

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MARCELLA KIST, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

SEMPRIS, LLC a Delaware limited liability
company, and DIGITAL RIVER, INC., a
Delaware corporation,

Defendants.

Civil Action No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

Plaintiff Marcella Kist (“Kist” or “Plaintiff”) brings this Class Action Complaint against Defendants Sempris, LLC (“Sempris”) and Digital River, Inc. (“Digital River”) (hereinafter collectively “Defendants”) on her own behalf, and on behalf of Class of similarly situated individuals who were charged without authorization for Sempris Membership Programs. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

NATURE OF THE ACTION

1. Defendants Sempris and Digital River work together to charge consumers recurring monthly fees for “Membership Programs” that purport to offer discounts, coupons, and other money saving deals.

2. The fraud is perpetrated in the following manner: First, an unknowing consumer provides Digital River (an online payment processor) with his/her private billing information to complete a purchase from one of Digital River’s online merchants. However, rather than keep

this information private (as any consumer would reasonably believe), Digital River shares this information with Sempris, and together, Defendants enroll and charge consumers for Sempris Membership Programs.

3. Consumers are often completely unaware of their enrollment until they notice the charges for “membership fees” on their credit or bank statement. Notably, Sempris Membership Programs are negative option programs with recurring monthly fees, meaning that the charges continue every month until a consumer calls and cancels.

4. Working in unity with one another, Defendants have systematically defrauded consumers by enrolling and charging them for Membership Programs without consent. Each Defendant is equally liable, and together, Defendants share in the profits generated by their fraudulent scheme.

5. Plaintiff Kist was only one of many injured by Defendants’ conduct. Through her Complaint, Plaintiff seeks to put an end to Defendants’ unlawful business practices and to recover the monies that have been wrongfully obtained.

PARTIES

6. Plaintiff Marcella Kist is a natural person and citizen of the Commonwealth of Massachusetts, residing in Billerica, Middlesex County, Massachusetts.

7. Defendant Sempris, LLC, is a marketing services company that operates numerous “Membership Programs,” including a membership program known as “Budget Savers.” Sempris is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business located at 11100 Wayzata Boulevard, Suite 680, Minneapolis, Minnesota. It does business throughout the United States, the Commonwealth of Massachusetts, and this District. Until early 2011, Defendant Sempris

operated under the corporate name Provell, Inc.

8. Defendant Digital River, Inc. is an online e-commerce company. Digital River is a Delaware corporation with its headquarters and principal place of business located at 10380 Bren Road West, Minnetonka, Minnesota 55343. It does business throughout the United States, the Commonwealth of Massachusetts, and this District.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), because (i) at least one member of the putative class is a citizen of a state different than Defendants, (ii) the amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs, and (iii) none of the exceptions under that subsection apply to this action.

10. This Court has personal jurisdiction over Defendants because Defendants conduct business in Massachusetts, Plaintiff Kist is a resident of Massachusetts, Defendants committed tortious acts within Massachusetts, and the conduct giving rise to Plaintiff's claims occurred in Massachusetts.

11. Venue is proper in this District because Plaintiff resides in this District and the cause of action arose, in substantial part, in this District. Specifically, Plaintiff and putative Class members were charged for the Sempris Membership Programs in this District.

FACTUAL BACKGROUND

Data Pass and Preacquired Account Marketing

12. Preacquired account marketing is a widespread and problematic practice whereby a third party is given access to a consumer's private billing information by a business partner who received this information through a prior, unrelated internet or phone transaction with the consumer. The business partner who acquired the information then passes it on to the third party

as part of a financial arrangement wherein the partner is paid a fee. This sharing of consumer information is commonly referred to as a “data pass.”

13. In a majority of instances, consumers do not consent to the sharing of their information in this manner, and are completely unaware that a merchant has transferred their information to a third party.

