

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

CAROL MAHER, individually and on)
behalf of a class of similarly situated)
individuals,)

Court File No. _____

Plaintiff,)

CLASS ACTION COMPLAINT

v.)

DEMAND FOR JURY TRIAL

SEMPRIS, LLC, a Delaware limited)
liability company, HEALTH PURE)
PRODUCTS, LLC, a California limited)
liability company d/b/a HEALTH)
RESOURCE, LLC, and JOHN DOE)
DEFENDANT,)

Defendants.

Plaintiff Carol Maher (“Maher” or “Plaintiff”) brings this Class Action Complaint against Defendants Sempris, LLC (“Sempris”), Health Pure Products, LLC, d/b/a Health Resource, LLC (“Health Resource”), and John Doe Defendant (“John Doe”) (hereinafter collectively “Defendants”) on her own behalf, and on behalf of a Class of similarly situated individuals who were charged without their consent 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 CASE

1. Defendants work together in a scheme to induce consumers into “enrolling” in recurring monthly fees for useless and unwanted “Membership Programs” that purport

to offer discounts, coupons, and other money saving deals. Using the sale of a legitimate product as bait, Defendants acquire consumers' contact and billing information and then use this information to trick consumers into enrolling in and paying for membership.

2. The deceptive scheme is perpetuated in the following way: First, after viewing a television commercial for one of Defendant Health Resource's products, an interested consumer calls the number on the screen to order the advertised product. The consumer is connected to a live operator employed by John Doe Defendant, a call center company responsible for handling Health Resource's telephone orders. While in the process of completing the order, the John Doe operator notifies the consumer that they qualify for a low-cost trial for one of Defendant Sempris' Membership Programs (though Sempris is never identified by name) and deceptively describes the terms of the trial offer, including that the membership has numerous money-saving benefits, can be cancelled at any time by calling Sempris' customer service number, and that written materials and free gifts relating to the membership will be sent to the consumer in the mail. The timing and description of the offer is purposefully misleading, as consumers reasonably believe that the product and services being offered are from the same company (Health Resource) and are part of the same transaction.

3. Working in unity with one another, Defendants have systematically defrauded consumers by enrolling and charging them for membership programs without consent. Each Defendant is jointly and severally liable, and together, Defendants share in the profits generated by their fraudulent scheme.

4. Plaintiff Maher was 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

5. Plaintiff Carol Maher is a resident and citizen of the State of Georgia.

6. Defendant Sempris, LLC, is a marketing services company that operates numerous "Membership Loyalty Programs," including the Taste for Savings Membership Program. Sempris is a corporation incorporated and existing under the laws of the State of Delaware, with its principal place of business located at 11100 Wayzata Boulevard, Suite 680, Minnetonka, Minnesota. It does business throughout the United States. Until April 2011, Defendant Sempris operated under the corporate name Provell, Inc.

7. On information and belief, Sempris's decisions and conduct as set forth herein were made and conducted in Minnesota and originated in Minnesota and emanated from Minnesota, including without limitation its decisions regarding how it structured and worded its standardized call scripts, its bundling of offers, the concealment of its involvement in its sales, its failure to accurately describe its program's benefits, and its failure to timely provide cancellation materials and other written materials to customers.

8. Defendant Health Resource manufactures, markets, and sells a wide range of dietary supplements, including supplements marketed "As Seen on TV," directly to consumers via television infomercials, websites, and other e-commerce means. Health Resource is a limited liability company formed and existing under the laws of the State of California (under the name Health Pure Products, LLC) with its principal place of

business at 650 N. Rose Drive #136, Placentia, California. It does business throughout the United States.

9. John Doe Defendant operates one or more telemarketing call centers from which a live operator handles telephone sales of Health Resource products and markets Sempris Membership Programs.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332(d)(2) because (a) at least one member of the putative class, which consists of at least 100 members, is a citizen of a state different from Defendants, (b) the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and (c) none of CAFA's exceptions apply to this action.

