

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

<p>PAUL CHO, individually and on behalf of all others similarly situated,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>REALNETWORKS, INC.,</p> <p style="text-align: right;">Defendant.</p>	<p style="text-align: center;">No.</p> <p style="text-align: center;">CLASS ACTION COMPLAINT</p> <p style="text-align: center;">JURY TRIAL DEMANDED</p>
---	---

Plaintiff Paul Cho, individually and on behalf of all others similarly situated, alleges based upon personal knowledge, information and belief, and the investigation of counsel, the following:

NATURE OF THE ACTION

1. This action is brought to redress a scheme initiated by Defendant RealNetworks, Inc. (“RealNetworks”) to work with numerous merchant partners to levy unauthorized charges on unsuspecting consumers’ credit or debit card accounts.

2. RealNetworks purports to offer *free* trial memberships to its subscription-based online entertainment services, such as “SuperPass.” This offer for free trial subscription, however, is part of RealNetworks’ fraudulent business practices designed to obtain unauthorized access to the consumers’ credit or debit card information to begin charging for its subscription-based services without the consumers’ knowledge or consent.

3. RealNetworks’ fraudulent marketing scheme operates as follows:

(a) **Post-Transaction Marketing**: Upon information and belief, RealNetworks pays its merchant partners, such as Comcast, a substantial fee in exchange for gaining access to the merchant partners’ customers during the customers’ transactions with the merchant partners.

Once the customer provides his or her credit or debit card information to the merchant partner, RealNetworks offers a free trial of its subscription-based services, such as SuperPass, to the merchant partners' customers who are led to believe that they are completing the original transaction with the merchant partner.

(b) **Data Pass**: At the heart of RealNetworks' fraudulent marketing scheme lies a "data pass" arrangement where a consumer can be subscribed to RealNetworks' subscription-based services, such as SuperPass, without ever directly providing his or her credit card information. Instead, RealNetworks' merchant partners, pursuant to their partnership agreement with RealNetworks, pass on the consumer's credit or debit card information to RealNetworks without the consumer's knowledge or consent and without any form of communication between the merchant partner and the consumer authorizing this "data pass."

(c) **Negative Option Billing**: Once the consumer is unwittingly enrolled in RealNetworks' subscription-based services, such as SuperPass, RealNetworks begins to automatically charge the consumer's credit or debit card, again without the consumer's authorization. The card issuing company then processes these unauthorized charges and debits the consumer's account. RealNetworks continues assessing these unauthorized charges unless and until the consumer actively opts-out of RealNetworks' subscription-based services. This practice is known as a "negative option."

4. Thousands of consumers who have been injured by similar marketing schemes consisting of the same features (*i.e.*, post-transaction marketing, data pass, and negative option) voiced their complaints, which prompted the United States Senate Committee on Commerce, Science, and Transportation (the "Senate Commerce Committee") to launch an official

investigation into the business practices of companies involving similarly fraudulent marketing schemes.

5. The Senate Commerce Committee issued an official staff report on November 16, 2009, which stated that:

The [post-transaction] sales tactics . . . exploit consumers' expectations about online "checkout" process . . . [m]isleading . . . consumers to reasonably think they are completing the original transaction, rather than entering into a new, ongoing financial relationship with [RealNetworks].

Even more misleading and confusing is the "data pass" process [that] automatically transfer consumers' credit or debit card information from the familiar web seller to the third-party [subscription service]. Passing consumers' billing information directly to [RealNetworks], without requiring consumers to re-enter it, deprives consumers of notice that they are entering a new, ongoing financial relationship with an unfamiliar company.

Because consumers often do not understand that the marketers already have their billing information, consumers "mistakenly believe they must take some action before they will be charged." At the end of the free trial period, the marketer starts billing the consumer, "even when consumers have taken no additional steps to assent to a purchase or authorize the charge, and have never provided any billing information themselves."

Based upon this evidence, the FTC concluded that, "in any transaction involving both preacquired account information and a [negative option billing], the evidence of abuse is so clear and abundant that comprehensive requirements for obtaining express informed consent in such transactions are warranted."

6. The investigative efforts of the Senate Commerce Committee led to the passage of the Restore Online Shoppers' Confidence Act ("ROSCA"), which was signed into law in December 2010. ROSCA expressly banned RealNetworks' data pass and negative option billing practices.

7. Despite these high profile outcries against post-transaction marketing schemes involving both the data pass and negative option billing features, RealNetworks has continued to operate its scheme.

8. As a result of RealNetworks' fraudulent marketing scheme, Plaintiff and members of the putative Class have been charged for RealNetworks' subscription-based services, such as SuperPass, that they never wanted or used.

9. Accordingly, Plaintiff, on behalf of himself and all others similarly situated, whose credit or debit card accounts have been assessed fees for RealNetworks' subscription-based services, such as SuperPass, as a result of RealNetworks' fraudulent scheme, bring these claims against RealNetworks for: (a) violations of the Racketeer Influenced Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968; (b) violations of the Electronic Communications Privacy Act ("ECPA"), 18 U.S.C. § 2510, *et seq.*; (c) violations of the Illinois Consumer Fraud and Business Protections Act, 815 Ill. Comp. Stat. 505/1, et seq.; and (d) unjust enrichment. Plaintiff seeks, *inter alia*,: (1) an order certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure; (2) an order appointing Plaintiff and his counsel of record to represent the Class; (3) restitution, statutory damages, actual damages in an amount to be proven at trial, and injunctive and declaratory relief on behalf of Plaintiff and the Class; (4) attorneys' fees and costs of bringing this lawsuit; and (5) any such further relief as the Court may deem just and proper under the circumstances.

