

Commonwealth of Massachusetts
Essex County Superior Court

Steven Keenholtz, M.D. and Dorothy
Guillicksen, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

GateHouse Media, LLC, GateHouse
Media Massachusetts I, Inc.,
GateHouse Media Massachusetts II,
Inc., Enterprise Publishing Company,
LLC, Local Media Group, Inc., The
Inquirer & Mirror, Inc., George W.
Prescott Publishing Co. LLC,
GateHouse Media Ventures, Inc., CA
Massachusetts Holdings, Inc., and
Lawyers Weekly, LLC

Defendants.

Case No. _____

FILED
ESSEX COUNTY SUPERIOR COURT
2011 FEB - 6 P 3:29

Class Action Complaint

Plaintiffs Steven Keenholtz, M.D. and Dorothy Guillicksen (“Plaintiffs”),
by and through their attorneys, allege upon personal knowledge as to themselves
and their own acts, and upon information and belief as to all other matters, as
follows:

1. This is a case about a group of newspaper companies run by a conglomerate of companies referred to as GateHouse Media (defined below) that devised a business practice designed to take advantage of its subscribers.

2. Subscribers to GateHouse Media's various weekly newspapers¹ sign up for offers such as a "1 Year Subscription" or a "26 Week Subscription." But that is not what they receive.

3. Instead, GateHouse sends them, as frequently as once a month, a so-called "premium" magazine called "Lens" which is filled almost exclusively with

¹ Among other publications, GateHouse Media publishes the following weekly papers: Abington Mariner, Acton Beacon, Allston Brighton Tab, Arlington Advocate, Beacon Villager - Maynard & Stow, Bedford Minuteman, Belmont Citizen, Beverly Citizen, Billerica Minuteman, Bourne Courier, Braintree Forum, Bridgewater Independent, Burlington Union, Cambridge Chronicle, Canton Journal, Cape Codder, Carver Reporter, Chelmsford Independent, Cohasset Mariner, Concord Journal, Danvers Herald, Dedham Transcript, Dover Sherborn Press, Easton Journal, Falmouth Bulletin, Georgetown Record, Hamilton Wenham Chronicle, Hanover Mariner, Hingham Journal, Holbrook Sun, Hopkinton Crier, Hudson Sun, Ipswich Chronicle, Kingston Reporter, Lexington Minuteman, Lincoln Journal, Littleton Independent, Malden Observer, Mansfield News, Marblehead Reporter, Marlborough Enterprise, Marshfield Mariner, Medfield Press, Medford Transcript, Melrose Free Press, Natick Bulletin, Newburyport Current, North Andover Citizen, Northborough Villager, Norwell Mariner, Norwood Bulletin, Old Colony Memorial, Pembroke Mariner, Provincetown Banner, Randolph Herald, Raynham Call, Reading Advocate, Rockland Standard, Roslindale Transcript, Salem Gazette, Saugus Advertiser, Scituate Mariner, Sharon Advocate, Shrewsbury Chronicle, Somerville Journal, Southborough Villager, Stoneham Sun, Stoughton Journal, Sudbury Town Crier & Sunday MetroWest, Swampscott Reporter, Tewksbury Advertiser, The Register, The Sentinel, TriTown Transcript, Wakefield Observer, Walpole Times, Waltham News Tribune, Wareham Courier, Watertown Tab, Wayland Town Crier Tab, Wellesley Townsman & TAB, West Roxbury Transcript, Westborough News, Westford Eagle, Weston Town Crier, Westwood Press, Weymouth News, and the Winchester Star.

advertisements and other puff articles, and has nothing to do with the weekly newspaper subscribers signed up for.

4. GateHouse then charges each subscriber as much as \$2 per issue of *Lens*. But rather than send subscribers a bill or give them a chance to turn down *Lens*, they simply deduct \$2 in value from the end of a subscriber's subscription.

5. So, a subscriber who signs up for one year of weekly newspapers from GateHouse Media will instead receive as few as 30 weeks of the newspaper along with numerous issues of *Lens*.