11. This Court has personal jurisdiction over this case because (i) Defendant Sempris is headquartered and conducts its principal operations in this state and (ii) Defendants Health Resource and John Doe conduct business within this state, including performing certain functions in the context of their business relationship with Defendant Sempris.

12. Venue is proper in this District under 28 U.S.C. § 1391(b) as (i) Defendant Sempris is headquartered in this District and (ii) Defendants Health Resource and John Doe conduct business in this District such that they are subject to personal jurisdiction in this District.

FACTS COMMON TO ALL COUNTS

13. Defendant Sempris is a marketing company that develops and operates numerous subscription-based, negative-option “Membership Programs” purporting to offer savings at unidentified restaurants and stores to “subscribing” consumers.

14. However, despite costing as much as \$24.95 a month in membership fees, these programs offer far less value than what is promised and are rarely ever utilized by membership “subscribers” (who are unaware that they have even been enrolled in the program, much less aware of how to access the supposed benefits). Furthermore, the majority of the coupons, gift cards, and rebates promised to subscribers, as well as the subscriber’s written membership materials, are never delivered or received.

15. Despite this fact (or perhaps due to it), Sempris continues to charge thousands of subscribers each month who have been deceptively enrolled in Sempris Membership Programs.

16. The Sempris Membership Programs include, but are not limited to: Taste for Savings, Value Plus, Budget Savers, Cooking in Style, Essentials for Home, Explore USA, FunSource, Homeplay, Pulse, Victoria’s Secret Sensations—Star Quality Travel and Leisure, 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).

17. Consumers have complained about each and every one of Sempris’s Membership Programs.

Defendants Jointly Conspire to Defraud Consumers

18. Enrollment in a Sempris Membership Program, through Defendants Health Resource and John Doe, occurs in the following way: A consumer views a television infomercial promoting one of Health Resource's products, e.g. Glucosulin or Colon Flow. Interested, the consumer picks up the phone and dials the listed number to purchase the advertised item.

19. Once the consumer is connected over the phone, a John Doe live operator processes the consumer's order for the advertised product while simultaneously trying to sell a Sempris Membership Program (though Sempris' name is never disclosed to the consumer). The operator is trained to make an aggressive sales pitch of a low-cost trial of the membership program and offers the caller a variety of gift cards, coupons, and/or rebates as incentives. The totality of the operator's description of the program's purported benefits consists of a single statement that the program will help save the customer money at thousands of stores and restaurants. The operator further promises that the consumer will timely be sent written membership materials (containing more information about the program and how to cancel) for review so they, the customers, can cancel without incurring monthly charges. Finally, the operator assures the consumer that they can call and cancel the membership at any time, and with no consequence, before the trial period (usually lasting 14 or 30 days) is over.

20. In reality, the timing and wording of the offer are purposefully designed to obscure material terms, confuse callers with "free" trials and other gifts, and induce consumers to consent to enrollment in a Sempris Membership Program, all while

obscuring and/or concealing the fact that the “Membership Programs” are negative option services that will automatically and perpetually be billed to a consumer’s account regardless of whether or not subscribers receive any benefits pursuant to their enrollment. As the John Doe operator never discloses that the program is operated by a third party (Sempris), consumers reasonably believe that the program is offered by the same entity behind their purchase (Health Resource), and further, that the membership offer is somehow related to their initial purchase.

21. Further adding to the confusion, offers for Sempris Membership Programs are often “bundled” with membership programs offered by other companies, such that consumers are marketed several membership programs during the same phone call—each with slightly different membership terms and conditions, such as varying trial periods, prices, and cancellation methods.

22. The fraud, however, does not end there. After being induced into membership enrollment, consumers then rarely (if ever) receive the gifts and vouchers promised as part of their trial. Nor do they receive their promised written membership materials in the mail, as Sempris either fails to send or serially delays sending such materials. Accordingly, consumers are unable to review membership materials before the expiration of their trial period, are unable to access any membership benefits (as they are without their membership identification number and instructions on how to use the program), and thus, are generally unaware that their enrollment has been completed until the monthly recurring charges show up on their accounts.