JURISDICTION AND VENUE

10. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the laws of the United States, namely, 18 U.S.C. §§ 1961-1968 (RICO) and 18 U.S.C. § 2510, *et seq.* (ECPA). This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiff's state law claims for violations of the Illinois Consumer Fraud and Business Protections Act and for unjust enrichment.

11. This Court also has original jurisdiction over this class action pursuant to 28 U.S.C. § 1332(d) because, in the aggregate, the amount in controversy exceeds the jurisdictional minimum amount of \$5,000,000.00, exclusive of costs and interests, there are at least 100 members in the proposed class, and at least one member of the class is a citizen of a different state than Defendant.

12. This Court has general and specific jurisdiction over Defendant. Defendant is, and at all relevant times was, engaged in unfair business practices and a racketeering enterprise directed at and/or causing injury to persons residing, located or doing business throughout the United States, including in this District.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims occurred in this District and/or because Defendant has sufficient contacts with this District.

PARTIES

14. Plaintiff Paul Cho was at all relevant times a resident of Illinois. On or about April 2011, he purchased a cable modem and a wireless router on Comcast's website using a Chase credit card. Beginning in May 2011, the Chase credit card was charged \$15.93 every month by RealNetworks with a transaction description of "RN *SUPERPASS" until September 2011.

15. At no point during Plaintiff's transaction with Comcast, or at any point thereafter, did Plaintiff provide his consent to charge his Chase credit card for allegedly subscribing to RealNetworks' SuperPass services. The charges were virtually unnoticeable because they were embedded amongst all the other ordinary charges that normally escape close scrutiny by the

ordinary consumer. Plaintiff noticed the recurring charges for the first time in or about September 2011 and promptly contacted RealNetworks to stop the unauthorized charges.

16. RealNetworks is a corporation established under the laws of the State of Washington, with its principal place of business located in Seattle, Washington.

STATEMENTS OF FACTS

17. RealNetworks' tactics to cram its subscription-based services, such as SuperPass, to unsuspecting consumers share a common element for their success: strategic alliance partnerships with third party merchants, such as Comcast, to obtain access to, and process charges on, the consumers' confidential billing information.

18. Upon information and belief, the mechanics of these *quid pro quo* partnership agreements are the same in every such agreement. In exchange for a portion of the revenue generated by charging for RealNetworks' subscription-based services, such as SuperPass, the partner merchants not only allow RealNetworks to market and sell its subscription-based services to their customers, but also provide access to the customers' private billing information, including their credit or debit card account numbers.

19. Once the partnership agreement is in place, RealNetworks' fraudulent marketing scheme to sell its subscription-based services, such as SuperPass, goes through several uniform steps to charge consumers' credit or debit cards for as many months as possible before consumers discover these unauthorized charges and cancel the subscriptions.

20. First, employing a deceptive tactic known as "post-transaction" marketing, RealNetworks uniformly created a false and deceptive appearance that these free trial offers for subscription-based services, such as SuperPass, are part of the consumers' original transactions

with the partner merchant. For example, RealNetworks inserted its SuperPass trial membership offer in a confirmation e-mail from Comcast to Plaintiff.

21. Second, once the consumers have been duped into believing that the free trial subscription-based service is from the partner merchant, RealNetworks allows the enrollment to go forward without ever requiring the unsuspecting consumers to enter his or her credit or debit card information.

22. As such, RealNetworks never obtains access to the consumers' credit card information directly from the consumers themselves. Instead, under the terms of the partnership agreement between the partner merchant and RealNetworks, the partner merchant provides RealNetworks with full, unfettered access to the consumers' credit or debit card information, even though the consumers never intended to directly provide such information to RealNetworks. This fraudulent tactic is known as "data pass" marketing.

23. Because the consumer never has to enter any of his or her credit or debit card information, they reasonably believe that they have not made any additional purchases, much less the purchase of an ongoing monthly subscription beyond a free trial period, apart from their original transaction with the partner merchant. According to the National Association of Attorneys General, requiring a consumer to re-enter his or her credit card information "is a readily recognizable means for a consumer to signal assent to a deal", which gives the consumers the ultimate say over their purchase decisions. Likewise, a Harvard Business School Professor, Benjamin Edelman, recently opined to the Senate Commerce Committee that "[consumers] rightly expect . . . they cannot incur financial obligations except by typing their credit card numbers."

24. Third, exploiting the fact that the consumers are completely unaware of their inadvertent enrollment in the subscription-based services, such as SuperPass, RealNetworks uniformly employs a deceptive billing process known as “negative option” where the consumers’ credit or debit card will be automatically charged a monthly fee unless and until the consumers take affirmative steps to cancel the membership.

25. Affirmative consumer action is impossible until they actually become aware that they have been inadvertently enrolled in RealNetworks’ subscription-based services, such as SuperPass, which does not occur until months, if not years, after RealNetworks first begins to charge recurring subscription fees. Furthermore, the common, distinctive feature of RealNetworks’ subscription-based services, that it merely provides “access” to benefits as opposed to periodic receipt of tangible goods, creates special hazards for consumers enrolled on a negative option basis because the consumers are not even aware of purchasing “access” in the first instance.

26. As a result of this uniform, fraudulent marketing scheme, consumers are wrongfully and deceptively charged by RealNetworks for its subscription-based services, such as SuperPass, even though the consumers do not knowingly consent to purchasing or being billed for the subscription-based services, and do not provide RealNetworks with valid authorization, in writing or otherwise, to withdraw funds from or assess charges against the consumers’ credit, debit, or other accounts.