6. GateHouse does not offer its subscribers the chance to opt-out of receiving *Lens*. It buries the details about the surcharge in fine print that contradicts the explicit, plain language of the advertisements.

7. What's worse, customers who are signed up for GateHouse's automatic debit programs are likely to never notice that their one year or 26-week subscription lengths have been materially shortened.

8. This action has two purposes. First, it seeks a refund for all subscribers to GateHouse publications for *Lens* magazine surcharges they already incurred. Second, it seeks a permanent injunction preventing GateHouse from advertising fixed-length subscriptions that it intends to materially shorten with so-called "Premium Edition" surcharges without sufficient disclosure.

Parties

9. Plaintiff Dr. Steven Keenholtz is a resident of Marblehead, Massachusetts, and a subscriber to the GateHouse Media publication the *Marblehead Reporter*.

10. Plaintiff Ms. Dorothy Guillicksen is a resident of Hanover, Massachusetts, and a subscriber to the GateHouse Media publication the *Hanover Mariner*.

11. Defendant GateHouse Media, LLC is a Delaware Corporation with a registered agent in Albany, New York, and with offices in Monroe County, New York.

12. Defendant GateHouse Media Massachusetts I, Inc. is a Delaware Corporation with a principal place of business in Pittsford, New York.

13. Defendant GateHouse Media Massachusetts II, Inc. is a Delaware Corporation with a principal place of business in Pittsford, New York.

14. Defendant Enterprise Publishing Company, LLC is a Delaware business entity with a principal place of business in Pittsford, New York that maintains an office in Needham, Massachusetts.

15. Defendant Local Media Group, Inc. is a Delaware Corporation with a principal place of business in Pittsford, New York.

16. Defendant The Inquirer & Mirror, Inc. is a Massachusetts corporation with its principal place of business in Fairport, New York.

17. Defendant George W. Prescott Publishing Co., LLC is a Delaware business entity with a principal place of business in Pittsford, New York.

18. Defendant GateHouse Media Ventures, Inc. is a corporation that operates in, among other places, Quincy, Massachusetts.

19. Defendant CA Massachusetts Holdings, Inc. is a Delaware corporation with a principal place of business in Pittsford, New York.

20. Defendant Lawyers Weekly, LLC is a Delaware business entity that maintains an office in Boston.

21. Collectively, throughout this Complaint, all Defendants are referred to as “GateHouse,” “GateHouse Media,” or “Defendants”. Defendants knew, and purposefully participated in, the wrongdoing alleged herein throughout the Commonwealth of Massachusetts, including in Essex County.

Factual Allegations

22. Term-length subscribers to GateHouse Media’s daily and weekly publications throughout Massachusetts, including Plaintiffs, subscribed to publications with advertisements that promoted a fixed-length subscription (e.g., “26 Weeks Subscription” or “1 Year Subscription”).

23. Notwithstanding advertisements that have bold headlines promising subscribers a fixed-length subscription, subscribers, including Plaintiffs, had their subscription lengths materially shortened by GateHouse.

24. Indeed, GateHouse shortened the agreed-to length of subscriber's subscriptions, including those of Plaintiffs, by charging a surcharge of \$2 per issue for each issue of Lens magazine (or other premium editions) sent to those subscribers.

25. Subscribers, including Plaintiffs, did not explicitly opt-in to receiving Lens magazine or other premium editions, and had no reasonable way to refuse them.

26. Because of GateHouse's premium edition billing policies, subscribers did not receive the length of subscription they signed up for. For example, a subscriber who signed up for a 1 Year Subscription would have had his subscription shortened to less than 52 weeks because of surcharges for Lens Magazine.

27. Information about the existence of Lens Magazine, or other premium editions, and the surcharge policy, was either not disclosed to Plaintiffs and the putative Class, or was disclosed in buried fine print.