23. Further, those who are fortunate enough to actually receive the promised membership materials in the mail, in reality get nothing more than a short letter containing their membership identification number and directing the consumer to a membership website, as well as a few pages of worthless coupons (i.e. to car rental agencies)—far from any actual savings promised during enrollment.

24. Upon discovering the charges, the overwhelming majority of consumers call the number listed on their statement to inquire about the source of the charges and, upon finding out that the charges are for a Sempris Membership Program, immediately cancel their memberships.

25. On information and belief, in some instances, consumers who call and cancel their membership continue to be charged repeated membership fees by Sempris.

26. Health Resource is not only aware of Sempris' fraudulent and deceptive business practices, it acts as a conduit to the deception by providing Sempris access to consumer billing information for use in its fraudulent endeavor.

27. After luring consumers into providing their billing and personal information in order to complete their purchase of a Health Resource product, Health Resource purposefully provides Sempris access to such information even though Sempris is an unrelated party to the purchase and the consumer is unaware of the information being shared or made available. Notably, Defendants fail to mention Sempris in any way during the call—leading consumers to believe they are only dealing with one entity (Health Resource).

28. On information and belief, John Doe is on the front lines of the fraud and perpetrates the spurious enrollment. John Doe actively participates in the scheme by deceptively marketing Sempris Membership Programs to unwary consumers.

29. Defendants are active co-conspirators who have knowingly entered into an agreement to profit from Sempris' scheme to fraudulently charge consumers' credit and debit accounts each month without authorization and have concocted and jointly implemented a plot whereby consumers are unknowingly or deceptively induced into enrolling in Sempris' Membership Programs.

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

Sempris' Documented History of Deceptive Marketing

31. Previously operating as Provell, Inc., and before that, Damark International, Inc., Sempris' practice of fraudulently enrolling and charging consumers for memberships in its Membership Programs (as well as its propensity for changing its name to evade liability) has been well documented over the past ten years.

32. Sempris' business practices previously resulted in an investigation and complaint filed against Sempris by the Minnesota Attorney General in 1999, forcing Sempris (then operating as Damark International Inc.) to issue an official Assurance of Discontinuance.¹

¹ See Assurance of Discontinuance, *Minnesota ex rel. Hatch v. Damark Int'l, Inc.*, No. C8-99-10638 (Ramsey County Dist. Ct. Dec. 3, 1999).

33. Despite its Assurance of Discontinuance, Defendant simply changed its name to Provell, Inc. and resumed its deceptive business practices—namely, using information acquired from third party merchants to fraudulently enroll consumers in its Membership Programs.

34. After operating as Provell, Inc. for the past ten years, and accumulating thousands of consumer complaints under that name, Defendant has changed its business name yet again to Sempris.

35. Hundreds of consumer complaints about the deceptive nature of Sempris' Membership Programs (spanning the course of several years)—including complaints about Taste For Savings—can be found throughout consumer protection websites:

Jan. 31, 2013: I do not know who this is WC*Mon Taste 4 Savings. I want to know why they are taking 25.00 from my account without my knowledge and my approval. They don't understand I am on a fixed income and cannot afford to have money taken from my account without my permission. All my funds are accounted for and now I am short on my bills. This is truly unfair and unwanted...

June 2, 2013: I have no idea who this is from and what it is for. They took \$24.95 out of my account today, and I NEVER authorized them to. From what I was reading on other complaints, I believe it has something to do with the company "COLON FLOW " that I ordered off TV a few weeks ago. [] First they got my debit card number then he asked if I wanted the free 30 day supply or a membership. [] And then the man starts taking so fast [] and said this was my lucky day, that I got a free \$25 WalMart card with this []. Then said he needed me to enter my visa card # with the phone keys this time to assure me of security measures. Then he said I get a free \$30 gas card and said something about a \$2 charge, and I said "WAIT A MINUTE' NO, NO, NO. I don't want anything except the colon flow. Well, when I got my package, it had two bottles of colon flow, and I returned them immediately. The WalMart card was a scam, and now I get a visa card withdrawal out of my account from this company today.

FACTS SPECIFIC TO PLAINTIFF MAHER

36. In or around December 2012, Carol Maher viewed a television infomercial for one of Defendant Health Resource's dietary supplements—Glucosulin.