14. Following the data pass, consumers are enrolled in a membership program with a recurring monthly subscription. Any possible benefits that exist from the membership programs go unrealized because the overwhelming majority of consumers are unaware they have been enrolled in these clubs and/or programs in the first instance. Third party sellers and their business partners, however, are completely aware of the deceptive nature of this business model and the legion of consumer complaints made directly to them as well as existing on the Internet.

The Government Investigates and Bans Data Pass

15. As a result of the deceptive nature of this type of marketing (and the thousands of complaints that have arisen because of it), the Senate Committee on Commerce, Science, and Transportation conducted an investigation of misleading e-commerce marketing practices in 2009, focusing its investigation on companies with the same business model as Sempris.

16. In November 2009, the Committee released a staff report entitled “Aggressive Sales Tactics On the Internet and Their Impact On American Consumers.” The report specifically described the process of “Data Pass” and “Preacquired Account Marketing,” stating that the “this ‘data pass’ or ‘card on file’ process—where a third party company obtains a consumer’s billing information not directly from the consumer, but from a website where the consumer has just made a purchase—is a well known and controversial practice” that has caused numerous consumer complaints and confusion.

17. In response to the Senate Investigation, Congress passed the Restore Online Shoppers' Confidence Act ("ROSCA") in 2010.¹ Section 8401 of ROSCA (citing its findings and declaration of policy) recognized the following:

(3) An investigation by the Senate Committee on Commerce, Science, and Transportation found abundant evidence that the aggressive sales tactics many companies use against their online customers have undermined consumer confidence in the Internet and thereby harmed the American economy.

(4) The Committee showed that, in exchange for "bounties" and other payments, hundreds of reputable online retailers and websites shared their customers' billing information, including credit card and debit card numbers, with third party sellers through a process known as "data pass." These third party sellers in turn used aggressive, misleading sales tactics to charge millions of American consumers for membership clubs the consumers did not want.

18. ROSCA banned the "data pass" process and required third-party sellers to both disclose all material terms of the transaction and obtain express informed consent from consumers, including the consumer's full account number and address, before charging their account.

Sempris' Documented History of Deceptive Marketing

19. Like the companies named in the Senate Committee's Report, Defendant Sempris is a marketing company that offers subscription-based, negative-option "Membership Programs" purporting to offer discounts and services to "subscribing" consumers.

20. However, despite costing membership fees of as much as \$29.95 a month, these programs offer little real value and are rarely ever utilized by membership subscribers (many of whom are unaware that they have even been enrolled).

21. Despite this fact (or perhaps due to it), Sempris continues to have thousands of subscribers who are deceptively enrolled in Sempris Membership Programs and charged for

¹ Restore Online Shoppers' Confidence Act, 15 U.S.C.A. § 8401 *et. seq.*

membership fees.

22. Sempris Membership Programs include, but are not limited to: Value Plus, Budget Savers, Cooking in Style, Essentials for Home, Explore USA, FunSource, Homeplay, Pulse, and Vacation Passport. Sempris has also partnered with various merchants to create “Custom” Programs, such as: Glamour in You and Duets (for Frederick’s of Hollywood), Chase Ultimate Rewards Plus (for Chase Manhattan Bank), and JC Whitney Buyers Plus (for JC Whitney).

23. Consumers have complained about each and every one of the Sempris Membership Programs.

24. In fact, Sempris has operated the same deceptive business practices for the past ten years. Previously operating as Provell, Inc., and before that, Damark International, Inc., Sempris’ practice of fraudulently enrolling and charging consumers for its Membership Programs (as well as its propensity for changing its name to evade liability) has been well documented over the past decade.

25. Sempris’ business practices previously resulted in an investigation and complaint filed against Defendant by the Minnesota Attorney General in 1999, forcing Sempris (then operating as Damark International Inc.) to issue an official Assurance of Discontinuance.²

26. Despite its Assurance of Discontinuance, Defendant simply changed its name to Provell, Inc. and resumed its deceptive business practices—namely, using preacquired information to fraudulently enroll consumers in its Membership Programs.

27. After operating as Provell for close to a decade, and accumulating thousands of

² Assurance of Discontinuance, *Minnesota ex rel. Hatch v. Damark Int’l, Inc.*, No. C8-99-10638 (Ramsey County Dist. Ct. Dec. 3, 1999).

consumer complaints under that name, Defendant simply changed its business name again, this time to Sempris.

28. Defendant Digital River is featured on Sempris' website as one of five featured clients, and indicates that Digital River uses Sempris as its "primary resource for membership services and loyalty programs to enhance their brand and increase customer responses and loyalty."³

29. Hundreds of consumer complaints about the deceptive nature of Sempris' membership enrollment and charges (and its relationship with Defendant Digital River) can be found throughout consumer complaint websites:

June 20, 2011: I just looked over my credit card statement and noticed a \$1.95 charge last month and a \$24.95 charge for this month. Both from DRI Value Plus Monthly. Interestingly, the first charge of \$1.95 was placed the same day I ordered some software from Aimersoft. On the statement the legit purchase showed up as DRI Aimersoft. Apparently DRI handles payments for some legit companies, and in the process of checking out, has a clause that adds these charges. []

August 8, 2011: I bought some online software I wanted and the seller slips in an agreement to sign up for an online coupon service that costs you \$1.95 the 1st month and who knows what for additional months []. There was apparently an associated \$15 cash back in the "offer" too. I was able to call the phone number for DRI that appeared on my credit card statement 800-669-6975 and the woman who answered seemed to know exactly why I was complaining and canceled the "membership" right away.

Feb. 20, 2012: I made a legitimate membership purchase from an organization in Sweden. Said payment was processed by SWReg Digital River. The day after the legitimate payment posted a fraudulent payment for \$1.95 posted from DRI*ValuePlus. [] In Dec and Jan charges for \$24.95 appeared for a so called membership in ValuePlusOnline.com processed by Digital River. Subsequent investigation has revealed that [] Sempris.com, which has several fraudulent programs under its umbrella, states that at the end of the legitimate payment process there will be an "unobtrusive link" to introduce one of their membership programs and once a customer has finished viewing the info they will arrive back at the legitimate payment page. Meanwhile, what has happened, a person clicks through a maze of links trying to get to the legitimate payment confirmation page and in the end has managed to sign their life away in the fine print.

30. The Better Business Bureau shows a total of close to 800 consumer complaints

³ <http://www.sempris.com/section/647/page/6239>.

lodged against Sempris over the past three years.⁴

Defendants Jointly Conspire to Defraud Consumers

31. In its role as a payment processor, Digital River acts to both authenticate and secure the transfer of online payments, ensuring that funds are authorized by the issuing bank or credit card company and are safely transferred from consumer to merchant. Accordingly, Digital River is entrusted with a wealth of private information from consumers making an online purchase, receiving such sensitive information as the consumer's name, billing address, and full credit card or bank account number.

32. Rather than safeguard this information (as it is both expected and paid to do), Digital River abuses its position of trust and parlays its access to sensitive information into an additional revenue stream from Sempris.

33. Digital River is aware of Sempris' fraudulent and deceptive business practices and actively participates by (1) passing along consumer's private information and then (2) processing unauthorized charges for Sempris' Membership Programs. As Digital River is already in possession of all the requisite information to process payments, it is able to completely bypass consumer consent to place the charges.

34. Digital River receives monetary benefits for providing Sempris with consumers' information, as well as processing monthly membership fees for Sempris' Membership Programs.

35. Defendants are active co-conspirators who have knowingly entered into an agreement to profit from the unauthorized charges to consumers' credit and debit accounts, and have designed and jointly implemented a system whereby consumers would be unknowingly or

⁴ See <http://www.bbb.org/minnesota/business-reviews/dining-club-plans/sempris-in-hopkins-mn-96345570/complaints>. Last accessed on January 24, 2013.

deceptively induced into enrolling in Sempris Membership Programs.

36. Defendants are jointly liable, and together, share in the profits generated by their fraudulent scheme.

FACTS REGARDING PLAINTIFF MARCELLA KIST

37. On or around September 15, 2012, Plaintiff Marcella Kist visited AppleXSoft, Inc.'s online store to purchase computer software. To complete her purchase, Kist was required to provide her private billing information, including her name, credit card number, and billing address, to AppleXSoft's business partner—Digital River.

38. At no point during the transaction did Digital River disclose that it would be sharing her information with any other third party.

39. After completing her purchase of the software, Kist immediately received an e-mail confirmation from Digital River with the details of her order. The e-mail informed Kist that the charges would appear on her statement as "DRI*AppleXsoft File Re." DRI stands for "Digital River, Inc."

40. The next day, the charge for "DRI*AppleXsoft File Re" appeared on Kist's credit card statement. Immediately below the charge was an additional charge of \$1.95 for "DRI*Value Plus Monthly."

41. The following month, Kist was again charged for DRI*Value Plus, this time for \$24.95. Kist continued to be charged \$24.95 a month in November, December, and January until she noticed the charges on her statement.

42. As there was no number listed next to the charges on her statement, Kist went online to find information relating to the source and reason for the charges. After finding out that the charges were for Sempris' Value Plus Membership Program, Kist called Sempris to inquire

as to who authorized the charges and how she could get her money back.

43. Surprisingly, the customer service representative who answered the call asked if he was speaking to Marcella Kist by name, and then repeated her full address, telephone number, and e-mail address to confirm her identity.

44. Kist explained to the representative that she had never consented to enrollment in the program, had not authorized any of the charges, and requested her membership be cancelled immediately and the charges refunded. Thereafter, the representative cancelled Kist's membership to Value Plus, but refused to refund any of the charges.

45. Sempris could not identify, or would not tell Plaintiff, how or as the result of what purchase, it had enrolled her in the Value Plus Membership Program.

46. Despite being enrolled in the program for more than three months, Kist never received any printed materials that notified her of her enrollment, such as confirmation of enrollment or a membership identification number (necessary to utilize the program's alleged benefits).

CLASS ALLEGATIONS

47. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of herself and a Class of similarly situated individuals, defined as follows:

All individuals who were enrolled in and charged for any Sempris Membership Program following their online purchase, completed through Defendant Digital River, of a product from www.applexsoft.com.

Excluded from the Class are (1) Defendants, Defendants' agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parents have a controlling

interest and their current and former employees, officers, and directors, (2) the Judge or Magistrate Judge to whom this case is assigned and the Judge's or Magistrate Judge's immediate family, (3) persons who execute and file a timely request for exclusion, (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released, and (5) the legal representatives, successors, or assigns of any such excluded person.

48. **Numerosity:** The exact number of the members of the Class is unknown and not available to Plaintiff at this time, but it is clear that individual joinder is impracticable.

Defendants have deceived thousands of consumers who fall into the definition set forth above. Members of the Class can be identified through Defendants' records.

49. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class, as Plaintiff and the Class sustained damages arising out of the wrongful conduct of Defendants, based upon the same transactions which were made uniformly with Plaintiff and he public.

50. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiff. Moreover, Plaintiff's claims are typical of the claims of the other members of the Class, as Plaintiff and the other Class members sustained damages arising from Defendants' uniform wrongful conduct. Plaintiff and her counsel are further committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor her counsel has any interest adverse to those of the other members of the Class.

51. **Predominance and Superiority:** Class proceedings are superior to all other

available methods for the fair and efficient adjudication of this controversy, as joinder of all members is impracticable. The damages suffered by the individual members of the Class will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' actions. It would be virtually impossible for the members of the Class to obtain effective relief from Defendants' misconduct on an individual basis. Even if members of the Class themselves could sustain such individual litigation, it would not be preferable to a class action, because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions would be ensured.

52. **Commonality:** There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not limited to the following:

- (a) Whether Defendants' conduct alleged herein constitutes fraud by omission;
- (b) Whether Defendants' conduct alleged herein constitutes breach of contract;
- (c) Whether Defendants' conduct alleged herein constitutes unjust enrichment.

FIRST CAUSE OF ACTION
Fraud by Omission
(Individually and on behalf of the Class)

53. Plaintiff incorporates by reference the foregoing allegations.

54. Based on Defendants' material omissions, Plaintiff and members of the Class did not reasonably expect to be charged for Sempris' Membership Programs without authorization.

55. Defendants knew that they did not have informed and explicit consent to enroll and charge Plaintiff and members of the Class for Sempris' Membership Programs.

56. Defendant Sempris concealed from and failed to disclose to Plaintiff and Class members that it would enroll and charge them for Sempris' Membership Programs without consent.

57. Defendant Digital River concealed from and failed to disclose to Plaintiff and Class members that it would share consumers' private billing and contact information with Sempris and that it would process unauthorized payments on Sempris' behalf.

58. Defendants were under a duty to disclose to Plaintiff and the members of the Class, that they intended to enroll and charge their accounts for Sempris' Membership Programs because: (1) Defendants were in a superior position to know the true state of facts about their possession and sharing of Plaintiff's and Class members' credit and bankcard information; (2) Defendants were in a superior position to know the terms of Sempris' Membership Programs; (3) Plaintiff and the Class members could not reasonably have been expected to learn or discover that Defendant Sempris was in possession of their personal information and that Defendants intended to place charges on their accounts without authorization; (4) Plaintiff and the Class members could not reasonably have been expected to learn or discover that Defendant Digital

River intended to, and did in fact, share their personal information with Sempris; and (5) Plaintiff and the Class members could not reasonably have been expected to learn or discover that Defendant Digital River intended to, and did in fact, process unauthorized payments from their accounts on behalf of Sempris.

59. The facts concealed or not disclosed by Defendants to Plaintiff and the Class are material in that a reasonable consumer would have considered them to be important in deciding whether to allow Digital River access to their contact and billing information.

60. Plaintiff and the Class justifiably relied on the omissions of Defendants to their detriment.

61. The detriment is evident from the unauthorized charges placed on Plaintiff's and Class members' accounts and the monies lost.

62. As a direct and proximate result of Defendants' misconduct, Plaintiff and the Class have suffered and will continue to suffer actual damages in the form of monies taken by Defendants.

SECOND CAUSE OF ACTION
Breach of Contract
(As against Defendant Digital River)
(On Behalf of Plaintiff and the Class)

63. Plaintiff incorporates by reference the foregoing allegations.

64. Defendant Digital River on the one hand, and Plaintiff and members of the Class, on the other, entered into valid and enforceable contracts whereby those Class members provided, and Digital River processed, payment for goods marketed and sold by Digital River's merchant partners. In order to complete their purchases, Plaintiff and the Class provided Digital River with access to their billing information.

65. A material term of the contract entered into by Plaintiff and the Class members with Digital River required that Digital River only share Class members' personal information with those expressly authorized to receive it. Likewise, a material term of the contract required Digital River to only process payment for charges that Plaintiff and the Class authorized.

66. Digital River breached its contract with Plaintiff and members of the Class by sharing their sensitive personal and payment information with Sempris.

67. Digital River breached its contract with Plaintiff and members of the Class by placing charges on their accounts for Sempris Membership Programs.

68. Plaintiff and members of the Class did not consent to Digital River releasing their personal information to Sempris, nor did they consent to any additional charges made by or on behalf of Sempris.

69. As a result of its unlawful conduct alleged herein, Digital River materially breached the terms of its contracts with Plaintiff and members of the Class.

70. Plaintiff and members of the Class have suffered damages in the form of monies lost as a direct result of Digital River's acts and practices.

71. Plaintiff, individually and on behalf of the Class, seeks actual damages for Digital River's breach of contract, as well as interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

THIRD CAUSE OF ACTION
Unjust Enrichment (*in the alternative to breach of contract*)
(As against Digital River)
(Individually and on Behalf of the Class)

72. Plaintiff incorporates by reference the foregoing allegations, excluding paragraphs 63 through 71.

73. Defendant Digital River knowingly received a monetary benefit from Plaintiff and the Class in the form of fees, revenue share, or other value given by Sempris when Digital River wrongfully permitted Sempris to obtain the Class members' contact and billing information. Digital River further received monetary benefit when it processed payments, in the form of recurring monthly fees, from members of the Class on behalf of Sempris.

74. Digital River appreciates or has knowledge of such benefits.

75. Digital River has no valid basis to accept benefits that are derived from Class members being charged unauthorized membership fees for Sempris' Membership Programs.

76. Under principles of equity and good conscience, Digital River should not be permitted to retain the benefits it wrongfully received from Plaintiff and the members of the Class.

77. Plaintiff, individually and on behalf of the Class, seeks restitution of all monies Digital River has unjustly received as a result of its conduct alleged herein, as well as interest, reasonable attorneys' fees, expenses, and costs to the extent allowable, as well as all other relief the Court deems necessary to make them whole

FOURTH CAUSE OF ACTION
Unjust Enrichment
(As against Defendant Sempris)
(On Behalf of Plaintiff and the Class)

78. Plaintiff incorporates by reference the foregoing allegations.

79. Sempris, knowingly and without authorization, charged or caused to be charged, the credit and debit accounts of Plaintiff and the members of the Class for its Membership Programs.

80. As a result, and despite having no valid or legal basis to do so, Sempris unjustly received and continues to receive a monetary benefit in the form of membership fees charged to those accounts.

81. Sempris appreciates and/or has knowledge of those benefits.

82. Plaintiff and the Class have no adequate remedy at law against Sempris.

83. Under principles of equity and good conscience, Sempris should not be permitted to retain the money belonging to Plaintiff and the members of the Class that it unjustly received as a result of its unlawful actions.

84. Plaintiff, individually and on behalf of the Class, seeks restitution for Sempris' unlawful conduct, as well as interest, reasonable costs and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Marcella Kist, on behalf of herself and the Class, respectfully requests that this Court enter an order:

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff Marcella Kist as Class Representative, and appointing her counsel as Class Counsel;
- B. Declaring that Defendants' actions, as set out above, constitute breach of contract, fraud by omission, and unjust enrichment;
- C. Awarding all economic, monetary, actual, consequential, statutory, and compensatory damages caused by Defendants' conduct, and if the conduct is proven to be willful, awarding Plaintiff and the Class exemplary damages;
- D. Awarding restitution against Defendants for all money to which Plaintiff and the Class are entitled in equity;

- E. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;
- F. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable;
- G. Entering such other injunctive and/or declaratory relief as is necessary to protect the interests of Plaintiff and the Class; and
- H. Awarding such other and further relief as equity and justice may require.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for all issues so triable.

Respectfully submitted,

Dated: February 11, 2013

MARCELLA KIST, individually and on behalf of
all others similarly situated,

By: /s/ David Pastor
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**Pro hac vice* admission to be sought

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

I. (a) PLAINTIFFS

Marcella Kist, Individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Middlesex (MA)
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
David Pastor - Pastor Law Office, LLP
63 Atlantic Avenue
Boston, MA 02110 - 617-742-9700

DEFENDANTS

Sempris, LLC a Delaware limited liability company, and Digital River, Inc., a Delaware corporation

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C., Section 1332

Brief description of cause:
Charging fees for membership programs without authorization

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 02/11/2013 SIGNATURE OF ATTORNEY OF RECORD: /s/ David Pastor

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Kist v. Sempris, LLC

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290, 320, 362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME David Pastor - Pastor Law Office, LLP

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