28. Advertising a fixed-length (*e.g.*, one year or 26-week) subscription and then modifying that subscription in the fine print is an unfair and deceptive act, and

a violation of Mass. G.L. ch. 93A. *See, e.g.*, FTC Policy Statement on Deception, 103 F.T.C. 174 at 180-81 (1983) (“Depending on the circumstances, **accurate information in the text may not remedy a false headline because reasonable consumers may glance only at the headline. Written disclosures or fine print may be insufficient to correct a misleading representation.**”) (Emphasis added).

Chapter 93A incorporate the extensive body of Federal administrative and decisional law under the FTC Act. *Slaney v. Westwood Auto, Inc.*, 366 Mass. 688, 694 (1975).

29. Plaintiff Dr. Keenholtz, for example, paid \$80.50 for a promised subscription to the Marblehead Reporter of 2 years plus 8 bonus issues, on or around October 13, 2014. The subscription should have run for 112 weeks. Instead, Dr. Keenholtz was billed for a renewal that reduced the length of his subscription by at least 9 issues. This reduction appears to be a result of surcharges levied against his account by Defendants for Lens magazine and other so-called “premium editions.”

30. Plaintiff Guillicksen subscribed to the Hanover Marnier on “auto pay,” prepaying for a month at a time. She noticed that her debit card was being debited more frequently than expected (*i.e.*, more frequently than once a month), and as a result, paid more than she expected for her newspaper. This reduction

appears to be a result of surcharges levied against her account by Defendants for Lens magazine and other “premium editions.”

Class Action Allegations

31. Plaintiffs bring this lawsuit on behalf of themselves and the proposed Class members pursuant to Massachusetts Rule of Civil Procedure 23.

32. The proposed class consists of: all persons who, between April 1, 2014 and the date of entry of a Preliminary Approval Order, resided in Massachusetts, purchased a subscription from GateHouse for a GateHouse publication, received one or more premium editions, were assessed an additional amount for the Premium Editions, and, rather than be billed for the additional amount, had the length of their subscription adjusted such that the expiration of their subscription was accelerated based on the surcharge amount of the Premium Editions published during the Class Period. The following persons are excluded from the Class: all persons who are officers, employees, agents, or directors of Defendants or any of their subsidiaries and corporations related to any Defendant by ownership of shares or other means of control, as well as Judges of this Court.

33. The Class is so numerous that joinder of all members is impracticable.

34. There are questions of law or fact common to the class, including, among others, whether GateHouse Media’s disclosures to Class members about

their premium edition pricing policies violates Massachusetts General Laws Ch. 93A; whether GateHouse Media has been unjustly enriched by the implementation of its premium edition pricing policy; and whether GateHouse Media should be allowed to retain money collected for premium editions in good conscience. Indeed, these questions predominate over any questions affecting individual members of the Class.

35. Plaintiffs' claims are typical of those of the rest of the Class, as all Class members are similarly affected by Defendants' wrongful conduct. Plaintiffs, like other members of the Class, saw their promised subscription length shortened by GateHouse's policies. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all absent members of the class.

36. Plaintiffs can fairly and adequately protect the interests of the Class. Plaintiffs have no interests antagonistic to other members of the proposed Class. Plaintiffs have retained counsel competent and experienced in class action litigation, and Plaintiffs will prosecute this action vigorously.

37. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. It would be virtually impossible for members of the Class to individually redress the wrongs done to them effectively. Even if the members of the Class could afford such litigation, the court system

could not. Individual litigation would increase the delay and expense to all parties, and to the court system. By contract, the class action device presents no management difficulties and provides the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court.

38. Unless a class is certified, Defendant will improperly retain monies received because of its conduct.

Count I
Violation of Mass. G.L. Ch. 93A, § 9

39. Plaintiffs incorporate herein all the allegations contained in the above-numbered paragraphs.

40. At all times relevant to this complaint, Defendants were engaged in trade or commerce.

41. The acts of Defendants constitute unfair and deceptive acts or practices within the meaning of G.L. c. 93A, §§ 2 and 9 and 940 C.M.R. §§ 3.02(3)-(4), 3.04, 3.05, 3.13(1)(a), and 3.16(2).