37. After viewing the infomercial, Maher picked up the phone and called the number listed on the screen to purchase Glucosulin. Maher was then connected with a live customer service representative employed by John Doe to place her order.

38. To place her order, Maher provided the John Doe operator with her billing and contact information, including her credit card information and address. After receiving her information (and while in the process of finalizing her Glucosulin order), the customer service representative asked Maher if she would also be interested in trying a Sempris membership program called "Taste for Savings" for the introductory fee of \$1.95.

39. The representative provided no clear explanation of the benefits of the program, other than that the program would provide Maher with undefined savings. The representative assured Maher, however, that she would receive information in the mail to explain all the benefits and costs of the program, as well as various gift cards and rebates simply for agreeing to the trial. The representative further claimed that Maher would be able to call and cancel her membership at any time and that cancellation information would likewise be contained in her membership materials, which would be timely sent to her in the mail for her review.

40. When Maher asked the representative if enrollment in the program would result in recurring fees, the representative deflected the question and instead assured

Maher that program information would be sent in the mail, and further, that she would be able to review the materials before being charged.

41. The operator did not disclose the fact that Taste for Savings was offered by Sempris, a third party, and likewise made no indication that Maher's private billing and contact information would be shared with any entity other than the entity selling her the Glucosulin (Health Resource).

42. In reliance upon the John Doe operator's representations and omissions, including those pertaining to Maher's ability to review written program materials and the lack of any affirmative indication that there would be recurring monthly charges, Maher said okay to the trial. She was thereafter enrolled in Sempris' Taste for Savings membership program and charged \$1.95 on that same day.

43. The next month, in January 2013, Maher was charged a monthly membership fee of \$24.95 for MON Taste for Savings on her credit card.

44. Maher continued to be charged monthly fees of \$24.95 through May 2013, when she discovered the charges and called the number appearing on her credit card statement to inquire about the charges.

45. The customer service representative with whom Maher spoke explained that the charged were for Sempris' Taste for Savings membership program and claimed to have Maher "on tape" requesting enrollment in the program. Maher informed the representative that she did not agree to any monthly charges and requested that the representative cancel her membership immediately and refund the charges.

46. A few days later, Maher noticed a \$24.95 membership fee pending on her account. She then canceled her credit card to avoid being charged any future fees.

47. Maher never received any printed materials pertaining to her membership enrollment, such as confirmation of enrollment, a membership identification number (necessary to utilize the program's supposed benefits or cancel), or any of the promised gift cards or rebates. Accordingly, Maher was unable to (and never did) utilize any of the program's alleged benefits.

CLASS ACTION ALLEGATIONS

48. 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 defined as follows:

Sempris Class: All individuals who were enrolled in a Sempris Membership Program following their telephone purchase through John Doe of a product from Health Resource using the materially same call script that John Doe used to enroll Plaintiff Maher.

The following persons are excluded from the Class: 1) any Judge or Magistrate presiding over this action and members of their families; 2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest and their current or former employees, officers and directors; 3) persons who properly execute and file a timely request for exclusion from the class; and 4) the legal representatives, successors or assigns of any such excluded persons.

49. **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 using the call script they used to deceive the Plaintiff into enrolling. Given the Defendants' obtaining of

Plaintiff and the putative class members' personal information, members of the Class can be identified through Defendants' records.

50. **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 used substantially identical call scripts to enroll Plaintiff and the Class Members;
- b. Whether Defendants' alleged: (1) failure to adequately disclose Sempris's involvement/explain that the program was a separate offer, (2) failure to adequately describe the program's benefits, (3) failure to timely send cancellation and other written materials, and (4) bundling of its offer with offers for similar, though distinct, programs caused or was likely to cause confusion among consumers and deceived consumers into providing consent that they otherwise would not have provided;
- c. Whether Sempris's Membership Programs provided any benefits to the Class Members;
- d. Whether Defendants' conduct alleged herein violates Minn. Stat. § 325F.68, *et seq.*, §325D.43, *et seq.*, and/or Minn. Stat. §325G.12, *et seq.*;
- e. Whether Defendants' conduct alleged herein constitutes fraud by omission or fraudulent inducement;

