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09-CV-01485-CMP

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BRUCE KEITHLY, DONOVAN LEE, and )  
EDITH ANNA CRAMER, Individually and on )  
Behalf of all Others Similarly Situated, )

Plaintiff, )

v. )

INTELIUS, INC., A Delaware Corporation; and )  
INTELIUS SALES, LLC, A Nevada Limited )  
Liability Company, )

Defendant. )

No. **C09-1485** <sup>BAJ</sup>

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE  
WASHINGTON CONSUMER  
PROTECTION ACT AND FOR  
DECLARATORY RELIEF**

**JURY TRIAL DEMAND**

**I. NATURE OF ACTION**

Plaintiffs Bruce Keithly, Donovan Lee, and Edith Anna Cramer, individually and on behalf of a class of similarly situated parties, complain and allege the following:

1. Intelius, Inc. and its wholly-owned subsidiary/affiliate, Intelius Sales LLC, (collectively, Intelius, Inc. and Intelius Sales LLC are referred to as "Intelius") market products and services on the Internet. Among the services Intelius offers on the Internet are "reverse" cell phone and land-line directories, "people search" directories and "background check" information. When class members sign up for such services, they provide their credit/debit card information. Through misleading "sign-up" messages on Intelius websites, however, when the

**ORIGINAL**

Summons Issued SEA 29807

1 consumer purchases an Intelius product, the consumer also unknowingly enrolls in a  
2 subscription-based service with Adaptive Marketing, LLC. The details and/or benefits of those  
3 Adaptive subscription services generally are never made known to the consumer, yet the  
4 consumer is then billed a significant monthly fee -- often \$19.95/month -- in perpetuity.

5  
6 2. The situation described above is a result of a July 10, 2007 marketing agreement  
7 (the "Marketing Agreement") between Intelius Sales, LLC and Adaptive Marketing that provides  
8 for Intelius to transmit to Adaptive all the credit card and customer information it receives from  
9 selling Intelius products. For its part, Adaptive pays Intelius an undisclosed fee for each  
10 customer. In this way, Adaptive is able to foist unwanted services (and the related monthly  
11 charges) on unsuspecting consumers without full or adequate disclosure. Upon information and  
12 belief, this alliance between Intelius and Adaptive has caused consumers to unknowingly pay  
13 Adaptive (and thus, indirectly, Intelius) millions of dollars in non-existent and/or unwanted  
14 services.

15  
16 3. Plaintiffs, on behalf of themselves and all others similarly situated, bring claims  
17 against Defendants based on Defendants' practice of collecting money from consumers through  
18 the deceptive practice involving the promotion and delivery of unordered subscriptions.  
19 Defendants' conduct constitutes a violation of the Washington Consumer Protection Act.

## 20 II. JURISDICTION AND VENUE

21  
22 4. This Court has jurisdiction over this class action pursuant to 28 U.S.C. § 1332. In  
23 the aggregate, the claims of Plaintiffs and the members of the Class exceed the jurisdictional  
24 minimum amount in controversy of \$5,000,000.00, exclusive of costs and interests, 28 U.S.C.  
25 § 1332(d)(2)(A) and § 1332(6). Additionally, this is a class action in which some of the  
26 members of the Class are citizens of a different state than the Defendants.



1 purchased the Intelius report, Plaintiffs Lee/Cramer incurred monthly charges for unordered  
2 services. The services -- which were each billed to the Plaintiffs' credit card at \$19.95 per month  
3 -- appeared on the credit card statements as "Family Protect," "AP9\*Family Safety Repo-V" and  
4 "Intelius Subscription." As a result, Plaintiffs Lee/Cramer were wrongfully charged hundreds of  
5 dollars for a service that they did not knowingly order and which provided them no benefits.  
6

7 **B. Defendants**

8 9. Defendant Intelius, Inc. is a Delaware Corporation with its principal place of  
9 business at 500 108<sup>th</sup> Avenue, NE, 25<sup>th</sup> Floor, Bellevue, WA 98004. Intelius provides  
10 intelligence services to consumers over the Internet. At all times relevant to this complaint,  
11 Intelius controlled Intelius Sales, LLC on a day-to-day basis. Upon information and belief,  
12 Intelius, Inc. owns and operates the Intelius.com website and receives a substantial portion of the  
13 monies obtained by Intelius Sales from Adaptive as the result of the Marketing Agreement  
14 described above.  
15

16 10. Defendant Intelius Sales, LLC ("Intelius Sales") is a Nevada limited liability  
17 company with its principal place of business at 500 108<sup>th</sup> Avenue, NE, 25<sup>th</sup> Floor, Bellevue, WA  
18 98004. Intelius Sales is a wholly-owned subsidiary/affiliate of Intelius, Inc. and was party to the  
19 Marketing Agreement with Adaptive Marketing described above.  
20

21 **IV. SUBSTANTIVE ALLEGATIONS**

22 **A. Intelius Improperly Enrolls Class Members for Monthly "Subscriptions," Netting  
23 Defendants Millions of Dollars**

24 11. Describing itself as an "information commerce company," Intelius provides on-  
25 line intelligence services and search and marketing services to consumers and enterprises.  
26 Among other things, Intelius generates revenue from consumers who purchase its intelligence  
services on a pay-per-use basis.

1           12.     Among other products, Intelius offers such services as “reverse” cell phone  
2 directories, identity protection services and “background checks.” Intelius sells its services  
3 through its network of websites, which Intelius claims was one of the top 100 most visited web  
4 properties in the U.S. for April 2008. According to Intelius, it has established relationships with  
5 leading online portals and directories, including Idea, Microsoft, Yahoo! and  
6 YELLOWPAGES.COM, that market its services on their websites and direct visitors to Intelius  
7 websites. According to Intelius, since its inception in January 2003, it has processed more than  
8 16 million orders and over four million customer accounts have purchased its services.  
9

10           13.     When a consumer purchases an Intelius service, Intelius makes available an  
11 “Intelius Consumer Site Terms and Conditions” page which purportedly governs the use of the  
12 Intelius databases. According to the terms and conditions, the Agreement is governed by  
13 Washington law.  
14

15           14.     Although Intelius derives revenue by directly offering services to customers, it  
16 also derives substantial revenue from “post-transaction marketing.” Among those companies  
17 that Intelius does business with is Adaptive Marketing. Adaptive offers a variety of membership  
18 programs (the “Adaptive Programs”) on the Internet. Among the Adaptive Programs are: “24  
19 Protect Plus,” “Privacy Matters,” “Identity Protect,” “ValueMax” and “Family Safety.”  
20

21           15.     Pursuant to the July 10, 2007 Marketing Agreement, when Plaintiffs and any  
22 member of the Class pay for one of the Intelius services, Intelius then transfers the consumers’  
23 credit/debit card and other billing information to Adaptive. Plaintiffs and Class members are  
24 then surreptitiously enrolled in one or more of the Adaptive programs, and are billed for these  
25 unwanted services on a monthly basis.  
26

1           16.     While Adaptive may be a separate entity purportedly providing these services to  
2 consumers, the consumers end up with these unwanted services through the direct actions of  
3 Intelius via the Intelius websites, and the language on the Intelius website has the tendency to  
4 mislead customers into unknowingly signing up for these Adaptive Programs. As explained in a  
5 March 2009 "Seattle Weekly" article:  
6

7           [M]any users apparently failed to realize they are giving such consent,  
8 and it's easy to see why. Say you do a "people search" through Intelius,  
9 a service that costs \$1.95 and provides an individual's phone numbers,  
10 addresses, birthday, relatives, and other information. After you enter  
11 your credit-card number, a page comes up thanking you for your order in  
12 big, bold type. In somewhat smaller and less-bold type, it also says you  
13 can get \$10 back as a member of ValueMax (an Adaptive program  
14 offering discounts at stores like Kmart and Bed Bath & Beyond). In  
15 really small, regular type, it tells you that membership will entail your  
16 credit card being charged \$19.95 a month after a "7-day FREE trial  
17 period."

18           Remember, you still haven't gotten access to the information you paid  
19 for. To get it, you have two choices: Click on the big orange rectangle,  
20 off to the side of all these instructions that says "YES, and show my  
21 report," or click on the small black one-line link that says "No, show my  
22 report." The YES button is what gets you monthly ValueMax fees.

23           17.     A May 2008 "TechCrunch" article describes an equally deceptive manner by  
24 which Intelius causes consumers to unknowingly "order" Adaptive products:  
25

26           Every time a customer buys a product at Intelius, they are shown a page telling  
27 them "Take our 2008 consumer Credit Survey and claim \$10.00 CASH BACK  
28 with Privacy Matters Identity." The user is then shown two survey questions and  
29 asked to enter their email and click a large orange button. They can choose to  
30 skip the survey by clicking on a small link at the bottom of the page.

31           Undoubtedly a lot of consumers do the survey and move forward to the next page  
32 -- it only takes a second. But what most people don't do is read the fine print,  
33 which gives no real details on the \$10 cash back (in fact, it is never mentioned  
34 again, anywhere). Instead, in light gray small text, users are told that by taking  
35 the survey they are really signing up to a \$20/month subscription. Intelius  
36 forwards your personal information, including your credit card, to Adaptive  
37 marketing. The next day a \$20 charge appears on your credit card, and each  
38 month afterwards.

1 \* \* \*

2 Of course you never hear from Adaptive Marketing again (why take a chance that  
3 you'll wonder who they are). Instead, the credit card charges keep coming, and  
4 the company obviously hopes you never notice.

5 This survey is quite literally a complete and total scam. And since users continue  
6 to pay forever (or until they try to stop it), the contribution to Intelius' revenue  
7 grows significantly over time.

8 18. While the language contained on the Intelius websites has the capacity to deceive  
9 a substantial portion of the public to initially purchase Adaptive products, pursuant to the terms  
10 of the Marketing Agreement, Intelius makes it difficult for the reasonable consumer to inquire  
11 about or cancel the Adaptive Program even when the consumer discovers that he/she is being  
12 charged for the Adaptive Program. For example, the Marketing Agreement specially prohibits  
13 Intelius from communicating with any customer with respect to an Adaptive Program, without  
14 Adaptive's prior written consent. Moreover, the Adaptive Programs are sometimes also listed on  
15 the consumer's charge card bill as an "Intelius Subscription" or "Intelius.com" charge, thereby  
16 further obfuscating what the charge constitutes.

17 19. Intelius thus enrolls Plaintiffs and the Class members into Adaptive Programs  
18 without adequately disclosing, among other things: (1) that the consumers are being enrolled in  
19 the Adaptive Programs without their authorization or consent; (2) the amount of the recurring  
20 charges by Adaptive and/or Intelius; (3) the terms and conditions involved in the Adaptive  
21 Programs; and (4) the manner by which the consumer may cancel those services.

22 20. The fact that Intelius website marketing of Adaptive Programs is plainly  
23 deceptive to a substantial portion of the public is borne out in, among other things, the hundreds -  
24 - if not thousands -- of complaints received by the Washington State Attorney General office and  
25  
26

1 the Better Business Bureau. The Intelius site is so deceptive, that even "sophisticated"  
2 consumers are being misled. As reported in the "Seattle Weekly" article:

3 Stephen Kropp of Renton says he inadvertently signed up for an Intelius identity-  
4 theft subscription last summer after purchasing a phone number from the  
5 company. Sometime later, he says, he noticed a \$19.95 charge on his debit card.  
6 Looking through past statements, he realized the company had been charging him  
7 for six months, collecting a total of \$120. "I just wanted a phone number," says  
8 Kropp. "The service they were offering was completely unrelated to what I was  
9 asking for" and hadn't provided him any benefits that he could see. He says  
10 Intelius initially refused to refund all but one month of the fees, but agreed to  
11 return the rest after he wrote to [the Attorney General's] office.

12 Like many of those complaining, Kropp is not a computer neophyte. A civil  
13 engineer, he works for an environmental consulting firm called Entrix, where he  
14 designs salmon habitat restoration projects, among other things -- all using  
15 software, of course. "I'm pretty much a computer nerd," he says.

16 That's the thing that bothers Brenda Piampiano, a Maine attorney who was hit  
17 with \$40 worth of charges for an Adaptive service she says she never  
18 intentionally signed up for. The service is called "Family Safety," and promises  
19 to allow consumers the ability to monitor sex offenders in their neighborhoods.  
20 "I'm a relatively savvy person with a law degree, and I use the computer  
21 absolutely all the time," she says. "I feel like if I can get taken into these things,  
22 anybody can."

23 21. Intelius derives substantial revenue as the result of its deceptive sale of Adaptive  
24 Programs. According to its SEC data, by the end of first quarter 2008, 38.9% of Intelius'  
25 revenue was the result of its agreement with Adaptive.

## 26 V. CLASS ACTION ALLEGATIONS

27 22. Plaintiffs and the Class reallege the proceeding paragraphs as if fully set forth  
28 herein.

29 23. This class action is brought and may be maintained under Fed. R. Civ. P. 23  
30 (b)(2) and (b)(3). Plaintiffs bring this action on behalf of the following nationwide class:

31 All persons located within the United States who provided credit, or debit card  
32 information to an Intelius website from July 17, 2007 to the present and thereafter

1 had charges debited to such card by or for the benefit of Intelius and/or Adaptive  
2 Marketing LLC without the consumers' prior informed authorization or consent.

3 24. Plaintiffs reserve the right to modify the class definition before moving for class  
4 certification, including a reservation of the right to seek to certify subclasses, if discovery reveals  
5 that modifying the class definition or seeking subclasses would be appropriate.

6 25. Excluded from the Class are governmental entities, Defendants, Defendants'  
7 affiliates, agents, parents, subsidiaries, employees, officers, directors, and immediate family  
8 members. Also excluded from the Class is any judge, justice or judicial officer presiding over  
9 this matter and the members of their immediate families and judicial staff.

10 26. Plaintiffs do not know the exact number of Class members, because such  
11 information is within the exclusive control of Defendants. Intelius boasts that it has sold to over  
12 four million customer accounts. The members of the Class include Washington residents and are  
13 so numerous and geographically dispersed across the United States that joinder of all Class  
14 members is impracticable.

15 27. Defendants have acted with respect to the Class in a manner generally applicable  
16 to each Class member. There is a well-defined community of interest in the questions of law and  
17 fact involved in the action, which affect all Class members. The questions of law or fact  
18 common to the Class predominate over any questions affecting only individual members and  
19 include, but are not limited to, the following:

20 A. Whether Defendants misstated, omitted or concealed material facts concerning the  
21 Adaptive Programs, and whether such misstatements, omissions or concealment of material facts  
22 deceived, or are likely to mislead and deceive consumers using Intelius websites;

23 B. Whether Defendants' acts and omissions as described above constitute a violation  
24 of the Washington Consumer Protection Act (the "CPA");  
25  
26

1 C. Whether Plaintiffs and the members of the Class have been damaged by  
2 Defendants' wrongs complained of herein, and if so, whether Plaintiffs and the Class are entitled  
3 to injunctive relief;

4 D. Whether Plaintiffs and the members of the Class have been damaged by  
5 Defendants' wrongs complained of herein, and if so, the measure of those damages and the  
6 nature and extent of other relief that should be afforded;

7 E. Whether treble damages should be awarded to Plaintiffs and the members of the  
8 Class for Defendants' violations of the Washington CPA, as alleged herein;

9 F. Whether Plaintiffs and the members of the Class should be awarded attorneys'  
10 fees and the costs of suit for Defendants' violation of the Washington CPA, as alleged herein;  
11 and  
12

13 G. Whether Plaintiffs and the members of the Class are entitled to declaratory relief  
14 for Defendants' statutory violations alleged herein.  
15

16 28. Plaintiffs' claims are typical of the claims of the other members of the Class in  
17 that all members of the Class have been harmed in substantially the same way by Defendants'  
18 acts and omissions.

19 29. Plaintiffs are each an adequate representative of the Class. Plaintiffs are  
20 committed to prosecuting this action and have retained competent counsel experienced in  
21 litigation of this nature. Plaintiffs seek no relief that is antagonistic or adverse to other members  
22 of the Class.  
23

24 30. A class action is superior to other available methods for the fair and efficient  
25 adjudication of the controversy. The prosecution of separate actions by individual members of  
26 the Class would create the risk of inconsistent or varying adjudications with respect to individual

1 members of the Class. Moreover, litigation on an individual basis could be dispositive of the  
2 interests of absent Intelius customers, and substantially impair or impede their ability to protect  
3 their interests.

4 31. In view of the complexity of the issues presented and the expense that an  
5 individual Plaintiff would incur if he or she attempted to obtain relief from Intelius, the  
6 individual claims of Class members are monetarily insufficient to support separate actions.  
7 Because of the size of the individual Class members' claims, few, if any, Class members could  
8 afford to seek legal redress for the wrongs complained of in this Complaint.  
9

10 32. Plaintiffs do not anticipate any difficulty in managing this action as a class action.  
11 The identities of the Class members are known by Defendants, and the measure of monetary  
12 damages can be calculated from Defendants' records. The claims will be governed under  
13 Washington law in accordance with Intelius's Terms and Conditions. This action poses no  
14 unusual difficulties that would impede its management by the Court as a class action.  
15

## 16 VI. CLAIMS FOR RELIEF

### 17 A. FIRST CAUSE OF ACTION

#### 18 1. Violation of Chapter 19.86 RCW, Washington Consumer Protection Act 19 (Against All Defendants)

20 33. Plaintiffs and the Class reallege the preceding paragraphs as if fully set forth  
21 herein.

22 34. This cause of action is asserted on behalf of Plaintiffs and the Class.

23 35. The Washington Consumer Protection Act, RCW 19.86 *et seq.*, provides  
24 consumers with a comprehensive procedure for redressing Defendants' unfair or deceptive  
25 business practices.  
26

1           36.     RCW 19.86.090 provides a private right of action to any person injured in his  
2 property by an “unfair or deceptive act or practice.”

3           37.     Defendants’ acts and omissions as alleged herein violate the Washington CPA  
4 because they: (1) are unfair or deceptive acts or practices; (2) are committed in the course of  
5 Defendants’ business; (3) have a pervasive public interest impact and have the potential to  
6 deceive a substantial portion of the public; and (4) have caused injury to Plaintiffs in their  
7 business and/or property and the members of the Class.  
8

9           38.     As a result of Defendants’ deceptive acts and practices as alleged herein.  
10 Plaintiffs and the members of the Class paid for unwanted and unused services.

11           39.     Defendants’ actions and inactions as alleged herein are the proximate cause of  
12 injury to Plaintiffs and the Class in an amount to be proven at trial.  
13

14           40.     Pursuant to RCW 19.86.090, Plaintiffs seek damages on behalf of themselves and  
15 each Class member against all Defendants for Plaintiffs’ actual damages sustained as a result of  
16 Defendants’ actions and inactions alleged herein, in an amount to be determined at trial, but not  
17 less than \$5,000,000, as well as the costs of this suit and reasonable attorneys’ fees.  
18

19           41.     Further, pursuant to RCW 19.86.090, Plaintiffs seek treble damages on behalf of  
20 themselves and each Class member for their actual damages sustained as a result of Defendants’  
21 unfair and deceptive acts in the amount to be determined at trial, but not less than \$5,000,000.  
22

**B.     SECOND CAUSE OF ACTION**

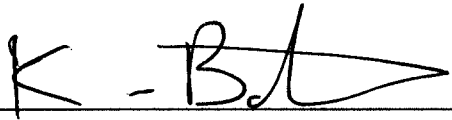
23           1.     **Declaratory Relief Under the Declaratory Judgments Act, 28 U.S.C. §**  
24                   **2201(Against All Defendants)**

25           42.     Plaintiffs and the Class reallege the preceding paragraphs as if fully set forth  
26 herein.





1 DATED this 19th day of October, 2009.

2  
3  
4 By 

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