42. The acts of Defendants described above were performed willfully and knowingly.

43. Because of the described unfair or deceptive acts or practices, Plaintiff and members of the Class sustained injury including, but not limited to, charges levied by GateHouse Media for premium editions.

44. On or around May 4, 2016, Plaintiffs, through their attorney, sent the Defendants, via certified mail, return receipt requested, postage prepaid, a written demand for relief pursuant to G.L. c. 93A, § 9, identifying the claimants and reasonably describing the unfair acts or practices relied upon and the injuries suffered. A copy of the demand letter is attached hereto as Appendix A.

45. On July 6, 2016, after a mutually agreed-to extension, Defendants made an offer of settlement in response to Plaintiff's demand letter.

46. Settlement discussions continued throughout July and into December 2016.

47. The Parties reached a Stipulation of Settlement on or around January 31, 2017 and anticipate moving the Court for preliminary approval of the settlement and certification of the class in short order. Plaintiffs believe the value the settlement to be more than \$2.3 million in relief for past behavior, as well as additional value for the forward-looking relief provided under the settlement.

48. It is Plaintiffs' belief that the settlement resolves one hundred percent of the Class's damages and prevents Defendants from committing similar violations in the future.

Relief Requested

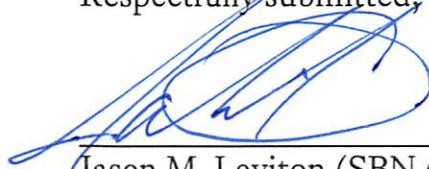
49. Plaintiffs demand judgment, preliminary and permanent relief, including injunctive relief, in their favor and in favor of the Class and against the Defendants as follows:

- a. Certifying this case as a class action, certifying the proposed Class, and designating the Plaintiffs and the undersigned as representatives of the Class;
- b. Compensating the Class with statutory damages for each balance inquiry transaction.
- c. Awarding attorneys' fees and costs as permitted under the law.
- d. Any other relief available.

Demand for Jury Trial

Plaintiff demands a trial by jury on all issues and claims so triable.

Respectfully submitted,



Jason M. Leviton (SBN 678331)

Jacob A. Walker (SBN 688074)

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Appendix A

May 4, 2016

Via Federal Express

General Counsel, GateHouse Media, LLC
175 Sully's Trail, 3rd Floor
Corporate Crossings Office Park
Pittsford, NY 14534

General Counsel, GateHouse Media Massachusetts I, Inc.
General Counsel, GateHouse Media Massachusetts II, Inc.
General Counsel, GateHouse Media Massachusetts III, Inc.
Each served via their registered agent
Corporation Service Company
84 State Street
Boston, MA 02109

Dear Sir or Madam:

I represent Dr. Steven Keenholtz and Ms. Dorothy Guillicksen (collectively, "Subscribers") (who themselves seek to represent a class of Massachusetts-based consumers), and write to you pursuant to the provisions of Massachusetts General Laws, Chapter 93A, Section 9 (the "Consumer Protection Act"). For the reasons set forth herein, Subscribers on their own behalves demand that GateHouse Media immediately cease-and-desist with violating the Consumer Protection Act and promptly repay affected consumers.

As you certainly know, GateHouse Media has been publishing a so-called "premium magazine," consisting mostly of advertising, entitled *Lens*. GateHouse has represented to subscribers, in hard-to-find small print embedded in *Lens* magazine itself, that it will "publish up to 12 Premium Editions" of *Lens* each year, and will institute a "surcharge of up to \$2 for each edition," which will "adjust the length of [a customer's] subscription, which accelerates the expiration of [a customer's] subscription, when [they] receive these special editions." Thus, a customer with a one-year subscription to one of your weekly newspapers will instead receive a reduced-length subscription. This deceptive practice violates the Consumer Protection Act. M.G.L. Ch. 93A, § 9; 940 C.M.R. §§ 3.02(3)-(4), 3.04, 3.05, 3.13(1)(a). *See also, e.g., Berenson v. National Financial Services, LLC*, 403 F. Supp. 2d 133, 148-151 (D. Mass. 2005) (undisclosed fees charged to consumers actionable under 93A).