- f. Whether Defendants' conduct alleged herein constitutes breach of express or implied contractual provisions with respect to the Class as a whole; and
51. Whether Defendants' conduct alleged herein constitutes unjust enrichment.
52. **Typicality:** Plaintiff's claims are typical of the claims of other members of

the Class, as Plaintiff and other members sustained damages arising out of the wrongful conduct of Defendants, based upon the same transactions that were made uniformly with Plaintiff and the public. Plaintiff and the Class Members were subjected to the same call script and were deceived by Defendants in essentially the same manner.

53. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interest antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiff.

54. **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 will be ensured.

COUNT I

**Violation of the Minnesota Prevention of Consumer Fraud Act
(Minn. Stat. § 325F.68, *et seq.*)
(Against Defendants Health Resource, John Doe, and Sempris)
(Individually and on Behalf of the Class)**

55. Plaintiff incorporates by reference the foregoing allegations.

56. The Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.* (“CFA”), protects consumers from a wide range of fraudulent and deceptive trade practices.

57. The CFA prohibits the act, use, or employment of fraud, false pretense, misrepresentation, misleading statement or deceptive practice in connection with the sale of any merchandise.

58. Minn. Stat. § 8.31 provides that “any person injured by a violation of any of the laws referred to in subdivision 1 [including the CFA] may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court.”

59. As described herein, Defendants employed fraud and misrepresentation in enrolling Plaintiff and Class members in Sempris Membership Programs and charging Plaintiff and Class members without authorization.

60. Defendants falsely and/or deceptively represented to Plaintiff and the Class that: (1) that Plaintiff and the Class would receive free gifts and/or rebates just for trying out the program; (2) that the program would provide money-saving benefits and discounts at thousands of stores and restaurants; (3) that Plaintiff and the Class would receive written information in the mail relating to the Membership Program, including information on the program's benefits and terms and how to cancel; and (4) that Plaintiff and the Class would be able to review such written information before the imposition of monthly charges and prior to the expiration of the trial period.

61. In fact, such representations were false. The program does not feature discounts at thousands of stores, and Plaintiff and the Class were never sent the promised free gifts or rebates or the written membership information within time for them to cancel, if at all. Plaintiff and the Class were not permitted to review the written information prior to the expiration of the trial period and contrary to Defendants' representations, the trial plan commenced at the end of the phone call, not upon receipt of the written materials.

62. Further, Defendants failed to disclose that agreeing to a "trial" would lead to enrollment in a negative-option membership with recurring monthly fees that would automatically be charged to consumers' accounts; that agents or representatives of Sempris would use consumers' information provided specifically for the purchase of Glucosulin or other Health Resource products, including credit card numbers, to enroll consumers in Membership Programs; and that Glucosulin (or other Health Resource products) and the Membership Program were being offered by two separate companies.

Consumers thus reasonably believed that the Membership Programs were operated by the same entity behind their Health Resource purchase, and further, that the program offer was a part of their purchase.

63. Defendants further misled consumers by combining several different offers (each with varying terms and conditions) during the same phone call by bundling such offers together.

64. Defendants' misrepresentations and omissions were material because they were likely to influence a consumer's decision on whether or not to provide their personal billing information to Defendants or agree to the a Sempris Membership Program.

65. Defendants knew the misrepresentations and omissions were false and/or misleading and designed the Membership Program enrollment process to fraudulently induce customers to enroll.

66. Plaintiff and the Class justifiably relied on the misrepresentations and omissions of Defendants to their detriment, as evidenced by the unauthorized charges placed on Plaintiff and Class members' accounts and the monies lost.

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

68. Accordingly under the CFA and Minn. Stat. § 8.31, Plaintiff and the Class seek actual damages, reasonable costs and attorneys' fees, and an injunction against further violations.

