

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

STEVEN GOLDSMITH, on behalf of)
himself and all others similarly situated,)

Plaintiff,)

v.)

LEE ENTERPRISES, INC. et al.,)

Defendants.)

Case No.: 4:19-cv-01772

JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT

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PLAINTIFF STEVEN GOLDSMITH (“Plaintiff”), on behalf of himself and all others similarly situated, files this Amended Complaint against Defendants Lee Enterprises, Inc.; Lee Enterprises Missouri, Inc.; St. Louis Post-Dispatch LLC; and Pulitzer Inc., d/b/a St. Louis Post-Dispatch (collectively “Defendants”) based on personal knowledge as to his own actions and on information and belief, based on the investigation of counsel, as to Defendants’ conduct and practices.

INTRODUCTION

1. Plaintiff brings this class action individually and on behalf of a Class of similarly situated individuals (referred to collectively as “Class Members”) who subscribe or subscribed to the *St. Louis Post-Dispatch* and were double-billed for certain days based on Defendants’ acts or practice of including the same (or overlapping) days in consecutive or separate invoices or charges.

2. Defendants’ actions as alleged herein violate the Missouri Merchandising Practices Act (“MMPA”), § 407.010 *et seq.*, by means of unfair practices and deception, constitute unjust enrichment and money had and received, breached their contracts with Plaintiff and Class Members, and breached the implied covenant of good faith and fair dealing.

THE PARTIES

Plaintiff

3. Plaintiff Steven Goldsmith is a resident of St. Louis County and a citizen of the State of Missouri. Since before the relevant class period, beginning five years before the filing of this lawsuit, he had a subscription to the *St. Louis Post-Dispatch* for personal, family, or household purposes, and, during the Class Period, he was billed for overlapping days in consecutive or separate invoices.

Defendants

4. Defendant Lee Enterprises, Inc. is a Delaware corporation, with its principal place of business at 201 N. Harrison Street, Suite 600, Davenport, Iowa 52801. Its registered agent in Iowa is Corporation Service Company, 505 5th Avenue, Des Moines, IA 50309. According to its filings with the Missouri Secretary of State’s website, the name it uses in Missouri is Lee Enterprises Missouri, Incorporated. The registered agent for Lee Enterprises Missouri, Inc. is CSC-Lawyers Incorporating Service Company, 221 Bolivar, Jefferson City, MO 65101.

5. Defendant Lee Enterprises, Inc. purchased and currently owns Defendant Pulitzer Inc., a Delaware corporation that does business in Missouri as the *St. Louis Post-Dispatch*. The address for Defendant Pulitzer Inc. listed on the Missouri Secretary of State’s website is 201 N. Harrison St., Ste 600, Davenport, IA 52801. The registered agent for Defendant Pulitzer Inc. is CSC-Lawyers Incorporating Service Company, 221 Bolivar, Jefferson City, MO 65101. On the Missouri Secretary of State’s website, the *St. Louis Post-Dispatch* is registered as a fictitious name, with Pulitzer Inc. listed as its owner. Defendant Lee Enterprises, Inc. therefore owns the *St. Louis Post-Dispatch*.

6. Defendant St. Louis Post-Dispatch LLC is a Delaware limited liability company and is registered in the State of Missouri. Its registered agent in Missouri is CSC-Lawyers Incorporating Service Company, 221 Bolivar, Jefferson City, MO 65101. On information and belief, Defendant St. Louis Post-Dispatch LLC publishes the *St. Louis Post-Dispatch* and is owned by Lee Enterprises, Inc.

JURISDICTION AND VENUE

7. This is a class action under Rule 23 of the Federal Rules of Civil Procedure.

8. As Defendants alleged in removing this case, this Court has jurisdiction pursuant to the Class Action Fairness Act, 18 U.S.C. § 1332(d). Because Plaintiff and Defendants are

citizens of different states, there is minimal diversity. The total claims of Class Members exceed \$5,000,000 exclusive of interest and costs. There are at least 100 Class Members.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS REGARDING DEFENDANTS' LIABILITY

10. The *St. Louis Post-Dispatch* is a daily newspaper serving the greater St. Louis metropolitan area.

11. Defendants sell the *St. Louis Post-Dispatch* through a delivery service, under which the newspaper is delivered to the subscriber's address.

12. Defendants bill or charge subscribers to the *St. Louis Post-Dispatch* for their subscriptions in two ways. They bill them in invoices that they send to subscribers, or charge them amounts that they collect from subscribers' accounts.

