.       PJ'S CORPORATE is at the apex of an international consortium which makes  
2 billions of dollars a year by marketing and selling pizza and pizza-related products and services  
3 under the "Papa John's" and/or "Papa John's Pizza" brand.

4           9.       The "Papa John's" and "Papa John's Pizza" brands are extremely valuable to PJ'S  
5 CORPORATE. To ensure that these brands preserve and grow their value, PJ'S CORPORATE  
6 requires all persons who join with it in marketing and selling pizza and pizza-related products  
7 and services to spend significant amounts of time and money in marketing the brands. PJ'S  
8 CORPORATE provides training, supervision, and other guidance and directives concerning such  
9 marketing practices. Moreover, PJ'S CORPORATE reserves and maintains actual and ultimate  
10 control over all marketing done by anyone with regard to the "Papa John's" and/or "Papa John's  
11 Pizza" brands.

12           10.     PJ'S CORPORATE directly operates at least one Papa John's Pizza restaurant in  
13 Washington State that markets and sells pizza and pizza-related products and services to  
14 consumers in Washington State.

15           11.     PJ'S CORPORATE also has combined by agreement or otherwise with other  
16 persons who have joined with PJ'S CORPORATE to market and sell pizza and pizza-related  
17 products and services under the "Papa John's" and/or "Papa John's Pizza" brand to consumers in  
18 Washington State. Some of these other persons who have joined with PJ'S CORPORATE are  
19 referenced herein collectively as "CITY PIZZA," which includes without limitation the  
20 following:

21               a.     CITY PIZZA includes EDWARD TALIAFERRO ("TALIAFERRO") and  
22 KEVIN SONNEBORN ("SONNEBORN") individually and doing business as  
23 RAIN CITY PIZZA, LLC. ("RAIN CITY"). Whether as individuals, a general  
24 partnership, a joint venture, or in some other business arrangement,  
25 TALIAFERRO and SONNEBORN have done and continue doing business  
26 under the name of RAIN CITY. TALIAFERRO and SONNEBORN jointly

1 operate, manage, control, and supervise multiple Papa John's Pizza restaurants in  
2 Washington State.

3 b. CITY PIZZA includes ROSE CITY PIZZA, L.L.C., which purports to be  
4 an Oregon limited liability company domiciled in Washington State.

5 SONNEBORN and TALIAFERRO own, operate, supervise, manage, and/or do  
6 business as ROSE CITY PIZZA, L.L.C. and other business entities which  
7 altogether own, operate, supervise, control and/or manage multiple Papa John's  
8 Pizza restaurants in Washington State.

9 c. CITY PIZZA includes SEATTLE PJ PIZZA, L.L.C., which purports to be  
10 a Washington limited liability company domiciled in Washington State.

11 SONNEBORN owns, operates, supervises, manages, and/or does business as  
12 SEATTLE PJ PIZZA, L.L.C. and other business entities which altogether own,  
13 operate, supervise, control and/or manage multiple Papa John's Pizza restaurants  
14 in Washington State.

15 d. CITY PIZZA includes PAPA WASHINGTON, L.L.C., which purports to  
16 be a Washington limited liability company domiciled in Washington State.

17 SONNEBORN owns, operates, supervises, manages, and/or does business as  
18 PAPA WASHINGTON, L.L.C. and other business entities which altogether own,  
19 operate, supervise, control and/or manage multiple Papa John's Pizza restaurants  
20 in Washington State.

21 e. CITY PIZZA includes PAPA WASHINGTON II, L.L.C., which purports  
22 to be a Washington limited liability company domiciled in Washington State.

23 SONNEBORN owns, operates, supervises, manages, and/or does business as  
24 PAPA WASHINGTON II, L.L.C. and other business entities which altogether  
25 own, operate, supervise, control and/or manage multiple Papa John's Pizza  
26 restaurants in Washington State.

f. CITY PIZZA includes PJ SOUND PIZZA, L.L.C., which purports to be a Kansas limited liability company domiciled in Washington State. SONNEBORN owns, operates, supervises, manages, and/or does business as PJ SOUND PIZZA, L.L.C. and other business entities which altogether own, operate, supervise, control and/or manage multiple Papa John's Pizza restaurants in Washington State.

12. The principal place of business for each of the constituents of CITY PIZZA is at the same location in Redmond, Washington. At this location, the constituents of CITY PIZZA intermingle their operational and marketing resources to effect their common purpose and design to profit from the marketing and selling of pizza and pizza-related services and products using the Papa John's and Papa John's Pizza brands as instructed by, permitted by, directed by, and/or agreed with PJ'S CORPORATE. Thus, the constituents of CITY PIZZA have combined by agreement or otherwise with each other and with PJ'S CORPORATE to manage, supervise, direct, and control the operations and marketing for numerous pizza restaurants utilizing the Papa John's and Papa John's Pizza brands in Washington State. All of the Defendants make money from these efforts.

13. One or more of the constituents of CITY PIZZA are alter egos and/or agents of one or more of the other constituents of CITY PIZZA. Thus, they have acted as if they are alter egos of each other with regard to the subject matter alleged herein.

14. Consistent with the foregoing, each of the Defendants negligently, recklessly, willfully, and/or intentionally caused, initiated, contributed to, assisted with, and/or agreed to accomplish the wrongful and otherwise unlawful acts and omissions referenced in this complaint.

### III. GENERAL ALLEGATIONS

15. Visual messages have been transmitted through telephone connections for about as long as telephones have existed. About the 1870s, stock exchange data was transmitted over

1 special telegraph lines which utilized stock tickers to print the data out as visual text messages.  
2 By about the 1920s, telephone connections were used to transmit and receive visual text  
3 messages via teletypewriters (TTYs). In about the 1960s, technology took a step forward with  
4 the emergence of telecommunication devices for the deaf (TDDs), allowing telephone users to  
5 use ordinary telephones to converse via visual text messages through a telephone connection. By  
6 the 1980s, a new technology emerged which permitted visual text messages to be transmitted to  
7 and received by telephones in a conversational manner through short message service (SMS)  
8 technology. In the past decade, a newer technology has emerged that, once a telephone  
9 connection is made, permits the transmission of multimedia messages which can play directly on  
10 phones via a multimedia message service (MMS). These MMS messages can include SMS-like  
11 text messages as well as audio and visual messages of different types, including without  
12 limitation moving, pictorial images (e.g., slideshows, movies, et cetera) and long, scrolling text  
13 messages. MMS technology has become widespread in the United States in the past few years.  
14 Today, billions of consumers worldwide have telephones which can receive SMS and/or MMS  
15 messages. For many consumers (e.g., hearing impaired persons), messages like these are the  
16 only way that they converse on the telephone.

17 16. In the past few years, PJ'S CORPORATE has used and/or encouraged the use of  
18 SMS and/or MMS messages by CITY PIZZA and others to market and sell pizza and pizza-  
19 related products and services under the Papa John's and Papa John's Pizza brands.

20 17. PJ'S CORPORATE plans to make billions of dollars from the marketing and sales  
21 of pizzas and pizza-related products and services via telephone connections made with  
22 consumers utilizing SMS and/or MMS messages.

23 18. CITY PIZZA has made and plans to make much money from the marketing and  
24 sales of pizzas and pizza-related products and services via the same marketing and sales channels  
25 as used, suggested, directed, and/or permitted by PJ'S CORPORATE.  
26

1           19.     However, marketing (a/k/a commercial solicitation) through message service  
2 messages is inherently injurious to consumers who have telephones and related devices with  
3 SMS and/or MMS message capabilities. In fact, such marketing has injured consumers. For  
4 example, as a consequence of marketing via message service messages:

- 5                   a.   Consumers incur increased monetary costs for their message services;
- 6                   b.   Consumers lose storage capacity on their telephones and related devices;
- 7                   c.   The limited storage capacity of the telephones and related devices can be  
8                        exhausted by unwanted message services messages resulting in the  
9                        inability of consumers to receive necessary and expected communications;
- 10                  d.   Consumers are deprived of the opportunity to immediately question a  
11                       seller of goods and services about the veracity of the seller's claims;
- 12                  e.   The privacy of consumers is invaded;
- 13                  f.   The telephone networks upon which consumers rely are used inefficiently  
14                       and harmed to the detriment of consumers;
- 15                  g.   Consumers are annoyed and harassed;
- 16                  h.   Consumers are susceptible to injury and/or are injured in other ways in  
17                       accord with proof to be presented at trial.

18           20.     In disregard of the inherent injuriousness of marketing via message service  
19 messages, Defendants proximately, negligently, recklessly, willfully, and/or intentionally caused  
20 acts and omissions which resulted recently in the creation and transmission through telephone  
21 connections of at least 5,000 unsolicited, recorded messages. These messages played  
22 commercial solicitations upon the telephones (i.e., cellular telephones) and/or related devices  
23 (i.e., pagers) of Representative Plaintiff and other residents of Washington State. These recorded  
24 messages were designed to do, and did, much if not all of the following after a telephone  
25 connection was made with the recipient's telephone or related device:

- 26                   a.   Generated audio sounds;

- b. Vibrated the receiving telephone or related device;
- c. Played a picture show (e.g., a movie) displaying multiple, detailed, color, graphical depictions of things such as pizzas and the Papa John's Pizza brand logo;
- d. Played moving, visual text messages encouraging the recipient to purchase Papa John's Pizza pizzas through a telephone connection and conversation;
- e. Presented a long, visual text message designed to initiate telephone conversations by which the recipient would, as desired by the Defendants, purchase discounted pizzas from Papa John's Pizza restaurants in Washington State; and
- f. Displayed characteristics of commercial solicitations proscribed by law.

21. Given the nature of these recorded messages and the number of consumers to whom these recorded messages were broadcast, automatic dialing and announcing devices were necessarily used to broadcast these recorded messages to consumers residing in Washington State.

#### IV. CLASS ACTION ALLEGATIONS

22. Representative Plaintiff brings this class action on behalf of herself and as a representative of the following class of persons entitled to injunctive relief:

- a. All residents of Washington State with a telephone number or pager number in the possession, custody, or control of a Defendant.

23. Representative Plaintiff also brings this class action on behalf of herself and as a representative of the following class of persons entitled to remedies including, but not limited to, damages:

- a. All residents of Washington State with a cellular telephone number or pager number to which an electronic commercial text message was transmitted by a Defendant, or someone acting on behalf of a Defendant; and
- b. All residents of Washington State to whose telephone or pager number a Defendant, or someone acting on behalf of a Defendant, directed a commercial solicitation by means of an automatic dialing and announcing device.

24. Plaintiffs' claims satisfy the numerosity, commonality, typicality, adequacy representation and superiority requirements for class action certification pursuant to Federal Rule of Civil Procedure, Rules 23(a) and 23(b)(1), 23(b)(2), and 23(b)(3) as referenced below and in accord with proof.

25. Defendants have available to them lists which identify all of the members of this class. These lists identify thousands of persons who belong to this class. Joinder of so many class members in to a single action is impracticable. In fact, given the number of class members, the only way to deliver substantial justice to all members of the class is by means of a single class action. Class members may be informed of the pendency of this class action through direct mail.

26. There are questions of fact and law common to the class, which predominate over any questions affecting only individual members. The questions of law and fact common to the class arising from Defendants' conduct include, without limitation, the following:

- a. Whether Defendants negligently and/or willfully caused violations of the Washington Consumer Protection Act;
- b. Whether Defendants negligently and/or willfully caused violations of RCW 19.190.060;

- c. Whether Defendants negligently and/or willfully caused violations of RCW 80.36.400;
- d. Whether Defendants, or someone acting on their behalf, caused transmissions of commercial text messages to residents of Washington State;
- e. Whether Defendants, or someone acting on their behalf, utilized automatic dialing and announcing devices for unlawful commercial solicitations to residents of Washington State;
- f. Whether Defendants' practices and policies will cause further violations of the Washington Consumer Protection Act;
- g. Whether Defendants' practices and policies will cause further violations of RCW 19.190.060;
- h. Whether Defendants' practices and policies will cause further violations of RCW 80.36.400;
- i. Whether Defendants conspired together to perpetuate unlawful and/or wrongful practices and conduct;
- j. Whether any Defendants are vicariously liable for the unlawful and/or wrongful practices and conduct of other Defendants; and
- k. Which Defendants are alter egos of another Defendant.

27. The questions referenced above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of Plaintiffs' claims.

28. Representative Plaintiff's claims are typical of those of the class in that she, just like the other members of the class, was the victim of the unlawful marketing practices detailed above.

1           29. A class action is the appropriate method for the fair and efficient adjudication of  
2 this controversy. Defendants have acted in a general manner to the injury and damage of the  
3 class. The presentation of separate actions by individual class members could create a risk of  
4 inconsistent and varying adjudications, establish incompatible standards of conduct for  
5 Defendants, and/or substantially impair or impede the ability of class members to protect their  
6 interests.

7           30. Further, PJ'S CORPORATE has indicated that Defendants will continue these  
8 unlawful marketing practices in order to take advantage of the increasing prevalence of  
9 telephones with the capacity to receive such wrongful and unlawful messages. Accordingly,  
10 final injunctive relief is necessary and appropriate to ensure that Defendants cease and desist  
11 their unlawful and wrongful conduct. A class action is the most efficient means to ensure that  
12 Defendants' do not damage the class in the future.

13           31. Representative Plaintiff is an adequate representative of the class because she is a  
14 member of the class and her interests do not conflict with the interests of the members of the  
15 class she seeks to represent. The interests of the members of the class will be fairly and  
16 adequately protected by Representative Plaintiff. Also, Representative Plaintiff is represented by  
17 a team of attorneys who together have extensive, multi-jurisdictional experience representing  
18 clients in complex class action litigation.

19           32. Maintenance of this action as a class action is a fair and efficient method for the  
20 adjudication of this controversy. It would be impractical and undesirable for each of the  
21 thousands of persons who comprise the class to bring separate actions. The maintenance of such  
22 separate actions would place a substantial and unnecessary burden on the courts and could result  
23 in inconsistent adjudications, while a single class action can determine, with judicial economy,  
24 the rights of all class members.

25           33. If this action is not certified as a class action, then given the number of class  
26 members, the only way that the court system will not be overburdened by a multiplicity of suits

over the subject matter of this complaint is if members of the class cannot or do not pursue an action against Defendants for reasons altogether unrelated to the merits of their claims (e.g., challenges in accessing legal counsel, the mundane realities of surviving in a challenging economy, et cetera). The only practical way to ensure that all members of the class are afforded an opportunity to obtain substantial justice with regard to the wrongs and injuries inflicted upon them by Defendants is to resolve the subject matter of this complaint through a class action.

## V. FIRST COUNT

### Violations of RCW 19.190.060

34. Plaintiffs reassert and re-allege the allegations set forth in the above paragraphs as if the same were alleged herein this count.

35. At all times material herein, Plaintiffs have been entitled to the rights, protections, and benefits provided under RCW 19.190.060.

36. The Washington State legislature noted the following when it enacted RCW 19.190.060:

The legislature recognizes that the number of unsolicited commercial text messages sent to cellular telephones and pagers is increasing. This practice is raising serious concerns on the part of cellular telephone and pager subscribers. These unsolicited messages often result in costs to the cellular telephone and pager subscribers in that they pay for use when a message is received through their devices. The limited memory of these devices can be exhausted by unwanted text messages resulting in the inability to receive necessary and expected messages.

The legislature intends [sic] to limit the practice of sending unsolicited commercial text messages to cellular telephone or pager numbers in Washington.

37. In this context, RCW 19.190.060 proscribes the transmission of electronic commercial text messages to telephone numbers assigned to Washington State consumers for cellular telephone or pager service that is equipped with SMS capability or any similar capability allowing the transmission of text messages.



The legislature finds that the use of automatic dialing and announcing devices for purposes of commercial solicitation: (1) Deprives consumers of the opportunity to immediately question a seller about the veracity of their claims; (2) subjects consumers to unwarranted invasions of their privacy; and (3) encourages inefficient and potentially harmful use of the telephone network. The legislature further finds that it is in the public interest to prohibit the use of automatic dialing and announcing devices for purposes of commercial solicitation.

47. In this context, RCW 86.36.400 proscribes the use of an automatic dialing and announcing device for purposes of commercial solicitation.

48. Negligently, recklessly, willfully, and/or intentionally, Defendants directly and/or vicariously used automatic announcing devices to broadcast messages referenced herein to Plaintiffs because the devices used to broadcast such messages necessarily dialed Plaintiffs' telephone numbers automatically and played recorded messages upon Plaintiffs' telephone devices after a connection was made.

49. These messages were unsolicited and calculated to initiate a conversation through telephone devices between Plaintiffs and Defendants by which Defendants directly and/or vicariously would encourage and facilitate Plaintiffs to purchase Papa John's pizzas and/or pizza-related products and services.

50. As referenced herein, Defendants violated RCW 80.36.400.

51. Defendants' violations of RCW 80.36.400 are emblematic of organizational policies, relationships, and agreements among the Defendants and others which have caused and, if unabated, will continue to cause future violations of RCW 80.36.400.

52. Pursuant to RCW 80.36.400, Plaintiffs are entitled to recover from Defendants \$500 in damages for each violation of RCW 80.36.400.

53. Justice requires an injunction crafted to compel Defendants to cease their unlawful policies, practices, and conduct referenced herein.

54. Plaintiffs are further entitled to all damages, attorneys' fees, costs, and treble damages as allowed by RCW 19.86.10, *et seq.*

**VII. THIRD COUNT**

**Violations of the Washington Consumer Protection Act**

55. Plaintiffs reassert and re-allege the allegations set forth in the above paragraphs as if the same were alleged herein this count.

56. At all times material herein, Plaintiffs have been entitled to the rights, protections, and benefits provided under the Washington Consumer Protection Act.

57. As referenced herein and in accord with proof to be presented at trial, Defendants engaged in unfair or deceptive acts and practices.

58. These acts and practices occurred in the scope of Defendants' combined conduct of marketing and selling pizza and pizza-related products and consumers to consumers residing in Washington State. These acts and practices occurred in the conduct of Defendants' trade and commerce in Washington State.

59. As referenced herein and in accord with proof to be presented at trial, Defendants and/or their agents injured Plaintiffs in their business or property.

60. Defendants' acts and practices as referenced herein and in accord with proof at trial were the proximate causes of these injuries.

61. Defendants' acts and practices are emblematic of organizational policies, relationships, and agreements among the Defendants and others which have caused and, if unabated, will continue to cause future violations of the Washington Consumer Protection Act.

62. Justice requires an injunction crafted to compel Defendants to cease their unlawful policies, practices, and conduct referenced herein.

63. Plaintiffs are further entitled to all damages, attorneys' fees, costs, and treble damages as allowed by RCW 19.86.10, *et seq.*

**VIII. FOURTH COUNT**

**Negligence**

64. Plaintiffs reassert and re-allege the allegations set forth in the above paragraphs as if the same were alleged herein this count.

65. Among other duties, Defendants owed a duty not to damage Plaintiffs. However, Defendants and/or their agents permitted, suffered, required, ratified, directed, and/or otherwise proximately caused the acts and omissions that have damaged Plaintiffs as referenced herein. If any of the Defendants and/or their agents had not been negligent (or worse) in their supervision, management, direction, instruction, training, guidance, assistance, and/or control of each other, their agents, or themselves, then the marketing practices referenced herein would have comported with Washington State law, and none of the inherently injurious messages referenced herein would have been broadcast and/or transmitted to the telephones or telephone devices of Plaintiffs.

66. For such reasons, Plaintiffs are entitled to recover from Defendants the damages referenced herein.

**IX. PRAYER FOR RELIEF**

WHEREFORE, on behalf of herself and all others similarly situated, Representative Plaintiff demands judgment against Defendants and prays that this Court to do the following:

A. Grant a permanent injunction enjoining Defendants, their officers, successors, agents, assigns, and all persons in active concert or participation with them, from engaging in the unfair, deceptive, and/or unlawful practices which are the subject matter of this action.

B. Order Defendants to make Plaintiffs whole with an award of damages in accord with the allegations of this complaint and proof to be presented at trial.

C. Order Defendants to make Plaintiffs whole by providing appropriate prejudgment interest, in an amount to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful practices.

1 D. Order Defendants to pay Plaintiffs punitive and/or treble damages to the fullest  
2 extent allowed by law.

3 E. Award Representative Plaintiff and the other class members the costs of this  
4 action, including attorneys' fees, as authorized by the Washington Consumer Protection Act, as  
5 sounds in tort and contract, and/or as permitted by any other law.

6 F. Grant any additional or further relief as provided by law or equity, which the  
7 Court finds appropriate, equitable, or just.

8 **X. JURY DEMAND**

9 Representative Plaintiff demands a jury trial on all issues so triable.

10 DATED: September 13, 2010

KIRBY LAW GROUP

11 /s/ Albert H. Kirby  
12 Albert H. Kirby, WSBA #40187  
13 Attorneys for Plaintiff Maria Agne  
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**DECLARATION OF SERVICE**

I, the undersigned, certify under penalty of perjury under the laws of the United States of America, that on the below date, a true copy of PLAINTIFF'S FIRST AMENDED COMPLAINT will be or has been served on the persons listed below in the manner shown as follows:

Joseph P. Lawrence  
Vanessa M. Vanderbrug  
LAWRENCE & VERSNEL, PLLC  
4120 Columbia Center  
701 Fifth Avenue  
Seattle, WA 98104  
Fax: (206) 908-8552

☐ Legal Messenger  
☐ Facsimile  
☐ United States Mail, First Class  
☐ Direct Email  
☒ CM/ECF Notification  
☐ Other: \_\_\_\_\_

James Howard  
Jessica M. Andrade  
DORSEY & WHITNEY LLP  
701 Fifth Avenue, Suite 6100  
Seattle, WA 98104  
Fax: (206) 903-8820

☐ Legal Messenger  
☐ Facsimile  
☐ United States Mail, First Class  
☐ Direct Email  
☒ CM/ECF Notification  
☐ Other: \_\_\_\_\_

Dated this 13th day of September 2010 in Seattle, Washington.

/s/ Albert H. Kirby  
Albert H. Kirby, WSBA #40187