COUNT II

**Violation of the Minnesota Uniform Deceptive Trade Practices Act
(Minn. Stat. § 325D.43, *et seq.*)
(As against Defendants Health Resource, John Doe, and Sempris)
(Individually and on Behalf of the Class)**

69. Plaintiff incorporates by reference the foregoing allegations.

70. The Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.* (“DTPA”), was enacted to counteract disproportionate marketing power present in consumer transactions.

71. The DTPA includes within its definition of deceptive practices those “caus[ing a] likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services.”

72. By combining the sale of Health Resource’s Glucosulin and Sempris’ membership enrollment into one transaction and failing to disclose that the two products were offered by separate entities, Defendants caused Plaintiff and the Class to be confused regarding and to misunderstand that both products and services were provided by the same source.

73. As a direct and proximate result of Defendants’ deceptive practices, Plaintiff and the Class have suffered and will continue to suffer actual damages in the form of monies taken by Sempris.

74. Accordingly, under the DTPA, Plaintiff and the Class seek an injunction against further violations, and to recover reasonable costs and, if Defendants’ conduct is found to be willful, attorneys’ fees.

COUNT III

**Violation of the Minnesota Consumer Prevention; Solicitation of Sales Act
(Minn. Stat. § 325G.12, *et seq.*)
(As against Defendants Health Resource, John Doe, and Sempris)
(Individually and on Behalf of the Class)**

75. Plaintiff incorporates by reference the foregoing allegations.

76. Minn. Stat. § 325G.12, *et seq.* protects consumers from personal solicitation of goods or services from sellers who fail to properly disclose information about (1) the goods or services, (2) who they are, and (3) who they represent.

77. Section 325G.12, *et seq.* imposes disclosure obligations on attempts by sellers who “regularly engage in transactions of the same kind, to sell good or services which are primarily for personal, family, or household purposes” when the seller or a person acting on the seller’s behalf contacts the consumer by telephone or in person at a location other than at the seller’s place of business.

78. Specifically, 325 G.13 requires that the seller “clearly and expressly disclose: the individual seller's name, the name of the business firm or organization the seller represents, the identity or kinds of goods or services the seller wishes to demonstrate or sell, and that the seller wishes to demonstrate or sell the identified goods or services.”

79. Penalties and remedies are available for violation of § 325G.12, *et seq.* pursuant to Minn. Stat. § 8.31, which provides for the recovery in a civil action of “damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court.”

80. As described herein, Defendants fail to meet the disclosure obligations imposed on sellers engaging in the solicitation of sales of goods or services that are primarily for personal, family, or household purposes.

81. Specifically, during the course of the call placed by consumers for the purposes of purchasing Health Resource products, the John Doe operator handling the call takes the authorized order and then begins to market unrelated membership programs. The John Doe operator fails to “clearly and expressly disclose” that the programs are offered by Sempris or “clearly and expressly disclose” the kinds of goods or services that the Sempris Membership Programs are.

82. Defendants’ failure to disclose is in violation of § 325G.12, *et seq.*, because (1) Defendants regularly engage in transactions of this kind, (2) the membership programs are primarily for personal, family, or household purposes, (3) the buyer is contacted by telephone, (4) the buyer does not initiate contact with Sempris or a Sempris agent in relation to the sale of Sempris membership programs but rather only initiates the call with Health Resource in relation to a Health Resource product, and (5) the seller fails to disclose required information about the business firm or organization he or she represents (Sempris) and also fails to disclosure required information about the goods or services (Sempris Membership Programs).

83. As a direct and proximate result of Defendants’ failure to disclose, Plaintiff and the Class have suffered actual damages in the form of monies taken by Sempris.

84. Accordingly under Minn. Stat. §§ 325G.12, *et seq.* and 8.31, Plaintiff and the Class seek actual damages, reasonable costs and attorneys' fees, and an injunction against further violations.