13. The invoices contain what are called "terms" (or date ranges or periods) that cover specified beginning and end dates. Thus, a specified amount of money is shown as due in an invoice to the subscriber, or if the subscriber has authorized direct charges to his, her, or its credit card or bank account, is charged to the subscriber, for each such term.

14. Because these invoices are generally sent before the term begins – or at least before it ends – it is an offer, which the subscriber accepts by paying the amount billed therein.

15. For more than five years, Plaintiff has been a subscriber to the *St. Louis Post-Dispatch*. The invoices that Plaintiff receives from Defendants specify the date of the invoice, the term for the invoice, and the amount of money that is due for that term.

16. While the term for one invoice should begin on the day following the last day of the previous term, on many occasions the dates in a term for which Plaintiff was billed included days that were a part of the term for Plaintiff's previous invoice and for which Plaintiff had already paid. This means that Plaintiff has been double-billed for overlapping days that are

improperly included in two separate invoices. Nothing in the invoices that Plaintiff received mentions an overlap in the dates that make up a term, and the invoices do not refer to any other source regarding what the amount or term in the invoice represents. Nor do the invoices refer to any “Terms of Service” located elsewhere or to any disclosure in the newspaper.

17. Plaintiff first noticed that he was being double-billed by Defendants approximately three or four years prior to the filing of this lawsuit. With respect to certain dates on which he was double-billed, but not each date on which he was double-billed, Plaintiff called the *St. Louis Post-Dispatch* to report it and received a credit for days for which he was double-billed. The *Post-Dispatch*’s representative never attempted to justify the double-billing.

18. The *Post-Dispatch*’s correction of its billing on those occasions establishes that Plaintiff was in fact being double-billed. But on other occasions when he was double-billed for overlapping days, Plaintiff neither reported it nor received a credit for having paid for such days.

19. Despite their knowledge of their double-billing practice, Defendants have continued to engage in this practice. Thus, not only did Defendants double-bill Plaintiff for his subscription, but they did so knowingly and deliberately.

20. The following invoices that Plaintiff received provide examples of how Plaintiff was billed for overlapping days.

21. Plaintiff received an invoice dated August 16, 2018 for \$82.00 that specified it was for the 56-day term of July 22, 2018 through September 15, 2018.¹ That invoice (as do the subsequently referenced invoices) states that a check should be made payable to St. Louis Post-Dispatch. Plaintiff paid this invoice by check.

¹ See Exhibit A, copies of Plaintiff’s invoices.

22. The next invoice that Plaintiff received and paid was dated September 14, 2018, and was for \$82.00 for the 56-day term of September 15, 2018 through November 9, 2018.²

23. As seen by the dates set forth above, the August 16, 2018, invoice included in its term September 15, 2018, which was also included in the term on the invoice of September 14, 2018. The effect of including this day in the terms for both invoices is that Plaintiff was double-billed for this overlapping day. Plaintiff paid for September 15, 2018 as part of his payment of the August 16, 2018 invoice, but then he was billed and paid for this day again in his payment of the September 14, 2018 invoice. Plaintiff did not receive a credit based on being double-billed for September 15, 2018.

24. The next invoice that Plaintiff received and paid was dated October 21, 2018 for \$66.00 its term of 56 days covered October 31, 2018 through December 25, 2018, even though the period of October 31, 2018 through November 9, 2018 had been included in the term on the September 14, 2018, invoice. Plaintiff called the *St. Louis Post-Dispatch* to report this overlap and, in response, was given a credit for these days.

25. Plaintiff's next invoice was dated December 12, 2018, and was \$66.00 for the 56-day term of December 22, 2018 through February 15, 2019. Because Plaintiff's prior invoice had been for a term lasting through December 25, 2018, this invoice contained the overlapping dates of December 22, 2018 through December 25, 2018. Thus, Plaintiff was again double-billed even though he had reported this issue in connection with his previous invoice and many prior invoices. Plaintiff paid this invoice in full. He did not receive a credit based on being double billed for December 22, 2018 through December 25, 2018.

² With respect to this and later invoices, Defendants agreed to a renegotiated amount having nothing to do with the days included in the term for the invoice.

26. Plaintiff's experience is not unique. On information and belief, many other subscribers to the *St. Louis Post-Dispatch* have been billed or charged for overlapping days in consecutive or separate bills or charges.

27. For example, another subscriber, referred to herein as Non-Party Subscriber No. 1, was double-billed in 2018 on multiple occasions. That subscriber received an invoice dated July 7, 2018; the amount due was \$82.00 for the term of July 17, 2018 through September 10, 2018. The next invoice that Non-Party Subscriber No. 1 received was dated August 26, 2018; the amount due was \$82.00 for the term of September 5, 2018 through October 30, 2018. The August 26, 2018 invoice therefore included the overlapping dates of September 5, 2018 through September 10, 2018.

28. Non-Party Subscriber No. 1 also received an invoice dated March 23, 2018; the amount due was \$71.40 for the term of April 2, 2018 through May 27, 2018. Their next invoice was dated May 15, 2018; the amount due was \$82.00 for the term of May 22, 2018 through July 16, 2018, and thus included the overlapping dates of May 22, 2018 through May 27, 2018.

29. Non-Party Subscriber No.1 paid the above invoices and therefore paid twice for the overlapping dates.

30. Non-Party Subscriber No. 2 is another subscriber who was double-billed for overlapping days in separate invoices. Non-Party Subscriber No. 2 received an invoice dated October 25, 2018, for \$52.00 for the term of November 4, 2018 through December 29, 2018. This subscriber's next invoice was dated December 18, 2018, for \$52.00 for the term of December 25, 2018 through February 18, 2019. As shown by these dates, Non-Party Subscriber No. 2 was billed for December 25, 2018 through December 29, 2018 under both invoices.

31. Non-Party Subscriber No. 2 was again double-billed in the next invoice, dated February 8, 2019 for \$68.00. That invoice was for the term of February 18, 2019, through April 14, 2019, even though February 18, 2019, had already been included in the December 18, 2018, invoice.

32. Non-Party Subscriber No. 2 paid the above invoices and therefore paid twice for the overlapping dates.

33. Defendants did not indicate on their invoices or charges that the date ranges for the subscriptions were subject to change. Nor did Defendants' invoices or charges mention, refer to, or incorporate any terms or conditions that are specified elsewhere. Thus, language that Defendants post outside the invoice or charge is not part of any contract Defendants have with Plaintiff or Class Members.

34. The impropriety of Defendants' double-billing practice is evidenced by the credits Defendants gave Plaintiff when he called to report it. On no such occasion did Defendants attempt to justify the double-billing; instead they simply provided refunds.

35. Nor is Defendants' practice of double-billing explained or excused by the fact that for certain terms Plaintiff and Class Members have reached agreements with Defendants to pay lower than the Defendants' full retail price. The agreements that Plaintiff and Class Members reached with Defendants for any particular term governs what they were to pay for that particular term, regardless of the prices that Defendants sold to others. When Plaintiff and Class Members paid the agreed amount for one term, and were subsequently billed for and paid for overlapping days, they were double-billed, whether or not their agreement was for less than what Defendants consider the full retail price of the paper.

**DEFENDANTS' DOUBLE-BILLING PRACTICES ARE UNETHICAL AND VIOLATED
ESTABLISHED ETHICAL STANDARDS**

36. Defendants' practice of double-billing, as alleged herein, violated generally accepted ethical principles of business conduct.

37. The basis for the allegation that it was unethical to engage in the above practices comes, in part, from established ethical principles recognized by the Direct Marketing Association ("DMA"), the leading industry association for companies that, like Defendants, market directly to consumers, and the American Marketing Association, "the leading organization for marketers [and] the trusted go-to resource for marketers and academics."³

DMA Ethical Guidelines

38. DMA published principles of ethical business practices in Direct Marketing Association's Guidelines for Ethical Business Practices ("DMA Ethical Guidelines") (2014), Exhibit B, which is incorporated herein by reference.

39. These Ethical Guidelines "are intended to provide individuals and organizations involved in direct marketing in all media with generally accepted principles of conduct." *Id.* at 2.

40. The Ethical Guidelines apply to all marketers, not just those that belong to DMA. DMA states that they "reflect DMA's long-standing policy of high levels of ethics and the responsibility of the Association, its members, *and all marketers* to maintain consumer and community relationships that are based on fair and ethical principles." *Id.* (emphasis added).

41. DMA's Ethical Guidelines are set forth in a series of "Articles," each of which states a separate ethical principle.

³ <https://www.crunchbase.com/organization/american-marketing-association#section-overview> (accessed 7/2/2019).

42. Article #1 of DMA's Ethical Guidelines is "HONESTY AND CLARITY OF OFFER." It states: "All offers should be clear, honest and complete so that the consumer may know the exact nature of what is being offered"

43. By not stating that the term or date range of the offer set forth in the invoice is subject to change, Defendants violated this principle because their offer, as set forth in the invoice, was not clear, honest and complete.

44. Article #2 of DMA's Ethical Guidelines is "ACCURACY AND CONSISTENCY." It states: "Simple and consistent statements or representations of all the essential points of the offer should appear in the promotional material. The overall impression of an offer should not be contradicted by individual statements, representations or disclaimers."

45. DMA has published a companion volume to its Ethical Guidelines called *Do the Right Thing: A Companion to DMA's Guidelines for Ethical Business Practice* (Revised January 2009) ("*Do the Right Thing*"), Exhibit C, incorporated herein by reference. That volume is intended to "give[] direct marketers advice on how to assure their business practices comply with" the Ethical Guidelines. *Do the Right Thing* at 2.

46. In *Do the Right Thing*, DMA elaborates on Article #2 of its ethical principles. It states, "Keep in mind that a disclaimer or disclosure alone usually is not enough to remedy a misleading or false claim."

47. By not stating in the invoice that the term or date range of the offer set forth in the invoice is subject to change, Defendants violated the ethical principle in DMA's Article #2 because the invoice did not contain all the essential points of the offer. It omitted the point that the term or date range was subject to change.

48. In July 2018, DMA (then going by the name “Data & Marketing Association”) was acquired by the Association of National Advertisers (“ANA”), “one of the oldest and most venerated trade association in the marketing industry.”⁴ ANA adopted DMA’s Ethical Guidelines, which it publishes on its web site as Part II of its Member Principles under the heading, “Marketing.”⁵ Thus, these ethical principles are still current and applicable.

AMA Statement of Ethics

49. The American Marketing Association (“AMA”) “commits itself to promoting the highest standard of professional ethical norms and values ...” Exhibit D.⁶ As such, it has published its “Statement of Ethics.” *Id.* AMA states that “marketers are expected to embrace the highest professional ethical norms and the ethical values implied by our responsibility toward multiple stakeholders (e.g., customers ...).” *Id.* Thus, the Statement of Ethics contains “Ethical Norms,” which “are established standards of conduct that are expected and maintained by society and/or professional organizations.” *Id.*

50. The AMA’s Ethical Norms state that marketers must “consciously avoid[] harmful actions and omissions,” “striv[e] for good faith and fair dealing,” “avoid[] deception in ... pricing, communication, and delivery of distribution,” and affirm “core values” of honesty, ... fairness [and] transparency.”

51. By changing the date range set forth in the invoice or charge and including overlapping dates in subsequent invoices and charges, resulting in double-billing, Defendants violated these Ethical Norms because, among other reasons, they did not strive (or achieve) good

⁴ <https://www.ana.net/content/show/id/49074> (accessed 7/2/2019).

⁵ <https://thedma.org/accountability/ethics-and-compliance/dma-ethical-guidelines/> (accessed 7/2/2019)

⁶ Available at <https://www.ama.org/codes-of-conduct/> (accessed 7/2/2019).

faith and fair dealing, did not avoid deception in pricing and did not affirm the core values of honesty, fairness and transparency.

52. The AMA has also published “Ethical Values,” which “represent the collective conception of what communities find desirable, important and morally proper.” *Id.* AMA states that marketers’ Ethical Values include honesty, meaning “[s]triv[ing] to be truthful in all situations and at all times” and “[h]onoring our explicit and implicit commitments and promises.”

53. Another Ethical Value, according to the AMA, is fairness, which includes “[r]epresent[ing] products in a clear way in selling, advertising and other forms of communication,” “avoid[ing] false, misleading and deceptive promotion,” and “[r]efusing to engage in ‘bait-and-switch’ tactics.” *Id.*

54. Yet another Ethical Value, according to the AMA, is “Transparency,” which includes “[s]triv[ing] to communicate clearly with all constituencies.” *Id.*

55. By not disclosing that the date range in the invoices was subject to change and by changing the date range in the invoice, resulting in double-billing, Defendants violated these Ethical Values, because, among other reasons, they were not truthful (to say nothing of not striving to be truthful) in all situations, did not honor their explicit and implicit commitments and promises, did not represent their products in a clear way, did not avoid false, misleading and deceptive promotion, engaged in a “bait-and-switch” tactic, and did not communicate clearly.

CLASS ACTION ALLEGATIONS

56. **The Class.** Plaintiff brings this action on his own behalf and as a class action on behalf of all subscribers to the *St. Louis Post-Dispatch* who have been and will be harmed by Defendants’ actions described herein (“the Class”), as well as a Subclass of subscribers in

Missouri who purchased their subscriptions for personal, family, or household purposes (“MMPA Subclass”).

57. Specifically, Plaintiff seeks to represent the following Class:

All subscribers to the *St. Louis Post-Dispatch* who, within the applicable period of limitations preceding the filing of this lawsuit to the date of class certification, were billed or charged for the same day or days through consecutive or separate bills or charges.

(“Class”).

All Class Members within the State of Missouri who had or purchased a subscription to the *St. Louis Post-Dispatch* for personal, family, or household purposes.

(“MMPA Subclass”).

Excluded from the Class are officers, directors and employees of Defendants, counsel and members of the immediate families of counsel for Plaintiff herein, and the judge presiding over this action and any member of the judge’s immediate family.

58. This action is properly maintainable as a class action under Fed. R. Civ. P. 23.

59. Plaintiff reserves the right to re-define the Class prior to class certification.

60. **Numerosity.** The members of the proposed Class are so numerous that joinder of all members is impracticable. The precise number of Class Members is unknown at this time, as such information is in the exclusive control of Defendants.

61. **Common Questions of Law and Fact and Predominance.** Numerous questions of law and fact are common to Plaintiff and the Class Members, and predominate over any individual questions. Such common legal and factual questions include, but are not limited to:

- a. Whether Defendants have billed or charged subscribers for overlapping days in consecutive or separate invoices or charges;
- b. Whether Defendants’ double-billing practice breached their contracts with subscribers or breached the implied covenant of good faith and fair dealing;

- c. Whether Defendants' double-billing practice was unfair and/or deceptive in violation of Mo. Rev. Stat. § 407.020;
- d. What process or system Defendants use to determine the dates in a term for which a subscriber is billed or charged;
- e. Whether as a result of including overlapping days in consecutive or separate invoices or charges Defendants have received excessive amounts of money from their subscribers;
- f. Whether Defendants' actions described herein constitute unjust enrichment or money had and received;
- g. Whether Plaintiff and the Class are entitled to compensatory and statutory damages and the amount of such damages based on Defendants' acts or practice of including overlapping days in consecutive or separate invoices or charges.

62. **Typicality.** Plaintiff's claims are typical of the claims of the Class Members.

Plaintiff and all Class Members have suffered damages as a result of Defendants' actions and practices alleged herein.

63. **Adequacy of Representation.** Plaintiff will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and consumer class actions.

64. Plaintiff and counsel are committed to prosecuting this action vigorously on behalf of the Class, and do not have any interests that are contrary to or in conflict with those of the Class they seek to represent.

65. **Superiority.** A class action is superior to all other available methods for fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

66. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and varying adjudications concerning the subject of this action.

67. Absent a class action, the vast majority of Class Members likely would not be in a position to litigate their claims individually and would have no effective remedy at law through which to vindicate their claims against Defendants and be made whole.

68. Class treatment will conserve the resources of the courts and the litigants, and further efficient adjudication of Class Member claims.

COUNT I: BREACH OF CONTRACT
(Plaintiff and the Class)

69. Plaintiff incorporates by reference all preceding paragraphs of this Amended Complaint as if fully set forth herein, and further alleges as follows:

70. Plaintiff and Class Members entered into contracts with Defendants for subscriptions to the *St. Louis Post-Dispatch* under which Defendants billed or charged Plaintiff and Class Members for their subscriptions for certain terms or periods, and Plaintiff and Class Members agreed to pay, and did pay, the invoices or charges for their subscriptions associated with such terms.

71. The provisions of those contracts are set forth in the invoices. Class Members agreed to those contracts when they paid the amounts billed.

72. No provision of the invoices or charges mentioned, referred to, or incorporated terms and conditions that were not set forth therein.

73. Plaintiff and Class Members performed their obligations under the contracts by paying the invoices or charges for their subscriptions.

74. Defendants breached their contracts with Plaintiff and Class Members by billing or charging them for overlapping days in consecutive or separate invoices or charges. The parties' agreements for the subscriptions required payment of amounts set forth in specific invoices or charges that covered a particular term or period, but Defendants breached the

agreements when they required additional payment for days for which Plaintiff and Class Members had already paid.

75. Plaintiff and Class Members thereby suffered damages as a result of being double-billed for overlapping days.

76. Such damages include moneys paid for overlapping days, which constituted the loss in value of Defendants' performance.

77. Where Plaintiff and Class Members spent time and effort in contacting the *Post-Dispatch* and reporting the double-billing, the value of that time and effort constituted incidental damages incurred in a reasonable effort to avoid loss.

78. Defendants had reason to foresee that Plaintiff and Class Members would spend time and effort in contacting Defendants about the double-billing. That was especially the case because Plaintiff had repeatedly contacted the *Post-Dispatch* to obtain refunds for the amounts double-billed.

79. WHEREFORE, Plaintiff and the Class pray for the relief requested in the Prayer for Relief set forth below in this Amended Complaint.

COUNT II: BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(Plaintiff and the Class)

80. Plaintiff incorporates by reference all preceding paragraphs of this Amended Complaint as if fully set forth herein, and further alleges as follows:

81. "In Missouri, all contracts have an implied covenant of good faith and fair dealing." *Glenn v. HealthLink HMO, Inc.*, 360 S.W.3d 866, 877 (Mo. App. E.D. 2012).

82. That covenant “requires that performance and enforcement terms be carried out in good faith” *Schell v. LifeMark Hosps. of Missouri*, 92 S.W.3d 222, 229 (Mo. App. W.D. 2002).

83. The duty of good faith “require[s] behavior on behalf of the parties that comports with the ‘reasonable expectations of the parties’ in light of their purposes in contracting.” *Id.* (citation omitted).

84. “A party breaches the covenant of good faith and fair dealing if it exercises a judgment conferred by the express terms of the agreement in a manner that evades the spirit of the agreement and denies the other party the expected benefit of the agreement.” *Glenn v. HealthLink HMO, Inc.*, 360 S.W.3d 866, 877 (Mo. App. E.D. 2012).

85. Plaintiff and Defendants entered into a series of agreements whereby Defendants agreed to provide newspapers for certain terms or periods in exchange for payment of the amounts set forth in Defendants’ invoices, and Plaintiff made such payments. Similarly, Class Members entered into such agreements with Defendants.

86. Even though Plaintiff and Class Members had paid for the complete term in each such contract, in subsequent invoices or charges Defendants billed for overlapping days, thereby double-billing for those days.

87. In so doing, Defendants acted, or exercised a judgment, in a manner that evaded the spirit of the agreements and denied Plaintiff and Class members the expected benefits of their newspaper subscriptions.

88. Specifically, by including overlapping days in consecutive or separate invoices or charges Defendants acted to deny Plaintiff and Class Members the expected benefit of their prior

agreements, in that the overlapping days included in each subsequent invoice or charge were for days that were already included and paid for as part of the prior agreement.

89. Defendants acted in bad faith. Defendants' bad faith is shown by the fact that, even though they repeatedly gave Plaintiff credit for double-billed days when he called to report that they had double-billed him, they persisted in double-billing him.

90. No provision in the agreements between the parties allowed Defendants to include overlapping days in consecutive or separate invoices or charges.

91. No provision in the agreements between the parties incorporated or even mentioned any terms or conditions that were not specified in the invoices or charges sent by Defendants to Class Members.

92. Defendants' actions set forth herein breached the implied covenant of good faith and fair dealing.

93. Such conduct of Defendants caused or directly contributed to cause damage to Plaintiff and Class Members.

94. Such damages include moneys paid for overlapping days, which constituted the loss in value of Defendants' performance.

95. Where Plaintiff and Class Members spent time and effort in contacting the *Post-Dispatch* and reporting the double-billing, the value of that time and effort constituted incidental damages incurred in a reasonable effort to avoid loss.

96. Defendants had reason to foresee that Plaintiff and Class Members would spend time and effort in contacting Defendants about the double-billing. That was especially the case because Plaintiff repeatedly contacted the *Post-Dispatch* about the double-billing and, in response, Defendants gave him refunds for the amounts double-billed.

97. WHEREFORE, Plaintiff and the Class pray for the relief requested in the Prayer for Relief set forth below in this Amended Complaint.

COUNT III: UNJUST ENRICHMENT
(Plaintiff and the Class)

98. Plaintiff incorporates by reference all preceding paragraphs of this Amended Complaint as if fully set forth herein, and further alleges as follows:

99. Substantial benefits have been conferred upon Defendants from Plaintiff and Class Members by Plaintiff and Class Members paying for certain days of their subscriptions twice as a result of being double-billed. Defendants have knowingly and willingly accepted and enjoyed the benefits of its double-billing.

100. Defendants either knew or should have known that they were double-billing their subscribers by including overlapping days in consecutive or separate bills or charges and that they were therefore accepting money from subscribers for days that the subscribers had already paid for in full.

101. For Defendants to retain the benefit of these double payments under these circumstances is inequitable.

102. Defendants' acceptance and retention of these benefits under the circumstances make it inequitable for Defendants to retain these benefits without payment of the value to Plaintiff and the Class.

103. Plaintiff and the Class are entitled to recover from Defendants all amounts wrongfully collected and improperly retained by Defendants based on their practice of double-billing subscribers.

104. As a direct and proximate result of Defendants' wrongful conduct and unjust enrichment, and in the alternative to the claim for breach of contract, Plaintiff and the Class are

entitled to restitution from, and institution of, a constructive trust disgorging all profits, benefits, and other compensation obtained by Defendants, plus attorneys' fees, costs, and interest thereon.

105. WHEREFORE, Plaintiff and the Class pray for the relief requested in the Prayer for Relief set forth below in this Amended Complaint.

COUNT IV: MONEY HAD AND RECEIVED
(Plaintiff and the Class)

106. Plaintiff incorporates by reference all preceding paragraphs of this Amended Complaint as if fully set forth herein, and further alleges as follows:

107. Defendants have received money from Plaintiff and the Class for selling subscriptions to the *St. Louis Post-Dispatch*, which includes money that they received as a result of their billing or charging subscribers for overlapping days in consecutive or separate invoices or charges, that in equity and good conscience should be returned to Plaintiff and the Class.

108. It is unjust for Defendants to accept and retain this money that they received by billing or charging Plaintiff and Class Members for the same day or days in consecutive or separate invoices or charges.

109. As an alternative to the claim for breach of contract, Defendants should return to Plaintiff and Class Members the money they received by double-billing or double-charging them.

110. WHEREFORE, Plaintiff and the Class pray for the relief requested in the Prayer for Relief set forth below in this Amended Complaint.

COUNT V: VIOLATION OF THE MMPA BY MEANS OF UNFAIR PRACTICES
(Plaintiff and the MMPA Subclass)

111. Plaintiff incorporates by reference each of the allegations contained in the preceding paragraphs of this Amended Complaint, and further alleges as follows:

112. The actions of Defendants alleged herein violated, and continue to violate, the Missouri Merchandising Practices Act (“MMPA”), Mo. Rev. Stat. § 407.010 *et seq.*, because they constitute unfair practices.

113. The MMPA, Mo. Rev. Stat. § 407.020, states in relevant part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . is declared to be an unlawful practice.

114. Plaintiff, on behalf of himself and all others similarly situated in Missouri, is entitled to bring this action pursuant to Mo. Rev. Stat. § 407.025, which provides in relevant part that:

1. Any person who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 407.020, may bring a private civil action in either the circuit court of the county in which the seller or lessor resides or in which the transaction complained of took place, to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party attorney’s fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary or proper.

2. Persons entitled to bring an action pursuant to subsection 1 of this section may, if the unlawful method, act or practice has caused similar injury to numerous other persons, institute an action as representative or representatives of a class against one or more defendants as representatives of a class In any action brought pursuant to this section, the court may in its discretion order, in addition to damages, injunction or other equitable relief and reasonable attorney’s fees.

115. The MMPA defines “merchandise” as any objects, wares, goods, commodities, intangibles, real estate or services. Mo. Rev. Stat. § 407.010. Thus, the newspapers that Defendants sell to subscribers are merchandise.

116. In selling subscriptions to the *St. Louis Post-Dispatch* to its subscribers, Defendants are engaging in the sale of merchandise in trade or commerce.

117. Plaintiff and the MMPA Subclass purchased subscriptions to the *St. Louis Post-Dispatch* for personal, family, or household purposes and were billed and/or charged for overlapping days in consecutive or separate invoices or charges. They were double-billed by Defendants for certain days by having such days included in two separate invoices or charges.

118. The Missouri Attorney General has promulgated regulations defining the meaning of unfair practice as used in the MMPA. That definition states that unethical practices are unfair in violation of the above statute. Mo. Code Regs. tit. 15, § 60-8.020.

119. Pursuant to the MMPA, Defendants have a duty not to engage in any unethical or unfair practice in connection with the sale of any merchandise in trade or commerce. For the reasons stated herein, they breached that duty.

120. Billing or charging subscribers to the *St. Louis Post-Dispatch* for overlapping days as part of two separate invoices or charges, so that the subscribers are double-billed for these days, is unfair and unethical and violates generally accepted principles of ethical business conduct, including the principles of the Direct Marketing Association and American Marketing Association, as set forth above.

121. Plaintiff and the MMPA Subclass thereby suffered ascertainable loss by paying for certain days of their subscription on two separate occasions based on Defendants' unfair acts or practice, or otherwise as a result of the time and effort they were forced to expend to obtain a credit on any occasions where they noticed the double-billing and reported the issue to Defendants. Had Plaintiff and the MMPA Subclass received what they had bargained for, they would have received their subscriptions for the amounts that Defendants agreed to for particular terms or date ranges, but instead they paid Defendants more than the agreed to amounts for particular terms or date ranges.

122. Defendants' acts and practices alleged herein have directly, foreseeably, and proximately caused loss, damages, and injury to Plaintiff and the MMPA Subclass in an amount to be determined at trial.

123. Defendants' unfair and unethical acts and practices in violation of the MMPA were performed willfully and wantonly, were outrageous, and were done in reckless indifference to the rights of Plaintiff and MMPA Subclass.

124. WHEREFORE, Plaintiff and the MMPA Subclass pray for the relief requested in the Prayer for Relief set forth below in this Amended Complaint.

COUNT VI: VIOLATION OF THE MMPA BY MEANS OF DECEPTION
(Plaintiff and the MMPA Subclass)

125. Plaintiff incorporates by reference all preceding paragraphs of this Amended Complaint as if fully set forth herein, and further alleges as follows:

126. The actions of Defendants alleged herein violated, and continue to violate, the MMPA because they constitute deception.

127. Mo. Rev. Stat. § 407.020.1 prohibits “[t]he act, use or employment by any person of any ... deception ... in connection with the sale or advertisement of any merchandise in trade or commerce.”

128. The Missouri Attorney General has promulgated regulations defining the meaning of deception as used in the MMPA. That definition states that deception is any “method, act, use, practice, advertisement or solicitation that has the tendency or capacity to mislead, deceive or cheat, or that tends to create a false impression.” Mo. Code Regs. Ann. tit. 15, § 60-9.020.

129. Pursuant to the MMPA, Defendants have a duty not to engage in any deception in connection with the sale or advertisement of any merchandise in trade or commerce. For the reasons stated herein, they breached that duty.

130. Billing or charging subscribers to the *St. Louis Post-Dispatch* for certain overlapping days as part of two separate invoices or charges, so that such subscribers are double-billed for these days, constitutes deception under the MMPA, because this act or practice has the tendency or capacity to mislead, deceive, cheat, and/or create a false impression.

131. Specifically, Defendants' act or practice of double-billing their subscribers has the tendency to create a false impression and mislead them as to what dates were included in and paid for as part of their previous invoice or charge, and to deceive and cheat them into paying for the same days twice.

132. Defendants' deceptive acts and practices have directly, foreseeably, and proximately caused loss, damages and injury to Plaintiff and the MMPA Subclass.

133. Defendants' deceptive acts and practices in violation of the MMPA were performed willfully and wantonly, were outrageous and were done in reckless indifference to the rights of Plaintiff and the MMPA Subclass.

134. WHEREFORE, Plaintiff and the MMPA Subclass pray for the relief requested in the Prayer for Relief set forth below in this Amended Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, pray judgment against Defendants as follows:

1. Certifying the Class as requested herein;
2. Entering an order appointing Law Office of Richard S. Cornfeld, LLC as lead counsel for the Class;
3. Awarding actual damages against Defendants in an amount to be determined;

4. Awarding punitive damages against Defendants as the Court deems necessary or proper;
5. Awarding injunctive relief as permitted by law or equity, including a preliminary and permanent injunction enjoining Defendants from continuing the unlawful practices as set forth herein;
6. Awarding pre-judgment and post-judgment interest;
7. Awarding reasonable attorneys' fees and costs herein;
8. Awarding such other and further relief as the Court deems fit and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: July 3, 2019

Respectfully submitted,

LAW OFFICE OF RICHARD S. CORNFELD, LLC

By: /s/ Richard S. Cornfeld

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 2019, the foregoing was served by operation of the Court's electronic filing system on all counsel of record in this matter.

/s/ Richard S. Cornfeld _____