In short, GateHouse has unfairly and deceptively defrauded its customers by automatically subscribing them to a junk magazine at a cost of up to \$2 per issue, and has buried the terms of the arrangement so that most customers will never notice what has happened. This practice, which cheats customers out of a few dollars at a time, was specifically designed by GateHouse to fly under the radar. Fortunately, the Consumer Protection Act provides for double and triple damages, and minimum statutory damages of at least \$25 per violation, to help address these types of unfair and deceptive acts. *See* M.G.L. Ch. 93A § 9(3).

Subscribers seek to represent a class of all Massachusetts consumers who have been harmed by this unfair and deceptive practice. On behalf of the putative class, Subscribers demand: (a) the return of all money charged against consumer's subscription accounts for the *Lens* magazine or any other publications other than the newspaper publication the consumer subscribed to; (b) restoration of each consumer's original end subscription date; and (c) that GateHouse Media and its publications cease-and-desist from the above-described practices and charge consumers only if they expressly opt-in to receive additional publications such as *Lens*.

On behalf of Subscribers and the putative class of consumers harmed by this practice, I am providing you with the opportunity to make a written offer of settlement of this claim within 30 days. If you fail to make a good faith offer of settlement and Subscribers institute legal action, a court may award Subscribers and the class triple damages, attorneys' fees and costs if the court finds in Subscribers' and the class's favor under the provisions of the Consumer Protection Act.

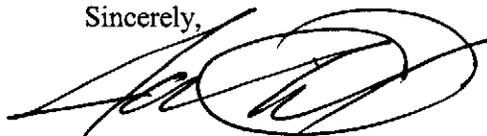
Finally, as this letter is sent in contemplation of potential litigation, you are required to take immediate action to preserve all electronically stored information that may contain evidence important to this issue. This includes, but is not limited to, records reflecting consumer subscriptions and billing for all of GateHouse Media's publications in Massachusetts over the past four years, all records and e-mails related to GateHouse Media's *Lens* publication, all documents regarding the *Lens* strategy or any other publications or strategies employed by GateHouse Media to reduce customer's subscription-end dates, all billing records, consumer complaints, and all other relevant documents and materials. If you are unwilling to institute an immediate document retention policy related to these allegations, please inform me so that we can seek legal redress prior to documents being destroyed or altered.

This notice applies to your company's on- and off-site computer systems and removable electronic media plus all computer systems, services, and devices (including all remote access and wireless devices) used for your company's operation. This includes, but is not limited to, email, text messages, chats, other electronic communications; electronically stored documents, records, images, graphics, recordings, spreadsheets, databases; calendars, system usage logs, contact manager information, telephone logs, internet usage files, deleted files, cache files, user information and other data. This notice also applies to archives, backup and disaster recovery tapes, discs, drives, cartridges, voicemail and other data.

Current law and rules of civil procedure clearly apply to the discovery of electronically stored information just as they apply to other evidence, and confirm the duty to preserve such information for discovery. Your company and your officers, employees, agents and affiliated organizations must take all reasonable steps to preserve this information until this legal matter is finally resolved. Failure to take the necessary steps to preserve the information addressed in this letter or other pertinent information in your possession or control may result in serious sanctions or penalties. *See, e.g., Keene v. Brigham & Women's Hospital, Inc.*, 439 Mass. 223, 234 (2003).

I may be reached at the address and phone number below. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason M. Leviton", written over a circular stamp or seal.

Jason M. Leviton, Esq.

cc: Dr. Steven Keenholtz
Dorothy Guillicksen