COUNT IV
Fraud by Omission
(As against Defendants Health Resource, John Doe, and Sempris)
(Individually and on Behalf of the Class)

85. Plaintiff incorporates by reference the foregoing allegations.

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

87. Defendants concealed from and failed to disclose to Plaintiff and Class Members that: (1) the Membership Programs and Health Resource products were offered by separate entities; (2) Sempris was in possession of Plaintiff and the Class's billing and contact information and would use such information to assess charges for monthly membership fees; (3) that consumers were unlikely to timely receive any written membership materials in the mail, and thus, would be unable to utilize membership benefits or cancel membership without being charged membership fees; (4) consumers were unlikely to receive any of the gifts and vouchers promised in exchange for trying out the program; and (5) that the Membership Program did not provide any actual benefits, to the extent any were actually described.

88. Defendants were under a duty to disclose to Plaintiff and the other members of the Class that Sempris intended to charge their accounts for its Membership Programs

because: (1) Defendants were in a superior position to know the true state of facts about their possession and use 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) Defendants were in a superior position to know their internal practices and policies relating to the mailing of written membership materials and promised gifts; (4) Plaintiff and the Class members could not reasonably have been expected to learn or discover that Sempris was in possession of their account information and that Sempris intended to place charges on those accounts without authorization; and (5) Defendants knew that Plaintiff and the Class members could not reasonably have been expected to learn or discover that Sempris was in possession of their account information and that Sempris intended to place charges on those accounts without authorization.

89. 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 Defendants access to their billing information and whether to agree to a free trial of any of Sempris' Membership Programs.

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

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

92. 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 Sempris through recurring membership fees.

COUNT V
Fraudulent Inducement
(As against Defendants Health Resource, John Doe, and Sempris)
(Individually and on Behalf of the Class)

93. Plaintiff incorporates by reference the foregoing allegations.

94. To induce Plaintiff and the Class members into enrolling in the Membership Program, Defendants misrepresented: (1) the terms and conditions of enrollment in the Membership Program; (2) the ease with which members could cancel their enrollment in the Membership Program; and (3) the recurring charges that members incur on a monthly basis.

95. Specifically, Defendants, in their standard call script used to enroll Plaintiff: (1) falsely described the benefits of membership for enrollees; (2) misrepresented to Plaintiff that she would timely receive information in the mail, including materials explaining all the benefits and costs of the program and how to cancel membership, as well as various gift cards and rebates simply for trying out the program; and (3) falsely told Plaintiff she could cancel her membership at any time at no cost.

96. Defendants knew that its representations about the Membership Programs were false. Defendants trained and/or encouraged their representatives to intentionally mislead callers about the Membership Program and its attendant terms, conditions, and fees.

97. Defendants made these misrepresentations specifically so as to induce Plaintiff and the Class to enroll in the Membership Program and incur monthly membership fees.

98. Plaintiff and the Class did in fact rely on these misrepresentations and agreed to enroll in the Membership Programs to their detriment. Given the deceptive manner in which Defendant communicated the terms and conditions of the Programs to Plaintiff and the Class, as well as the confusing proximity of the offer of enrollment to the consumers' purchase of Health Resource's products, Plaintiff and the Class's reliance on Defendants' misrepresentations was justifiable.

99. As a result of relying on Defendants' misrepresentations, Plaintiff and Class members have suffered, and will continue to suffer, actual damages in the form of recurring fees for the Membership Program.

COUNT VI
Alternative Claim for Breach of Contract
(As against Health Resource)
(Individually and on Behalf of the Class)

100. Plaintiff incorporates by reference the foregoing allegations.

101. Defendant Health Resource 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 Health Resource accepted payments in exchange for goods marketed and sold by Health Resource. In order to facilitate their purchases, Plaintiff and the Class provided Health Resource with access to their billing information.

102. A material term of the contract entered into by Plaintiff and the Class members with Health Resource required that Health Resource only share Class members' billing information with those expressly authorized to receive it. Likewise, a material term of the contract required Health Resource to only bill Plaintiff and the Class for charges that they authorized.

103. Plaintiff and members of the Class did not consent to Health Resource releasing their billing information to Sempris or any agent or representative authorized to enroll consumers in Membership Programs on behalf of Sempris, nor did they consent to any additional charges made by or on behalf of Sempris.

104. As a result of its unlawful conduct alleged herein, Health Resource materially breached the terms of its merchant contracts with Plaintiff and the other members of the Class.