27. RealNetworks received, and therefore is fully aware of, the hundreds of consumer complaints claiming that they were unknowingly enrolled in its subscription-based services, such as SuperPass, and that they never authorized RealNetworks to assess charges on their credit or debit cards. Some of the consumer complaints include:

- (a) “[B]eware of signing up with comcast or purchasing anything from a company called bridgevine. (routers) When I signed up with comcast I got a FREE trial from realnetworks. 30 days later I was getting billed. I cancelled my card I used to sign up with comcast and called Realnetworks. HA! You don’t need to do anything. They just start billing you and won't return any monies. I got scammed by comcast!!”
- (b) “[W]hat the hell is going on? I got the very same thing. I got charged for some kind of super pass crap.”
- (c) “Today (3 March 2010) I received 2 charges for 15.99 from RN Superpass. I’ve never even heard of them before. I tried to call them, but I keep getting told it’s a 15 minute wait for an agent or whatever. I don’t know what’s going on. I’ve never heard of them, and I’ve never put my card number online. So, I’m going to call the card company and see if I can get my money back.”
- (d) “This has happened to me also. They have been charging my card since October, I thought it was some random store I stopped at. Then I put two and two together and feel like a complete idiot. I am a single parent of 4 teenagers. Every 12.99 counts. What can I do? Will I get any of this money back? This is a bunch of bull.”
- (e) “This got my debit card number when I had tried to order Comcast. I ended up cancelling the Comcast order before I received any services but I had two fraudulent charges on my account. Superpass from REA was one of them. I called them to cancel and called my bank to request that the charges be deemed fraud. I had to cancel my debit card and get a new one. I hope this helps other victims of this unscrupulous organization.”
- (f) “I didn’t get a call but I noticed today the same thing everyone seems to be saying . . . I have realplayer but I never gave out my card info?? I always use my credit card anyway not my personal bank account. Weird. And I live in CA so the WA charge really scared me . . . I was freaking out.”
- (g) “I just notice that I have been being charged \$12.99, \$14.99 and \$9.99 a month on my credit card for EN Real BB Essentials, RN Superpass from REA and RN Realarcadegamepass all out of Washington. I have no idea who this is or what they are selling. I am working with my credit card company to remedy this problem. I guess I am not alone.”
- (h) “I got automatically subscribed to real player superpass thru comcast. Now I am trying to find a way to cancel it. It asks me to sign-in to → get the phone number →to call → to cancel it. But I don't have a password to sign-in. I tried resetting the password but I get no email on resetting it. This is clearly a scam and I am not going to pay them a dime.”
- (i) “This is after frustrating failures to cancel this ‘subscription’ automation. According to the RealNetworks support technician an ‘affiliation’ to services

provided from Time Warner and Comcast will engage the SuperPass promotion service.”

- (j) “I had the same problem. Real networks has no interaction with you after they start billing you. No correspondence at all. The company does not engage in normal and accepted business practices and they offer you nothing in restitution. Under no circumstances should anyone use this kluge of a product until Real networks fixes this business practice. They make the superpass part of the installation process and do not make it known to the user in any way that they are being billed. A monthly statement would have been nice. But nothing. This is a major scam.”
- (k) “I’ve just found out that this RN superpass has been charging me for about a year automatically, what a scam, I don’t even know what it is for. I guess i’ll try that number to remove it. Thanks.”
- (l) “I received charges from this company after I received a call from ‘GRANT WRITER PRO’. I did sign up for ‘Grant Writer’, but then I started receiving charges from ‘SUPERPASS FROM REA’, ‘Rhasody music’ and ‘superpass games’. Then I received a call yesterday stating they were going to send me a ‘Visa Card’ with a \$25.00 gift certificate thanking me for my purchased. They already had my address and the last four digits of my credit card. It made me angry that my information was given to a second party. The Visa gift card was another scam that came with a monthly charge.”
- (m) “The company that is charging people is Real.com. . . . I keep getting charged each month \$14.99 after I signed up for the FREE-TRIAL. The free trial then turned into this long drawn out process of me trying to get them from stealing money from my bank account. I have canceled this service 3 times, and each month I continue to get charged.”
- (n) “RN SUPERPASS FROM REAL NETWORKS [is a] SCAM . . . unauthorized charges, called to cancel and they refuse to refund the charges, they tell me that I will have to file a claim with my credit card company . . . so that is what I did . . . to bad it took me 4 months to realize the charges. STUPID SCAM!”
- (o) “In early February, 2010, we noticed ‘RN*Superpass’ on our credit card bill for \$14.99. We didn’t have a clue what it was. Did a websearch and found it, with a lot of complaints about unauthorized charges.

Went to the RealNetworks Superpass website, and thought, maybe I have an account. Entered my e-mail address, then selected ‘forgot password’. They sent a link to reset the password, which I did. Logged in. Checked the details – there was no account name, just the email address and a history of charges. The history showed \$14.99 per month for the last 11 months. I checked my credit card statements, and they confirmed it. We had been charged over \$160 for an unknown ‘product’.

I cancelled the credit card. Then called the 800 number to cancel Superpass. First it said that the wait would be about 15 minutes. Then, 20 seconds later, an english-speaking person with a foreign accent came on. They said we probably signed up for a free trial and didn't cancel it. I asked them to provide me some proof that we used the service. They said they couldn't. I asked for a supervisor and continued.

The supervisor said I could contest the charges with my credit card company. RealNetworks could research the usage history and provide that info to the credit card company, but not to me.

Neither my wife nor kid has any recollection of Superpass. I checked my e-mail history. I have no history of anything from Realnetworks last year or this year. At the time we supposedly signed up, Feb 15, 2009, I was unemployed; thus, we weren't taking on any extra expenses.

They just got my credit card number and charged it for as long as they could get away with it.

I deleted every scrap of RealNetworks stuff from my computer. It has been an annoying popup and media player for a while, replacing other media players already present.”

28. Despite the flood of consumer complaints, RealNetworks continues to engage in the same fraudulent marketing scheme under its partnership agreements with numerous partner merchants.

CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of himself and all others similarly situated. The Class is defined as follows:

All persons or entities who reside in the United States and who were enrolled in, and subsequently charged for, one or more of RealNetworks' trial subscription-based services, including, but not limited to, SuperPass.

30. The following persons shall be excluded from the Class: (1) all persons or entities that make a timely election to be excluded from the proposed Class; (2) Defendant and its legal representatives, officers, directors, assignees and successors; (3) governmental entities; and (4) the judge(s) to whom this case is assigned and any immediate family members thereof.

31. Plaintiff reserves the right to modify or amend the Class definition before the Court determines whether certification is appropriate.

32. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of the claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

33. **Numerosity Under Rule 23(a)(1):** The members of the Class are so numerous that individual joinder of all the members is impracticable. Plaintiff believes that thousands of consumers have been illegally charged monthly membership fees without their authorization. The exact number of Class members can be identified from records maintained by RealNetworks.

34. **Commonality Under Rule 23(a)(2):** This action involves common questions of law and fact, including, but not limited to, the following:

- (a) Whether RealNetworks' monthly membership charges to Plaintiff and Class members' credit or debit card accounts without their authorization constitutes wire fraud within the meaning of 18 U.S.C. § 1343;
- (b) Whether RealNetworks' monthly membership charges to Plaintiff and Class members' credit or debit card accounts without their authorization constitutes mail fraud within the meaning of 18 U.S.C. § 1341;
- (c) Whether RealNetworks' monthly membership charges to Plaintiff and Class members' credit or debit card accounts without their authorization constitutes bank fraud within the meaning of 18 U.S.C. § 1344(2);

- (d) Whether RealNetworks' practice of enrolling unsuspecting consumers in the trial subscription-based services, such as SuperPass, and charging monthly fees without proper authorization constitutes a pattern of racketeering activity;
- (e) Whether an association-in-fact enterprise exists among RealNetworks, various partner merchants, and credit card companies or debit card banks within the meaning of 18 U.S.C. § 1961(5);
- (f) Whether RealNetworks conducts lawful business activity unrelated to the illegal wire, mail, and bank fraud that constitutes the pattern of racketeering;
- (g) Whether RealNetworks failed to obtain authorization in writing from Plaintiff and Class members to assess automatic monthly charges on their credit or debit cards;
- (h) Whether Plaintiff and Class members' credit, debit, and/or charge information was wrongfully accessed or caused to be accessed by a party who was not authorized to access Plaintiff and Class members' private credit, debit, or charge card information;
- (i) Whether the transmission of Plaintiff and Class members' private credit or debit card information between RealNetworks and its partner merchants over the Internet was in violation of the Electronic Communications Privacy Act, 18 U.S.C. § 2510, *et seq.*;
- (j) Whether RealNetworks' marketing scheme to enroll consumers into the trial subscription-based services, such as SuperPass, without their knowledge and assess monthly fees on the consumers' credit or debit card violated the Illinois Consumer Fraud Act;

- (k) Whether the partnership agreement between RealNetworks and various partner merchants pursuant to which RealNetworks obtained Plaintiff and Class members' credit or debit card information is fraudulent;
- (l) Whether treble damages should be awarded to Plaintiff and Class members;
- (m) Whether RealNetworks has been unjustly enriched at the expense of Plaintiff and Class members; and
- (n) Whether Plaintiff and Class members are entitled to injunctive and/or declaratory relief.

35. **Typicality Under Rule 23(a)(3):** The named Plaintiff's claims are typical of, and not antagonistic to, the claims of the members of the Class. Plaintiff and the members of the Class he seeks to represent have been deceived and damaged by Defendant's unlawful, deceptive, and fraudulent conduct.

36. **Adequacy of Representation Under Rule 23(a)(4):** Plaintiff will fairly and adequately protect the interests of the Class, and the representative Plaintiff's interests are coincident with and not antagonistic to those of the other class members he seeks to represent. Plaintiff has retained competent counsel to represent him and the Class.

37. **The Class Can Be Properly Maintained Under Rules 23(b)(1)(A) and (B):** Prosecuting separate actions by or against individual class members would create a risk of (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

38. **The Class Can Be Properly Maintained Under Rule 23(b)(2):** RealNetworks and the other entities comprising the RICO enterprise has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

39. **The Class Can Be Properly Maintained Under Rule 23(b)(3):** Questions of law or fact common to the members of the Class predominate over any questions affecting only individual members with respect to some or all issues presented in this Complaint. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Individual litigation of the claims of all Class members is impracticable because the cost of litigation would be prohibitively expensive for each Class member and would impose an immense burden upon the courts. The conduct of this action as a class action, with respect to some or all of the issues presented in this Complaint, presents fewer management difficulties, conserves the resources of the parties and of the court system, and is the only means to protect the rights of all Class members.

COUNT I
(Violations of Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. §§ 1962(c))

40. Plaintiff incorporates by reference all allegations of all prior paragraphs as though fully set forth herein.

The RICO Enterprise

41. RealNetworks, various partner merchants (*e.g.*, Comcast), and credit or debit card companies (*e.g.*, Chase) formed an association-in-fact enterprise (the “RN Enterprise”) for the common purpose of making enormous illicit profits by fraudulently marketing and selling the trial subscription-based entertainment services, such as SuperPass, to consumers, including

Plaintiff and the Class members, and charging recurring monthly fees without proper consent of the consumers.

42. RealNetworks offers its subscription services and has conceived of the scam and how to implement it. In order to implement it, RealNetworks requires partner merchants and credit or debit card companies willing to process its charges.

43. In order to carry out their common purpose, RealNetworks and their merchant partners established, directed, and/or participated in the operation and management of an ongoing, independent structure and mechanism for extracting from consumers unauthorized subscription fees related to RealNetworks' subscription-based entertainment services, including SuperPass.

44. RealNetworks and various merchant partners have been contractually associated through a partnership agreement under which RealNetworks was granted full access to the merchant partners' customers in order to initiate the scam. RealNetworks also was given access to consumers' credit or debit card information that remained on file with the merchant partners, while the merchant partners are given a substantial portion of the revenue generated by RealNetworks fraudulently charging unsuspecting consumers monthly subscription fees without their proper consent. The merchant partners in turn depended upon the cooperation of the companies that issued these credit or debit cards to extract the monthly credit card payments. As such, the RN Enterprise is controlled, managed and directed by RealNetworks.

45. The merchant partners also manage and direct the RN Enterprise by agreeing to enter into the partnership agreements with RealNetworks, the terms of compensation the merchant partners receive, the placement and/or presentation of the offers from RealNetworks, the ease in which the merchant partners' customers will be able to cancel the subscription with

RealNetworks. The merchant partners also direct the RN enterprise each time they agree to do a data pass to RealNetworks for one of their customers.

46. The credit or debit card companies also manage and direct the RN Enterprise because they allowed the charges even though each company has its own fraud monitoring department and/or criteria and despite the fact that such companies have knowledge of complaints against RealNetworks (and other companies with similar unlawful business practices such as Trilegiant). The credit or debit card companies continued to process the charges from RealNetworks because they profited from such transactions even though their customers never agreed to the charges from RealNetworks.

47. At all relevant times hereto, RealNetworks was a “person” within the meaning of 18 U.S.C. § 1961(3). RealNetworks is legally distinct from the RN Enterprise.

48. RealNetworks has a legal existence separate from its participation in the RN Enterprise’s racketeering activity. In addition to its illegal acts of racketeering, RealNetworks conducts legitimate business of selling its products and services through lawful means. For example, RealNetworks 2011 Annual Reports states that “We provide the digital media services and applications we create to consumers, mobile carriers and other businesses. Consumers use our services and software to find, purchase, store, organize, play and manage music, games and video. Our consumer products and services include RealPlayer, a widely distributed media player; casual games for play on the Internet and social media sites and for purchase on personal computers and mobile phones; and SuperPass, a subscription service that provides access to a wide variety of digital media. Network service providers, such as mobile carriers, use our products and services to create and deliver digital media and messaging services, such as ringback tones, music-on-demand, video-on-demand and intercarrier messaging, for their

subscribers.” *See* RealNetworks Inc., Annual Report (Form 10-K), at 3 (March 1, 2012). In addition, RealNetworks could not accomplish its fraudulent scheme without the assistance of the merchant partners (who pass on the customers’ billing information in the data pass) and the credit or debit card companies (who actually process and bill the charges to the customers).

49. The purpose of the RN Enterprise is to act in concert to implement this fraudulent scheme to profit off of unsuspecting customers. While each entity in the RN Enterprise generates revenue through legitimate means, and thus, maintains a legal existence separate from the RN Enterprise (for example, a merchant partner like Comcast makes money off of its cable and DSL services while a credit or debit card company like Chase makes money off the transaction fees, interest accrued on balances, etc.), the RN Enterprise allowed each of the entities to obtain profits through this other channel and the expense of defrauded consumers .

50. The RN Enterprise has been of a long-running, continuous nature and will continue to operate into the future unless the relief sought herein is granted.

51. At all relevant times, the RN Enterprise was engaged in, and its racketeering activities affected, interstate commerce within the meaning of 18 U.S.C. § 1962(c).

Racketeering Activity

52. RealNetworks engaged in “racketeering activity” within the meaning of 18 U.S.C. § 1961(1) by engaging in predicate acts that constitute violations of the following statutes: (1) 18 U.S.C. § 1343 (wire fraud); 18 U.S.C. § 1341 (mail fraud); and 18 U.S.C. § 1344 (bank fraud).

53. RealNetworks willfully engaged in a scheme to defraud Plaintiff and Class members by:

- (a) Enrolling Plaintiff and Class members in RealNetworks’ subscription-based services, such as SuperPass, even though RealNetworks knew that Plaintiff and

Class members were unaware of the alleged enrollment because of the post-transaction marketing, data pass, and negative option billing;

- (b) Entering into a partnership agreement, and intentionally concealing this contractual arrangement, under which RealNetworks unlawfully gained access to the consumers' credit or debit card information from various merchant partners without first obtaining their proper authorization;
- (c) Intentionally concealing that RealNetworks will automatically charge the consumer's credit or debit card on a monthly basis without first obtaining their proper authorization; and
- (d) Intentionally misrepresenting its authority to charge the consumers' bank and credit card accounts to the banks that issued the consumers' credit or debit cards.

54. RealNetworks repeatedly used interstate wire and mail communications for the purpose of executing and furthering such scheme to defraud Plaintiff and other Class members, including, *inter alia*:

- (a) Electronic, mail and/or telephone communications between the various merchant partners and their customers for their customers' initial transaction;
- (b) Electronic, mail and/or telephone communications between RealNetworks and various merchant partners discussing the details of their partnership agreement to allow RealNetworks to market its subscription-based services, such as SuperPass, in exchange for a portion of the revenue generated therefrom;
- (c) Thousands of electronic, mail and/or telephone communications between RealNetworks and various merchant partners asking and receiving Plaintiff and Class members' credit or debit card information (the "data pass");

- (d) Thousands of electronic and mail communications between RealNetworks and Plaintiff and Class members regarding RealNetworks' subscription-based services, such as SuperPass;
- (e) Thousands of transmissions of monthly unauthorized charges sent by RealNetworks to the credit or debit card companies;
- (f) Thousands of transmissions of monthly unauthorized charges to Plaintiff and Class members' credit or debit card accounts for its subscription-based services, such as SuperPass;
- (g) Thousands of electronic, mail and/or telephone communications between RealNetworks and Plaintiff and Class members consisting of numerous complaints regarding unauthorized enrollment into, and charges for, RealNetworks' subscription-based services, such as SuperPass;
- (h) Thousands of electronic or mail transmissions of credit or debit card statements to Plaintiff and Class members containing the fraudulent charges, including, *inter alia*,
 - i. \$15.93 charge against Plaintiff's Chase credit card with a transaction description of RN *SUPERPASS FROM REA 866-212-1343 WA on May 14, 2011;
 - ii. \$15.93 charge against Plaintiff's Chase credit card with a transaction description of RN *SUPERPASS FROM REA 866-212-1343 WA on June 14, 2011;

- iii. \$15.93 charge against Plaintiff's Chase credit card with a transaction description of RN *SUPERPASS FROM REA 866-212-1343 WA on July 14, 2011; and
 - iv. \$15.93 charge against Plaintiff's Chase credit card with a transaction description of RN *SUPERPASS FROM REA 866-212-1343 WA on August 14, 2011.
- (i) Thousands of electronic, mail and/or telephone communications between RealNetworks and credit card companies regarding processing of monthly unauthorized charges on Plaintiff and Class members' credit or debit cards;
 - (j) Thousands of electronic, mail and/or telephone communications between RealNetworks and Plaintiff and Class members regarding cancellation of their inadvertent enrollment into the subscription-based services, such as SuperPass; and
 - (k) Thousands of electronic, mail and/or telephone communications among RealNetworks personnel regarding how to respond to consumer complaints and/or requests for cancellation of the subscription-based services, such as SuperPass, to minimize the amount of refund.

55. Each of the predicate acts described above occurs each and every time a Class member was scammed by the RN Enterprise.

56. Additionally, such scheme to defraud enabled RealNetworks to unlawfully obtain enormous amount of funds under the custody or control of the banks that authorized the recurring credit or debit card charges. Each time RealNetworks assesses a monthly charge to millions of unwitting consumers pursuant to its fraudulent marketing scheme that resulted in

their attainment of the consumers' credit or debit card information without proper consent, RealNetworks committed bank fraud within the meaning of 18 U.S.C. § 1344.

Ongoing Pattern of Racketeering Activity

57. RealNetworks has knowingly, intentionally, and/or recklessly engaged in an ongoing, open-ended pattern of racketeering activity by committing thousands of predicate acts of wire, mail, and bank fraud, by knowingly and intentionally assessing, without authorization, monthly charges to Plaintiff and other Class members' credit or debit cards as part of their fraudulent marketing scheme described herein.

58. The racketeering activity was and is related by virtue of common participants, common victims (Plaintiff and members of the Class), a common structure and method of commission, a common purpose, and a common result of enrolling and charging consumers for unknown and unwanted subscription-based services, such as SuperPass, thereby defrauding Plaintiff and Class members of significant monies and unjustly enriching RealNetworks and their collaborators.

Injury to Plaintiff and Class Members in Their Business or Property by Reason of the Pattern of Racketeering Activity

59. As a direct and proximate result of RealNetworks' ongoing pattern of racketeering activity, Plaintiff and Class members have suffered, and continue to suffer, repeated, ongoing injury by virtue of RealNetworks' unauthorized assessment of monthly fees on Plaintiff and Class members' credit or debit cards.

60. But for RealNetworks' scheme to defraud Plaintiff and Class members by enrolling them into its subscription-based services, such as SuperPass, without their knowledge and assessing monthly charges to their credit or debit cards without first obtaining proper

authorization from Plaintiff and Class members, Plaintiff and Class members would not have been injured.

61. Plaintiff and Class members are the only direct victims of RealNetworks' wrongful and unlawful conduct. Without authorization, RealNetworks withdrew moneys from Plaintiff and Class members' banks and credit card accounts on an ongoing basis.

62. As the direct victims of RealNetworks' wrongful and unlawful conduct, Plaintiff and Class members have been injured in an amount according to proof. Damages will be calculated with greater accuracy according to information in RealNetworks' records. Because the information necessary to calculate damages is contained in RealNetworks' records, the Court will not need to adopt complicated rules apportioning damages in order to obviate multiple recoveries. Plaintiff will seek leave of Court to amend this Complaint to set forth the exact amount thereof when the same is ascertained.

63. The pattern of racketeering activity, as described herein, is continuous, ongoing, and will continue unless RealNetworks is enjoined from continuing these racketeering practices. RealNetworks has consistently demonstrated its unwillingness to discontinue the illegal practices described herein, and continues its pattern of racketeering as of this moment.

64. As a direct and proximate result of the racketeering activities of RealNetworks as described herein, Plaintiff and Class members are entitled to recover treble damages for the injuries they have sustained, according to proof, restitution, as well as costs of suit and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

65. As a direct and proximate result of the racketeering activities of RealNetworks as described herein, Plaintiff and Class members are entitled to an Order, pursuant to 18 U.S.C. §

1964(a), enjoining and prohibiting RealNetworks from further engaging in the unlawful conduct which the RN Enterprise has engaged in.

66. By virtue of their violations of 18 U.S.C. § 1962(c), RealNetworks is jointly and severally liable to Plaintiff and Class members for three times the damages that Plaintiff and Class members suffered as a result of RealNetworks' scheme to defraud consumers.

COUNT II
(Violations of Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1962(d))

67. Plaintiff incorporates by reference all allegations of all prior paragraphs as though fully set forth herein.

68. In violation of 18 U.S.C. § 1962(d), RealNetworks agreed with its merchant partners to enter into a conspiracy to, and did, in fact, conduct and participate in the affairs of the RN Enterprise directly or indirectly, through a pattern of racketeering activity, which included the repeated acts of mail fraud, wire fraud, and bank fraud as alleged above.

69. In furtherance of this conspiracy, RealNetworks committed numerous overt acts as alleged above in the pattern of racketeering described above, including, but not limited to, entering into partnership agreements with merchants, which provided the structure, mechanism, and strong financial incentive to carry out the scheme to defraud Plaintiff and Class members of monthly fees by surreptitiously enrolling them in RealNetworks' subscription-based services, such as SuperPass.

70. As a direct and proximate result of, and by reason of, the activities of RealNetworks and its conduct in violation of 18 U.S.C. § 1962(d), Plaintiff and Class members have been injured in their business and property within the meaning 18 U.S.C. § 1964(c), and are entitled to recover treble damages together with the costs of this lawsuit, expenses and reasonable attorneys' fees.

COUNT III

(Violations of Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 *et seq.*)

71. Plaintiff incorporates by reference all allegations of all prior paragraphs as though fully set forth herein.

72. The ECPA prohibits any person from “intentionally intercept[ing], endeavor[ing] to intercept, or procur[ing] any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication.” 18 U.S.C. § 2510(1)(a).

73. “Electronic communication” means “any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce.” 18 U.S.C. § 2510(12).

74. “Intercept” means the “acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.” 18 U.S.C. § 2510(4).

75. The transmission over the Internet of the confidential credit or debit card account information to RealNetworks’ merchant partners by Plaintiff and Class members constitutes “electronic communications” within the meaning of 18 U.S.C. § 2510(12). The transmission is a private communication among these merchant partners and Plaintiff and Class members made for the sole purpose of purchasing the merchant partners’ products and/or services that did not include RealNetworks’ subscription-based services, such as SuperPass.

76. Without prior notice to Plaintiff and Class members, and in furtherance of their fraudulent marketing scheme to enroll and charge unwitting consumers for the subscription-based services, such as SuperPass, as alleged in this Complaint, RealNetworks entered into a partnership agreement with various merchant partners to intentionally intercept, and did

intercept, Plaintiff and Class members' confidential credit or debit card information by means of electronic devices, including, but not limited to their computers, in violation of 18 U.S.C. § 2510(l)(a).

77. Pursuant to 18 U.S.C. § 2520, Plaintiff and the Class members are entitled to preliminary, equitable and declaratory relief, in addition to statutory damages of the greater of \$10,000 or \$100 per day for each day of violation, actual and punitive damages, reasonable attorneys' fees and other litigation costs, and RealNetworks' profits obtained from the above-described violations.

COUNT IV
(Violation of Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1, et seq.)¹

78. Plaintiff incorporates by reference all allegations of all prior paragraphs as though fully set forth herein.

79. At all times relevant hereto, there was in full force and effect the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, et seq. (the "Consumer Fraud Act."), which prohibits any concealment, suppression or omission of any material fact, with the intent that others rely thereupon, in the conduct of any trade or commerce.

80. At all times relevant hereto, RealNetworks, Plaintiff and Class members were "persons" within the meaning of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1(c).

81. At all times relevant hereto, RealNetworks conducted "trade" and "commerce" within the meaning of 815 ILCS 505/1(f).

¹ Plaintiff brings this claim and seeks certification of a class under the Illinois Consumer Fraud and Deceptive Business Practices Act and the consumer protection acts of states that are substantially similar.

82. Plaintiff and Class members are “consumers” within the meaning of 815 ILCS 505/1(e).

83. Under the Consumer Fraud Act, the use or employment of any practice described in Section 2 of the Uniform Deceptive Trade Practices Act (“UDTPA”) (815 ILCS 510/2) in the conduct of any trade or commerce is unlawful whether any person has in fact been misled, deceived or damaged thereby.

84. Under Section 2 of UDTPA, a person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have. 815 ILCS 510/2(a)(5).

85. RealNetworks’ marketing and sale of its subscription-based services, such as SuperPass, as described herein is an unfair and deceptive act and practice within the meaning of the Consumer Fraud Act, including, *inter alia*:

- (a) the offer for free trial of subscription-based services as part of the overall transaction with RealNetworks’ merchant partners, when in fact they are separate financial transactions with RealNetworks;
- (b) Failing to disclose that RealNetworks automatically charges monthly assessments to Plaintiff and Class members’ credit or debit cards; and
- (c) Failing to disclose that the merchant partners affiliated with RealNetworks have a strong financial incentive to share, without proper consent, Plaintiff and Class members’ credit or debit card information with RealNetworks, and that these

merchant partners do share the credit or debit card information with RealNetworks pursuant to a partnership agreement.

86. As a direct and proximate result of the foregoing acts and/or omissions of RealNetworks, Plaintiff and Class members were damaged in an amount to be determined at trial.

COUNT V
(Unjust Enrichment)

87. Plaintiff incorporates by reference all allegations of all prior paragraphs as though fully set forth herein.

88. As a result of RealNetworks' fraudulent, deceptive, and unlawful conduct, Plaintiff and Class members have conferred benefits upon RealNetworks in the form of recurring, monthly payment for RealNetworks' subscription-based services, such as SuperPass.

89. RealNetworks was at all times aware that the benefits conferred upon by them by Plaintiff and Class members were the result of RealNetworks' fraudulent, deceptive, and wrongful conduct.

90. Allowing RealNetworks to retain these unjust profits and other benefits would offend traditional notion of justice and fair play. Under these circumstances, it would be inequitable for RealNetworks to retain the benefits and allowing them to do so would induce companies to fraudulently conceal, mislead, and/or misrepresent key characteristics and obligations of their products in order to increase sales and profit.

91. Plaintiff, on behalf of himself and all others similarly situated, seeks restitution from RealNetworks and an order of this Court proportionally disgorging all profits, benefits, and other compensation obtained by RealNetworks from its wrongful conduct.

COUNT VI
(Declaratory Judgment)

92. Plaintiff incorporates by reference all allegations of all prior paragraphs as though fully set forth herein.

93. There is an actual controversy between RealNetworks and Plaintiff and the Class concerning whether Plaintiff and the Class ever agreed to be billed for RealNetworks' subscription-based services, including SuperPass. Thus, Plaintiff and the Class believe they are entitled to a full refund of all charges levied by RealNetworks while RealNetworks refuses to refund all such charges and believes it is entitled to retain such funds.

94. These opposing views create adverse legal interests over an actual controversy of whether those charges were authorized. A declaratory judgment is proper to declare the rights of Plaintiff, the Class and Defendant in this controversy.

95. The foregoing facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

96. Pursuant to 28 U.S.C. § 2201 this Court may "declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." These declarations are being sought under the law supporting the causes of action set forth above.

97. RealNetworks has wrongfully engaged in this illicit scheme of post-transaction marketing, data pass, and negative option billing. By granting declaratory relief, the Court would avoid multiplicity and circuitry of actions by declaring in one action the rights and obligations of the litigants.

98. Accordingly, Plaintiff seeks the following declarations:

Declaration I: That RealNetworks use of post-transaction marketing is illegal, unjust, and inequitable, and henceforth is prohibited.

Declaration II: That RealNetworks can only engage in post-transaction marketing if a customer is clearly and conspicuously notified that the offer is from RealNetworks for a subscription-based service. The offer must detail the exact terms of the offer, the charges to be levied, when the transaction must be canceled to avoid charges, and the method or contact information to cancel the transaction.

Declaration III: That RealNetworks use of data pass is illegal, unjust, and inequitable, and henceforth is prohibited.

Declaration IV: That RealNetworks use of pre-checked boxes as the customers' purported permission to make a purchase is illegal, unjust, and inequitable, and henceforth is prohibited.

Declaration V: That RealNetworks must obtain affirmative consent of the customers in order to start charging for its subscription-based services. Such affirmative consent may be obtained by requiring the customer to re-enter his/her credit/debit card number and billing information or otherwise provide proof of enrollment by providing some personally identifying information such as date of birth or mother's maiden name.

Declaration VI: That RealNetworks use of negative option billing is illegal, unjust, and inequitable, and henceforth is prohibited.

Declaration VII: That RealNetworks may only continue to charge a customers' credit or debit card on a monthly basis if RealNetworks sends a monthly statement to the customer either via the customers' billing address or customer provided email address.

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for relief and judgment as follows:

A. For an order certifying this action as a class action on behalf of the Class described above, appointing Plaintiff as the representative of the Class, and designating his counsel as counsel for the Class;

B. For restitution and/or disgorgement of all amounts wrongfully charged to and received from Plaintiff and members of the Class;

C. For damages according to proof;

D. For an award of treble damages where permitted under applicable law;

E. For an award of punitive damages where permitted under applicable law;

F. For preliminary and permanent injunctive relief, including an injunction prohibiting Defendant from any further engagement in the fraudulent marketing scheme to enroll unsuspecting consumers into its subscription-based services, such as SuperPass, and charge a monthly fee without authorization;

G. For an award of attorneys' fees as appropriate pursuant to the above cited statutes;

H. For costs of suit herein incurred;

I. For both pre- and post-judgment interest on any amounts awarded; and

J. For such other and further relief as the Court may deem proper.

DATED: May 24, 2012

Respectfully submitted,

**PAUL CHO,
Class Plaintiff,**

By: /s/ Jeffrey A. Leon

Jeffrey A. Leon
Jamie E. Weiss
Grant Y. Lee
COMPLEX LITIGATION GROUP LLC
513 Central Avenue, Suite 300
Highland Park, Illinois 60035
(847) 433-4500

Richard J. Burke
COMPLEX LITIGATION GROUP LLC
1010 Market Street, Suite 660
St. Louis, Missouri 63101

Robert J. Axelrod
Jay Douglas Dean
**POMERANTZ HAUDEK
GROSSMAN & GROSS LLP**
100 Park Avenue
New York, New York 10017

James E. Cecchi
**CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO**
5 Becker Farm Road
Roseland, New Jersey 07068

Jonathan Shub
SEEGER WEISS LLP
1515 Market Street, Suite 1380
Philadelphia, Pennsylvania 19102

*Attorneys for Plaintiff
and the Proposed Class*