105. Plaintiff and the other members of the Class have suffered damages in the form of monies lost as a direct result of Health Resource's acts and practices.

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

COUNT VII
Alternative Claim for Breach of Contract
(As against Sempris)
(Individually and on Behalf of the Class)

107. Plaintiff incorporates by reference the foregoing allegations.

108. In the hypothetical event that Defendants can show that Plaintiff and the Class entered into an enforceable contract despite Plaintiff and the Class's lack of assent to the actual terms of enrollment, such agreement required Defendant Sempris to timely send written membership materials to customers informing them on how to utilize their membership benefits and how to cancel their membership prior to being charged for recurring monthly charges. The agreement further required that Sempris would provide the gifts and vouchers promised in return for Plaintiff and the Class's agreement to trying out the program.

109. Plaintiff and the Class performed under the agreement by paying the introductory fee for their trial of Sempris' Membership Program.

110. Sempris breached the contract by serially delaying and/or failing to send out the promised written membership materials and gifts/vouchers. Sempris further breached the contract by charging Plaintiff and the Class recurring membership fees without Plaintiff and the Class having had an opportunity to review the promised written membership materials prior to the imposition of monthly charges.

111. Sempris' breach of its agreements with Plaintiff and members of the Class caused Plaintiff and Class members to suffer damages in the form of monthly recurring charges lost as a direct result of Sempris' acts and practices.

112. Plaintiff, individually and on behalf of the Class, seeks damages for Sempris' breach of contract, as well as interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT VIII

**Unjust Enrichment (*in the alternative to Breach of Contract*)
(As against Defendants Health Resource, John Doe, and Sempris)
(Individually and on Behalf of the Class)**

113. Plaintiff incorporates by reference the foregoing allegations, excluding allegations establishing the existence of an enforceable contract.

114. Defendants Health Resource and Sempris knowingly received a monetary benefit from Plaintiff and the Class. Sempris received monies from deceptively imposed fraudulent charges. Health Resource received money in the form of fees, revenue share, or other value given by Sempris as part of Sempris and Health Resource's deceptive scheme to enroll consumers in Membership Programs. On information and belief, John Doe received money in the form of a commission for its role in the deceptive enrollment.

115. Defendants appreciate or have knowledge of such benefits.

116. Plaintiff and the Class members have no adequate remedy at law.

117. Defendants have no valid basis to accept benefits that are derived from Class members' unauthorized membership fees.

118. Under principles of equity and good conscience, Defendants should not be permitted to retain the benefits they wrongfully received from Plaintiff and the other members of the Class.

119. Plaintiff, individually and on behalf of the Class, seeks restitution of all monies Defendants have unjustly received as a result of their 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 the Plaintiff and Class members whole.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Carol Maher, individually and on behalf of the Class, requests that the Court enter an Order providing for the following relief:

- A. Certify this case as a class action on behalf of the Class defined above, appoint Plaintiff as Class Representative, and appoint her counsel as Class Counsel;
- B. Declare that Defendants' actions, as set out above, violate Minn. Stat. §§ 325D.43, *et seq.*, 325F.68, *et seq.*, 325G.13, *et. seq.* and constitute fraud by omission, fraudulent inducement, breach of contract, and unjust enrichment;
- C. Award all economic, monetary, actual, consequential, statutory and compensatory damages caused by Defendants' conduct, and if the conduct is proven to be willful, award Plaintiff and the Class exemplary damages;
- D. Award restitution against Defendants for all money to which Plaintiff and the Class are entitled in equity;
- E. Award Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;
- F. Award Plaintiff and the Class pre- and post-judgment interest, to the extent allowable;

- G. Enter injunctive and/or declaratory relief as is necessary to protect the interests of Plaintiff and the Class; and
- H. Award such other and further relief as equity and justice may require.

JURY TRIAL

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

Dated: August 14, 2013

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

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Attorneys for Plaintiff

**Petition for Admission to be filed*

CIVIL COVER SHEET

The JS 44 civil coversheet 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
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant
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)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

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

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):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE