

CAUSE NO. _____

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
EYE LEVEL HOLDINGS, LLC	§	
D/B/A JAWA, NEW ECONOMIC	§	
ORDER, LLC, SAGUARO MEDIA, LLC,	§	
EAGLE PARK, LLC, CYLON, LLC,	§	
PLANET WEB, LLC, SMS CITY, LLC,	§	
BESTXTS.COM, LLC, STANDARD	§	
PLAN, LLC, WORLDTXTS.COM, LLC,	§	
MYTXTSMS.COM, LLC, TEXT	§	
CHARGE, LLC, FYISMS.COM, LLC,	§	
NEWS ALERTS, LLC, MESSAGE PLAN,	§	
LLC, STANDARD MESSAGE, LLC,	§	
CITY-O-GAMES.COM, LLC,	§	
ALL-GAME-CHEATS.ORG, LLC, 45I,	§	
LLC, HOT-HOT-NEWS.COM, LLC,	§	
TOPICTEXT.COM, LLC JASON	§	
RANDAL HOPE, INDIVIDUALLY,	§	
WAYNE P. DESTEFANO,	§	
INDIVIDUALLY, AND ERNEST W.	§	
SOUHRADA, INDIVIDUALLY,	§	
	§	
Defendants.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL VERIFIED PETITION AND APPLICATION FOR
EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION,
AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, GREG ABBOTT, complains of EYE LEVEL HOLDINGS, LLC D/B/A JAWA, NEW ECONOMIC ORDER, LLC, SAGUARO MEDIA, LLC, EAGLE PARK, LLC, CYLON, LLC, PLANET WEB, LLC, SMS CITY, LLC, BESTXTS.COM, LLC, STANDARD PLAN, LLC, WORLDTXTS.COM, LLC, MYTXTSMS.COM, LLC, TEXT CHARGE, LLC, FYISMS.COM, LLC, NEWS ALERTS, LLC, MESSAGE PLAN, LLC, STANDARD MESSAGE, LLC, CITY-

O-GAMES.COM, LLC, ALL-GAME-CHEATS.ORG, LLC, 45I, LLC, HOT-HOT-NEWS.COM, LLC, TOPICTEXT.COM, LLC (“Company Defendants”) and individuals JASON RANDAL HOPE, WAYNE P. DESTEFANO, AND ERNEST W. SOUHRADA (“Individual Defendants”) (collectively “Defendants”), and for cause of action would respectfully show as follows:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 3 pursuant to Tex. R. Civ. P. 190.4.

NATURE OF DEFENDANTS’ OPERATIONS

2. Defendants collectively engage in a sophisticated, multi-million dollar scheme whereby Defendants place unauthorized, misleading, and deceptive charges on consumers’ cell phone bills, a scheme commonly known as cell phone “cramming.” As detailed below, Defendants own hundreds of web sites and engage in egregious misleading and deceptive acts and practices which serve to cause confusion and mislead consumers into providing their cell phone numbers to Defendants. Defendants then use those numbers to add a charge on consumers’ cell phone bills for a variety of paid subscription services. Defendants advertise and sell these services nationwide, including in Travis County, Texas.

3. Specifically, Defendants have a network of corporate entities designed to handle various aspects of the overall scheme. Defendants EYE LEVEL HOLDINGS, LLC D/B/A JAWA, NEW ECONOMIC ORDER, LLC, SAGUARO MEDIA, LLC, EAGLE PARK, LLC, CYLON, LLC, and PLANET WEB, LLC, all have registered, paid for, or own the various web sites Defendants collectively use to display deceptive and misleading advertise their services. Defendants SMS CITY, LLC, BESTTXTS.COM, LLC, STANDARD PLAN, LLC,

WORLDTEXTS.COM, LLC, MYTEXTSMS.COM, LLC, TEXT CHARGE, LLC, FYISMS.COM, LLC, NEWS ALERTS, LLC, MESSAGE PLAN, LLC, STANDARD MESSAGE, LLC, CITY-O-GAMES.COM, LLC, ALL-GAME-CHEATS.ORG, LLC, 45I, LLC, HOT-HOT-NEWS.COM, LLC, TOPICTEXT.COM, LLC provide text messaging services to consumers and are the entities that appear on consumers' cell phone bills. Defendants JASON RANDAL HOPE, WAYNE P. DESTEFANO, AND ERNEST W. SOUHRADA direct and control this operation, and have directly paid for the web sites associated with this scheme.

JURISDICTION

4. This action is brought by Attorney General GREG ABBOTT, through his Consumer Protection Division, in the name of the State of Texas and in the public interest under the authority granted him by § 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 et seq. (hereafter the "DTPA") upon the ground that Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§ 17.46(a) and (b) of the DTPA.

DEFENDANTS

5. Defendant EYE LEVEL HOLDINGS, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below in its own name and under the trade name JAWA. Defendant's principal place of business is at 15111 North Pima Road, Suite 200, Scottsdale, Arizona 85260. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044,

Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701. Defendant EYE LEVEL HOLDINGS, LLC has two managers: Defendants NEW ECONOMIC ORDER, LLC and SAGUARO MEDIA, LLC.

6. Defendant NEW ECONOMIC ORDER, LLC is a limited liability company that is one of two members of EYE LEVEL HOLDINGS, LLC, and that does business in Texas as alleged specifically below. Defendant identifies its principal place of business at 1209 Orange Street, Wilmington, Delaware 19801. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

7. Defendant SAGUARO MEDIA, LLC is a limited liability company that is one of two members of EYE LEVEL HOLDINGS, LLC, and that does business in Texas as alleged specifically below. Defendant identifies its principal place of business at 1209 Orange Street, Wilmington, Delaware 19801. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas

Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

8. Defendant EAGLE PARK, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 15111 North Pima Road, Suite 200, Scottsdale, Arizona 85260, the same address as Defendant EYE LEVEL HOLDINGS, LLC. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

9. Defendant CYLON, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 15111 North Pima Road, Scottsdale, Arizona 85260, the same address as Defendants EAGLE PARK, LLC and EYE LEVEL HOLDINGS, LLC. In fact, Defendant CYLON, LLC has now merged with Defendant EYE LEVEL HOLDINGS, LLC. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

10. Defendant PLANET WEB, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 15333 North Pima Road #370, Scottsdale, Arizona 85260. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

11. Defendant SMS CITY, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 2608 Erwin Road Ste 148-323, Durham, North Carolina 27705. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

12. Defendant BESTTXTS.COM, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 1201 Allen Drive #302, Grand Island, Nebraska 68803. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's

business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

13. Defendant STANDARD PLAN, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 1009 E. Capitol Expressway, San Jose, California 95121. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

14. Defendant WORLDTXTS.COM, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 198 Tremont Street Ste 440, Boston, Massachusetts 02116. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

15. Defendant MYTXTSMS.COM, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 64 Beaver Street Ste 454, New York, New York 10004. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

16. Defendant TEXT CHARGE, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 1648 S Ohio Street #231, Salina, Kansas 67401. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

17. Defendant FYISMS.COM, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 5 E. Bijou Street, Colorado Springs, Colorado 80903. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this

state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

18. Defendant NEWS ALERTS, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 5841 E. Charleston Blvd., Las Vegas, Nevada 89142. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

19. Defendant MESSAGE PLAN, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 2692 Madison Road Ste N1-149, Cincinnati, Ohio 45208. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

20. Defendant STANDARD MESSAGE, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 1700 W. Market St. #192, Akron, Ohio 44313. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

21. Defendant CITY-O-GAMES.COM, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 1648 S Ohio Street #231, Salina, Kansas 67401. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

22. Defendant ALL-GAMES-CHEATS.ORG, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 9618 Jefferson Hwy Ste D-348, Baton Rouge, Louisiana 70809. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit

arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

23. Defendant 45I, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 7797 W Adam Ave, Peoria, Arizona 85382. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

24. Defendant HOT-HOT-NEWS.COM, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 626 Admiral Drive Ste C-206, Annapolis, Maryland 21401. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

25. Defendant TOPICTEXT.COM, LLC is a limited liability company that does business nationwide and in Texas as alleged specifically below. Defendant's principal place of business is at 1229 Chestnut Street, Ste 402, Philadelphia, Pennsylvania. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

26. Defendant JASON RANDAL HOPE is the CEO of JAWA and a manager / member of Defendant CYLON and has done business in Texas as alleged below. On information and belief, Defendant has at times relevant to this petition either directly engaged in the acts or practices described below, or has directed and controlled others in committing the acts or practices described below. Defendant can be served with process at EYE LEVEL HOLDINGS, LLC or at his home, 20980 North 104th Way, Scottsdale, Arizona 85255, or at any other place where he may be found.

27. Defendant WAYNE P. DESTEFANO is a manager of CYLON and has done business in Texas as alleged below. On information and belief, Defendant has at times relevant to this petition either directly engaged in the acts or practices described below, or has directed and controlled others in committing the acts or practices described below. Defendant can be served with process at EYE LEVEL HOLDINGS, LLC or at his home, 22325 North 39th Run, Phoenix, Arizona 85050, or at any other place where he may be found.

28. Defendant ERNEST W. SOUHRADA has done business in Texas as alleged below. On information and belief, Defendant has at times relevant to this petition either directly engaged in the acts or practices described below, or has directed and controlled others in committing the acts or practices described below. Defendant can be served with process at EYE LEVEL HOLDINGS, LLC or at his home, 1409 East Brentup Drive, Tempe, Arizona 85283, or at any other place where he may be found.

VENUE

29. Venue of this suit lies in Travis County, Texas because under the DTPA § 17.47(b), Defendants and their agents have done business in Travis County, Texas.

PUBLIC INTEREST

30. Because Plaintiff State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff has reason to believe Defendants have caused adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State.

31. The promotion of deceptive trade practices on the Internet is of particular concern because the Internet makes it possible for operators to quickly reach thousands of consumers and to obtain payments from them through the electronic transfer of monies. Further, the promotion of deceptive trade practices via the Internet may serve to undermine consumer confidence in electronic commerce. Accordingly, the Consumer Protection Division of the Office of the Attorney General believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

32. Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by § 17.45(6) of the DTPA.

ACTS OF AGENTS

33. Whenever in this Petition it is alleged that any Defendant did any act, it is meant that Defendant performed or participated in the act or Defendant's officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

NOTICE BEFORE SUIT

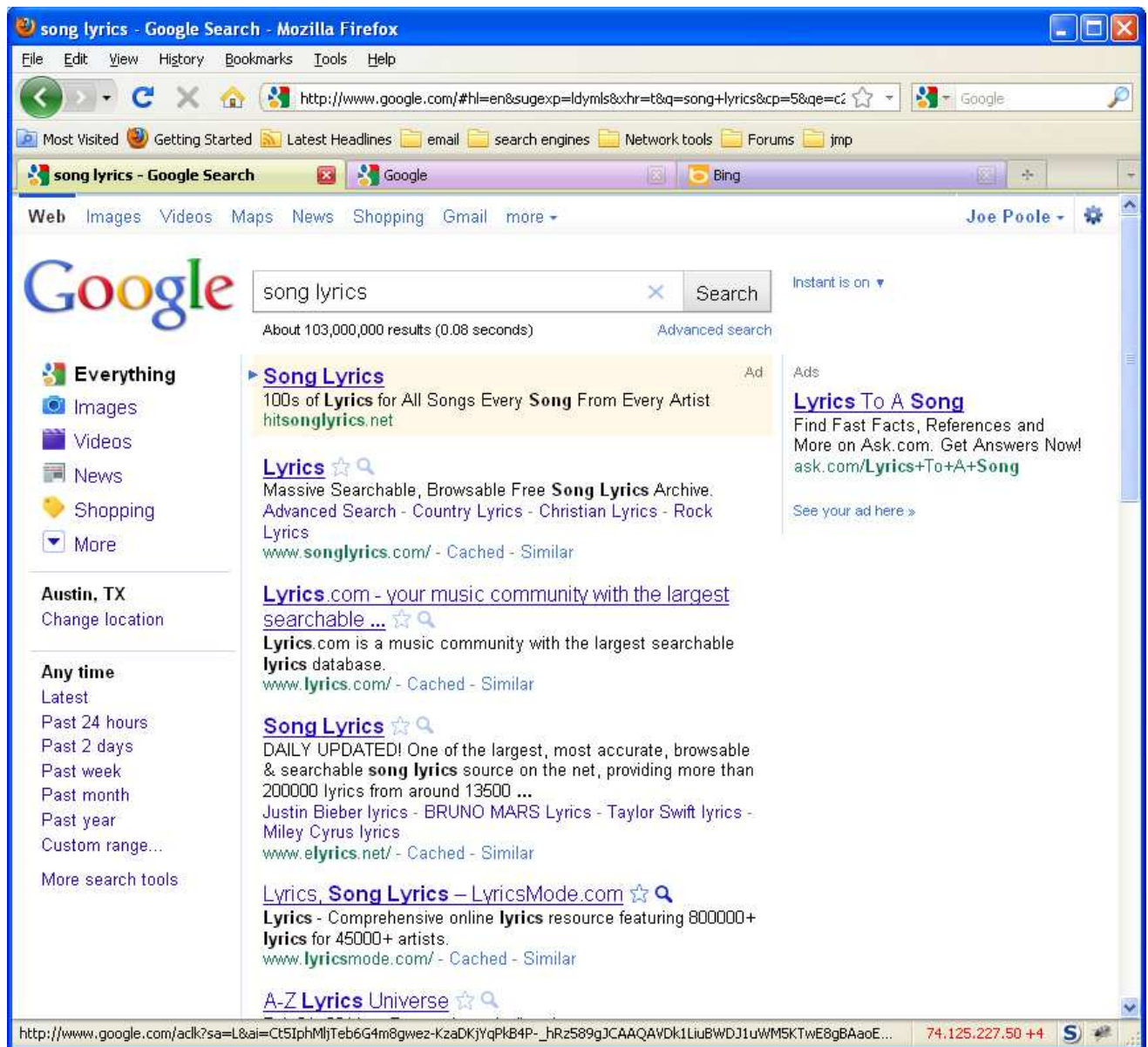
34. Pursuant to §17.47(a) of the Deceptive Trade Practices act, contact has not been made with the Defendants herein to inform them of the unlawful conduct alleged herein, for the reason that the Consumer Protection Division is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss or damage would occur as a result of such delay in obtaining a temporary restraining order, and that Defendants might evade service of process, destroy relevant records and secrete assets if prior notice of this suit were given.

SPECIFIC FACTUAL ALLEGATIONS

35. Defendants own and operate hundreds of web sites through which they advertise and sell paid monthly subscription services covering a wide variety of topics, including music, news, maps, weather, video games, and cooking. The general subject matter of the sites owned by Defendants is often available to consumers via the Internet at no cost. For example, it is very common for consumers to conduct quick searches for information such as local weather conditions, driving directions, local weather forecasts, language translations, dictionaries and song lyrics.

36. When a consumer enters a search query on an Internet search engine that is related to one of the topics for which Defendants offer a paid service, the consumer will be presented with a list of search results which will likely include a paid advertisement directing the

consumer to one or more of Defendants' web sites. For example, a consumer entering a generic search query such as "song lyrics" on Google may be served a prominently placed sponsored, or advertised link, for one of Defendants' web sites (in this case, <http://hitsonglyrics.net>)¹:

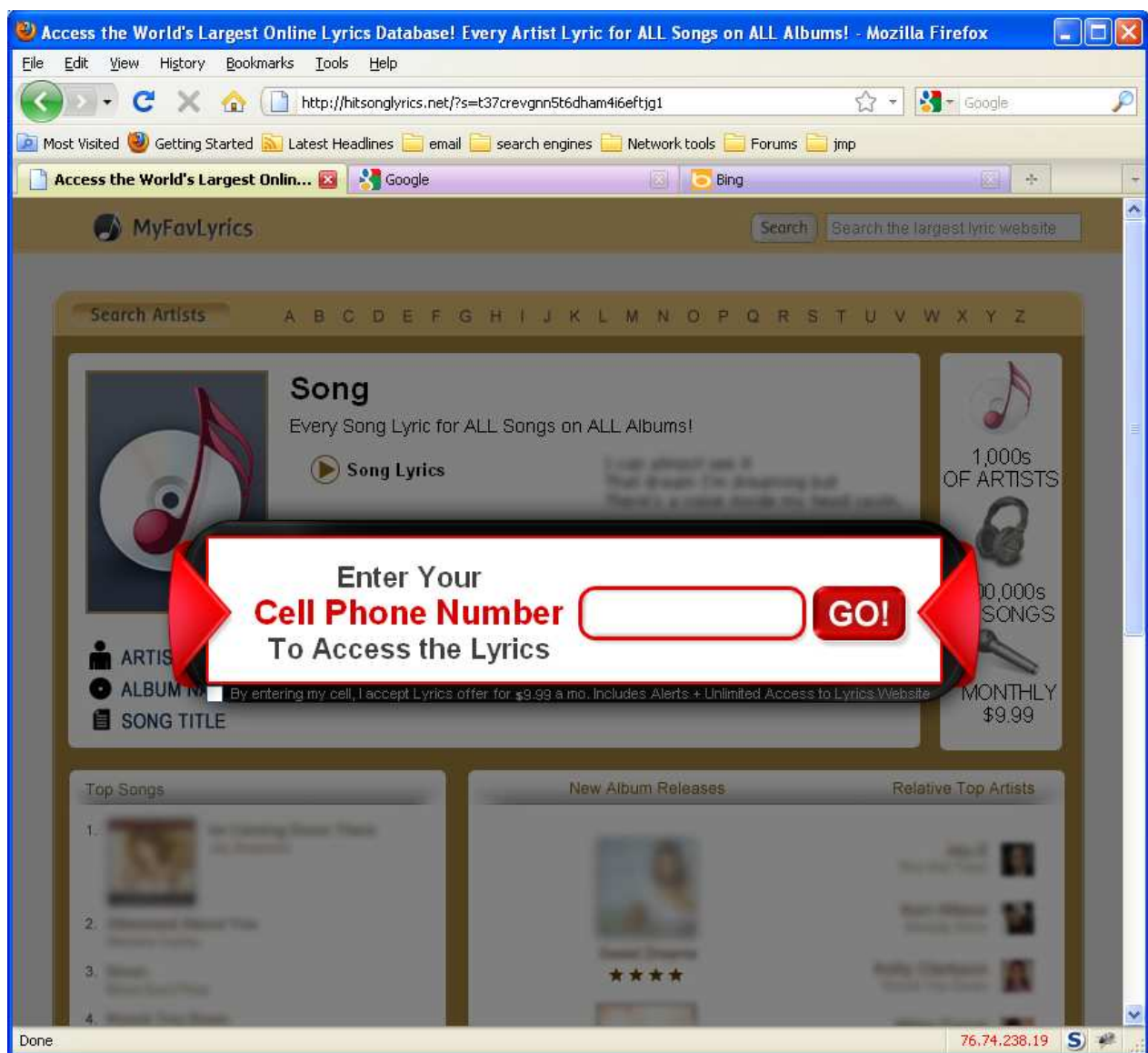


Defendants' advertisement for hitsonglyrics.net, like virtually all of Defendants' advertisements, omits any reference to the cost or required subscription that accessing the site ultimately entails.

¹ See Exhibit 1, Affidavit of Joe Poole.

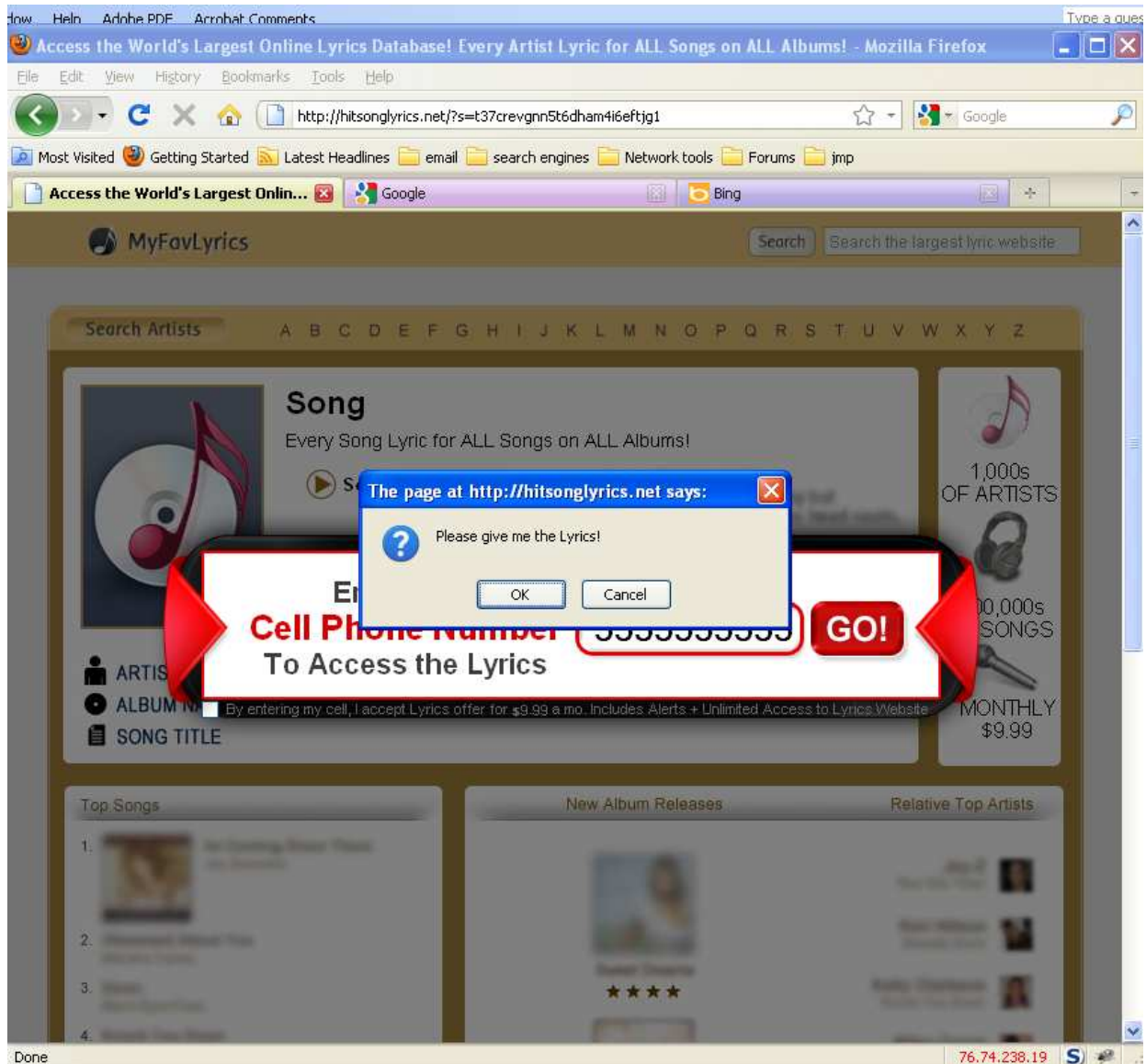
As a result, a consumer clicking on the link in the advertisement has no expectation that the site they are being driven to is a pay site or that they might incur charges by proceeding.

37. A consumer who clicks on one of Defendants' advertisements is taken to a web page that goes to great lengths to further mislead consumers by failing to clearly and conspicuously disclose the cost or the subscription nature of Defendants' service. As an example, after clicking the <http://hitsonglyrics.net> link referenced above, the consumer is taken to a web site that appears as follows:



38. While each of Defendants' sites varies, the most prominent aspect of each is the eye catching box featuring an instruction such as the one above directing the consumer to "Enter Your Cell Phone Number to Access the Lyrics." Notably absent from Defendants' sites is a clear and conspicuous disclosure of the costs associated with the content, the subscription nature of Defendants' offer or any reference to billing the consumer's cell phone account. For example, in the screen shot for <http://hitsonglyrics.net> shown above, Defendants include one line which states: "By entering my cell, I accept Lyrics offer for \$9.99 a mo. Includes Alerts + Unlimited Access to Lyrics website." That sentence is displayed in tiny type in a dark grey font on a black background which renders it virtually unreadable and is further obfuscated by the large brightly colored directive to "Enter your Cell Phone Number to Access the Lyrics" that is shown in a large bold font in black and red text.

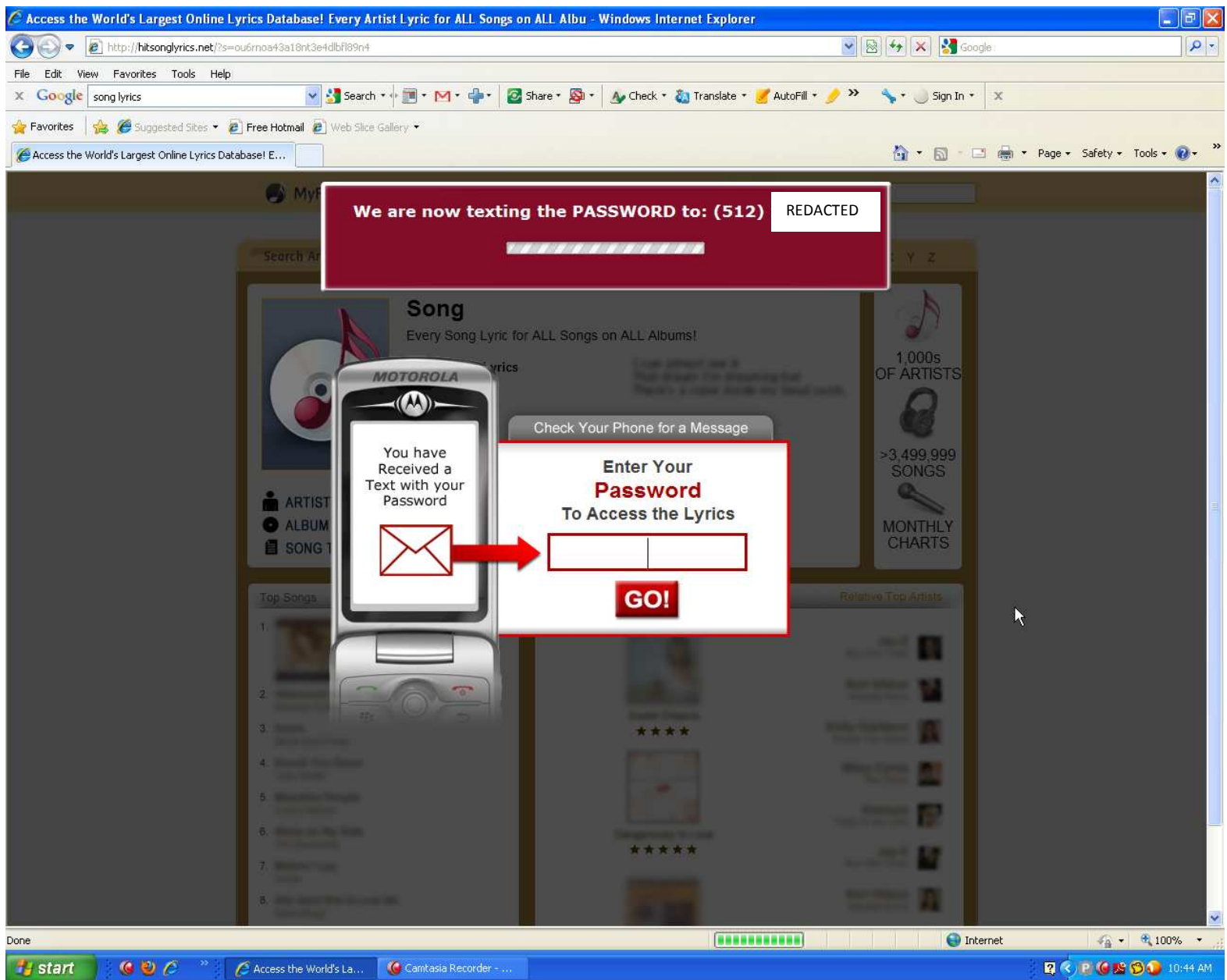
39. Further, although the <http://hitsonglyrics.net> screen shot appears to represent that only consumers who check the box after entering their phone number will be allowed to continue, in fact, consumers who simply enter their cell phone number and either press "Enter" or click on the large "GO" button, are immediately presented with a misleading pop-up that simply states, "Please Give me the Lyrics!" as demonstrated below:



When a consumer responds to the “Please give me the Lyrics” prompt by clicking “OK,” Defendants’ system fills in the check box for the consumer and automatically continues to the next page.

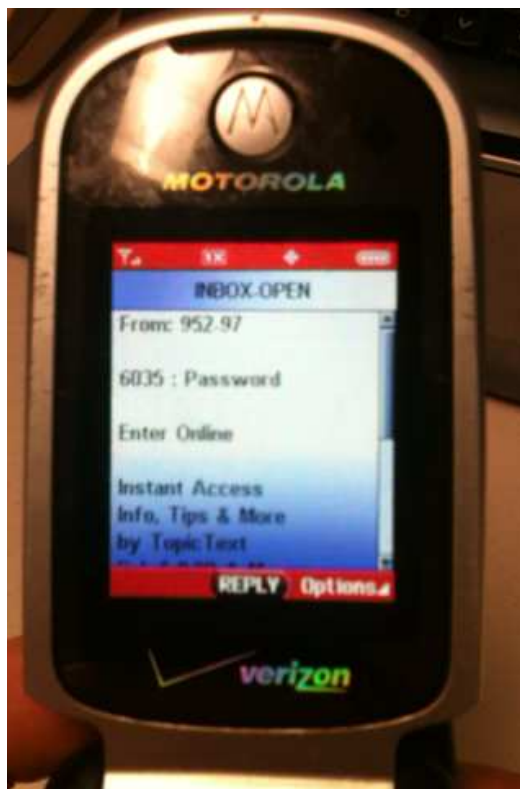
40. The consumer is next directed to a web page that asks them to enter a password and informs them that such password is being sent by text to the cell phone number which the consumer previously provided. On this page Defendants provide no disclosures regarding the cost or subscription nature of the service. For example <http://hitsonglyrics.net>, shown below,

illustrates this process and the fact that Defendants omit any disclosure or reference to any costs associated with this service:



At the same time, the consumer receives a text message which includes the password. This message again fails to clearly and conspicuously disclose the subscription nature of Defendants'

offer and the costs associated with the offer. Defendants have designed these text messages such that they immediately provide the password number needed to continue, and only below the password and below additional text, which on many phones requires the consumer to scroll down, is there a disclosure of the price. In some instances, the reference to price is so low in the message, that even on a large screen smart phone the consumer will not see the price on the first page or even as part of the same text message. Further, it is not clear from the reference to a price that by entering the password, the consumer is agreeing to sign up for a monthly subscription service. For example, the first page of text message response from <http://hitsonglyrics.net> appears as follows:



If the consumer scrolls down through the whole message, it would reads as follows:

6035: Password

Enter Online

Instant Access Info, Tips & More by TopicText

Sub \$ 9.99 A Mo

HELP4help

Easy2Use

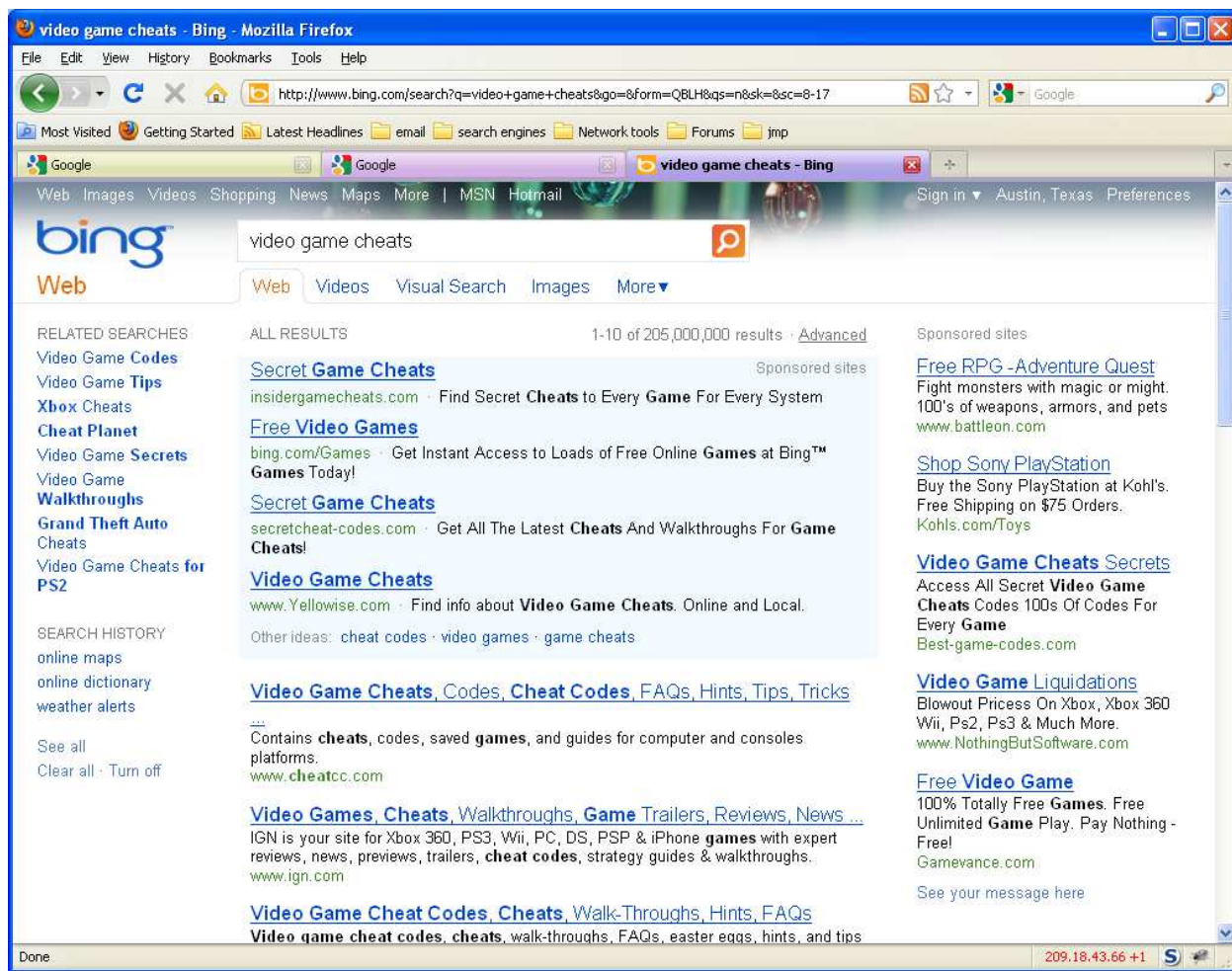
Online Password: 6035

In this example, the consumer is even further misled by Defendants' reference to the company "TopicText" – an entity unknown to the consumer, which results in the text message appearing to be an advertisement for a different service.

41. Once a consumer enters this password at the web site, despite the lack of any clear and conspicuous disclosure, Defendants represent that they have authority to include a charge for the service on the consumer's cell phone bill. Consumers then are billed on a monthly basis for the service.² Consumers who fail to input their password will typically continue to receive text messages from Defendants asking them to simply respond to the text with a "y" to confirm enrollment.

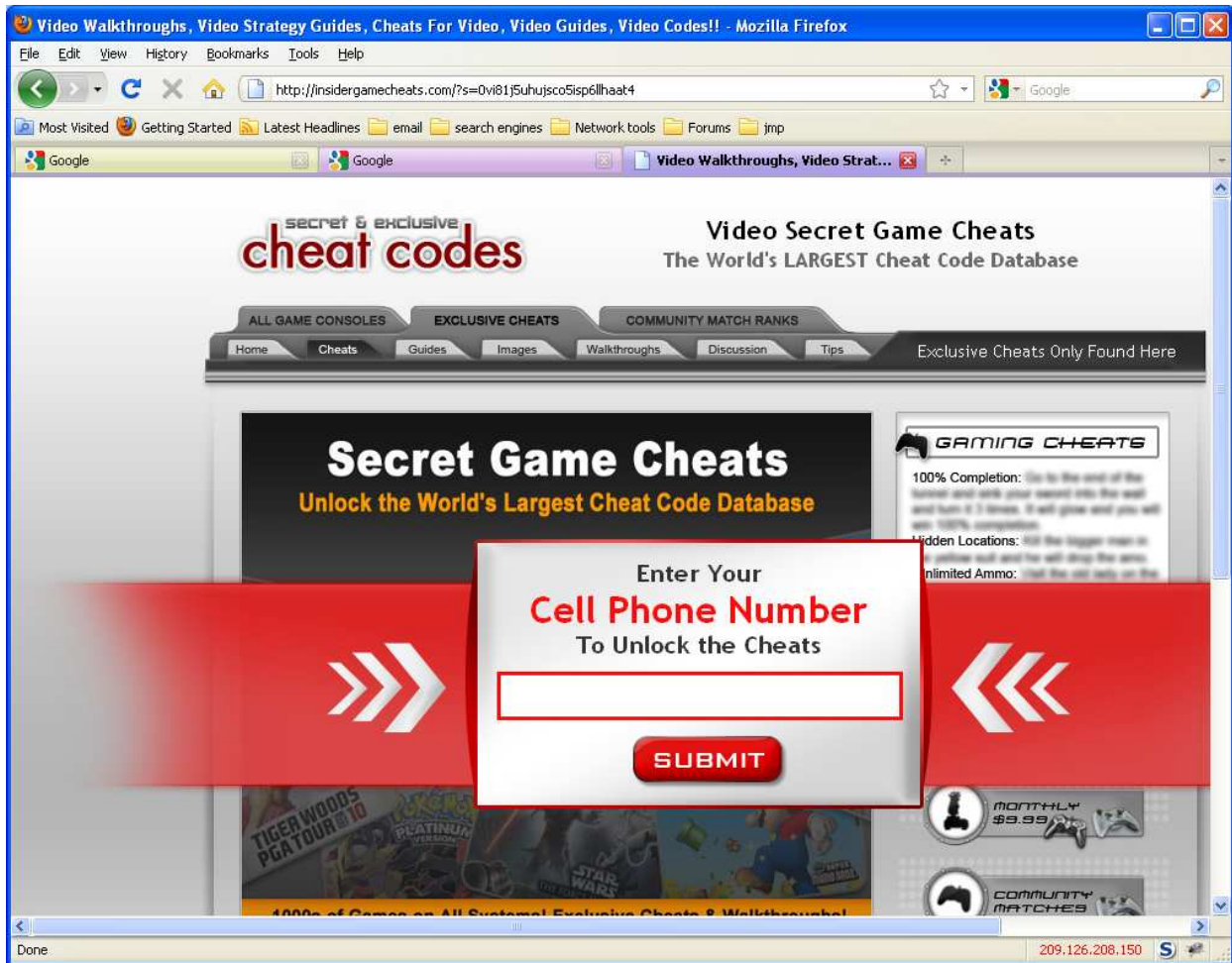
42. Defendants advertise their web sites on most, if not all, of the major search engines. In each case, while the specific web sites that are advertised may be different, the deceptive nature of Defendants conduct is similar to that described above. For example, a consumer visiting the search engine Bing and entering a search for "video game cheats," – a common search phrase by teenagers or children searching for codes or tips and tricks related to popular video games - may receive the following results:

² See Exhibit 2, Affidavit of Pierce Cox.



The first sponsored link is one of Defendants' advertisements for <http://insidergamecheats.com>, and again does not disclose the paid or subscription nature of Defendants' services. Notably, two other sponsored links, <http://secretheat-codes.com> and <http://best-game-codes.com> are also owned by Defendants and similarly fail to disclose the cost and subscription nature of Defendants' services.

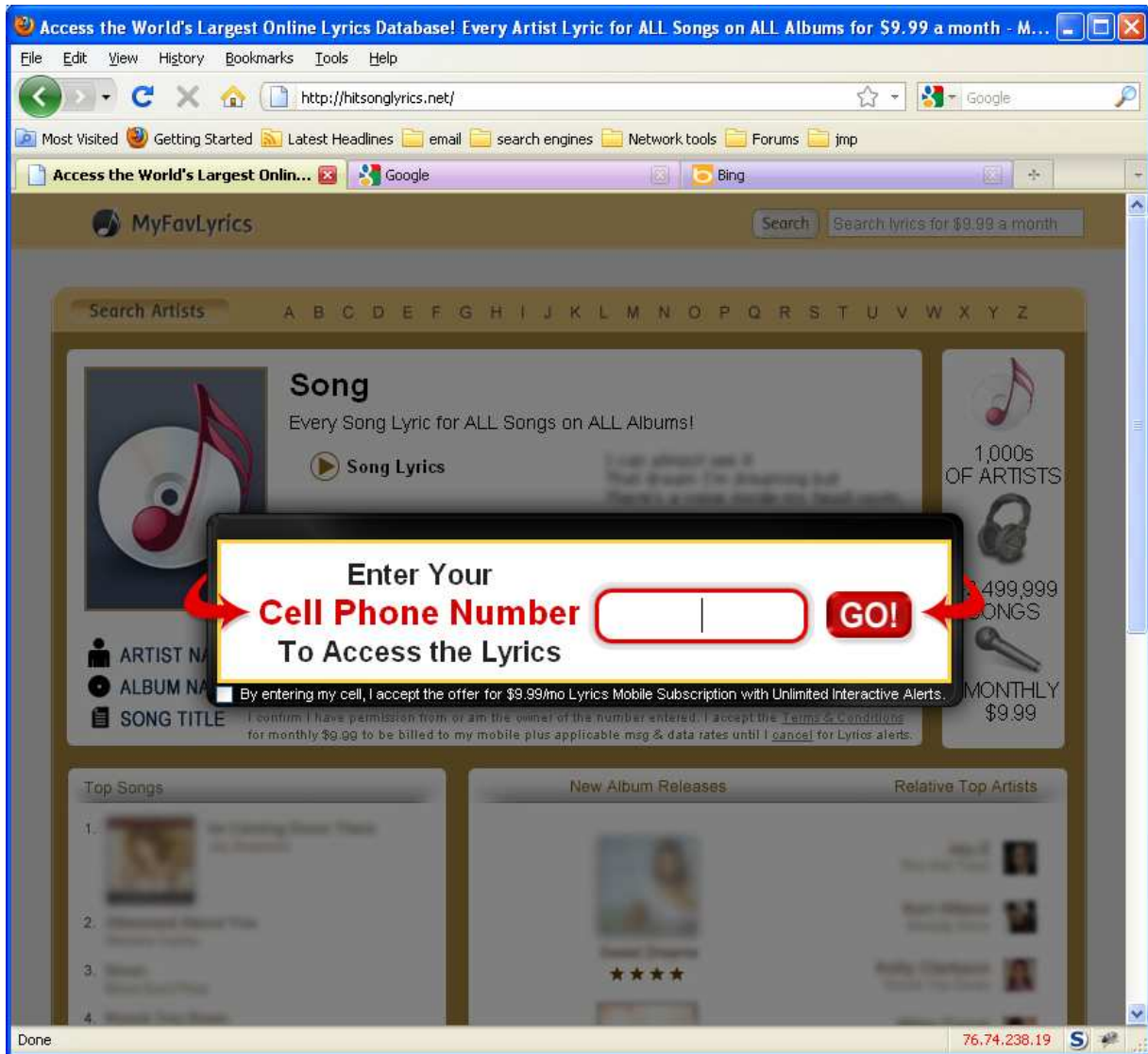
43. By clicking through the sponsored link, the consumer is again taken to a web page that fails to clearly and conspicuously disclose any costs associated with Defendants' services. For example, the site <http://insidergamecheats.com> appears as follows:



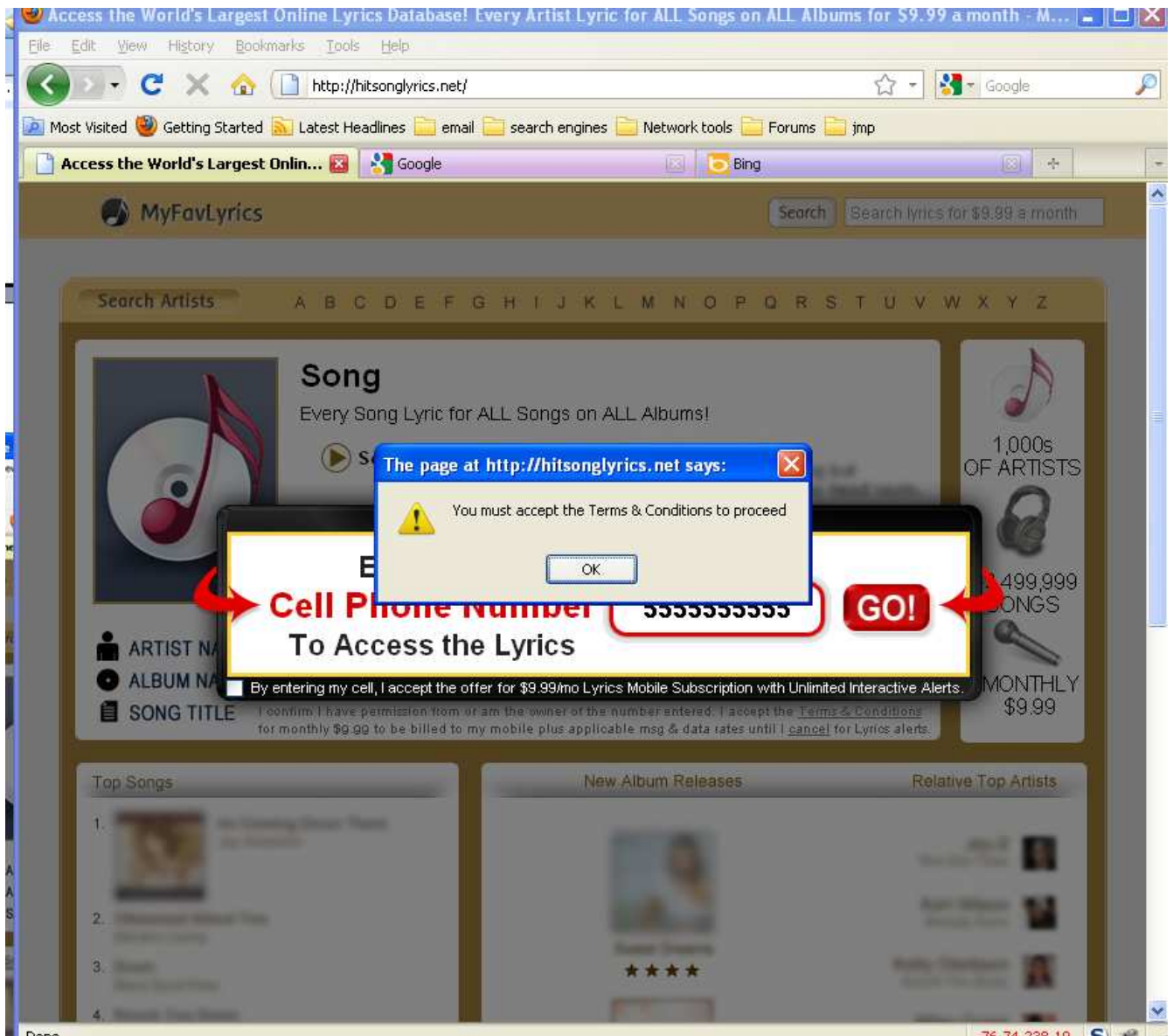
Just as in the above example, the most prominent aspect of the site is calling for the consumer to enter his / her cell phone number. Any minimal disclosures provided are hidden through small, illegible text or through disclosures designed to blend with background images. And unlike the prior example, there is no check box – all the consumer needs to do is enter his / her cell phone number and click “Submit” or press “Enter” on the keyboard. At that point, the consumer receives a text message, which as above, attempts to obscure any disclosure regarding the fact that the consumer will be charged if they enter the pin number at the web site. Once the pin is entered, the consumer is enrolled and charged on their cell phone bill.

44. Defendants own and operate hundreds of web sites that engage in variations of the practices described above. While Defendants’ sites on their face fail to clearly and

conspicuously disclose material terms, the intentional nature of Defendants' conduct is demonstrated by their use of a second web site, similar in subject matter and design to the ones described above, but used to hide the enrollment process described above from regulators, cell phone carriers, and consumers re-visiting the web site. For example, if a consumer ultimately discovers that they are being charged, he / she may visit Defendants' web site to see why they are being charged. Alternatively, the consumer may file a complaint with their cell phone carrier or a regulator. The carrier or regulator may then visit the web site in an attempt to investigate the consumer's experience. But Defendants have designed the process to further deceive consumers, regulators, and cell phone carriers. For example, in the first example above, the consumer, regulator, or cell phone carrier would likely start a search by typing in the root web site, <http://hitsonglyrics.net>. In such case, they would be taken to a second, distinct web page:



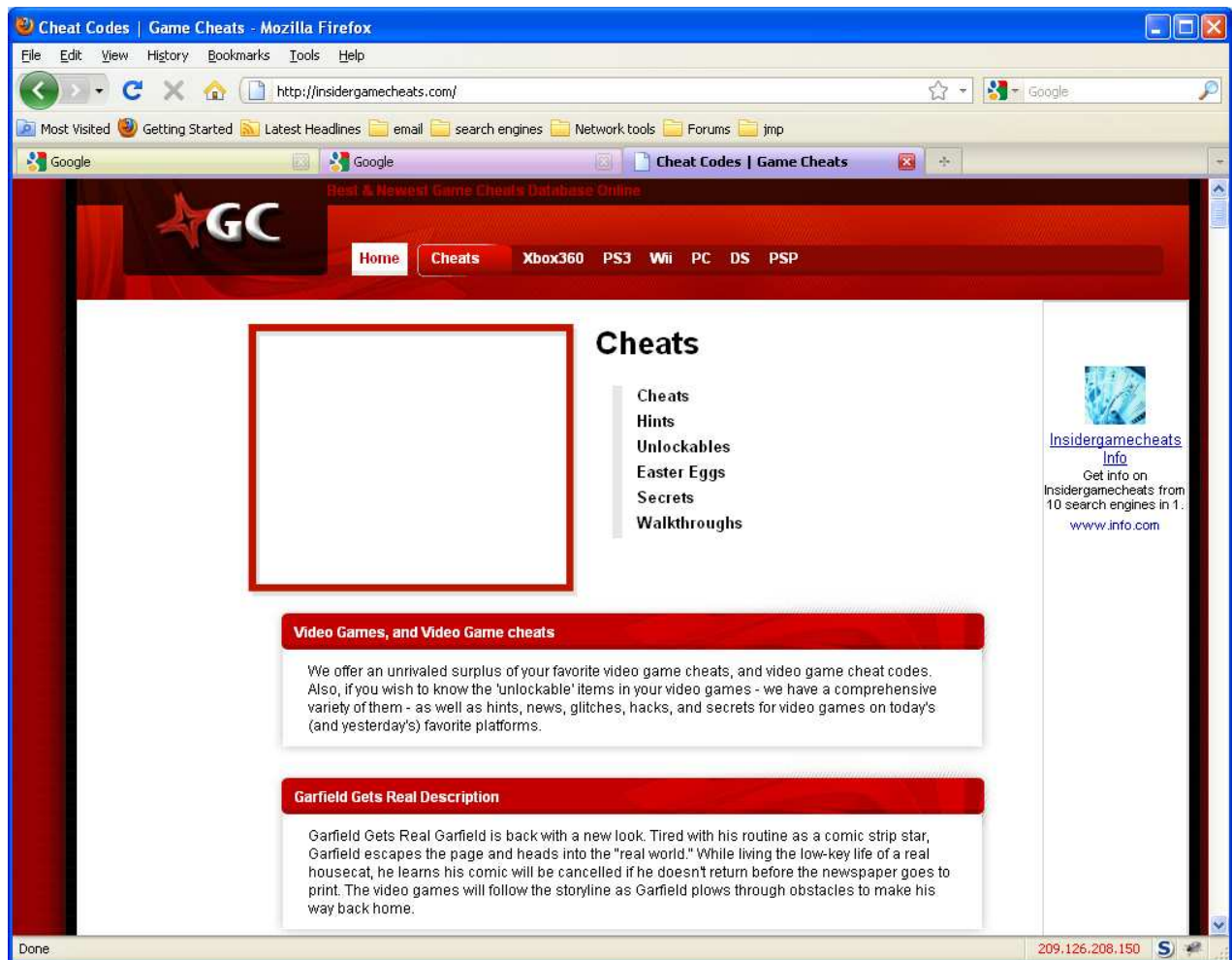
While this site looks very similar to the original site, there are notable and important differences. The check box now includes a much brighter, larger, and clearer disclosure of the cost and subscription nature of the service. In this version, Defendants now include an additional disclosure regarding the cost and acceptance of the terms and conditions – as well as a link to cancel the subscription. In addition, a failure to check the box on this revised web page now gives the consumer a different disclosure:



By clicking OK in this version, the check box is not checked – so the consumer must still take affirmative action to continue.

45. In the second example previously described above involving <http://insidergamecheats.com>, Defendants again use a second web page to conceal the original misleading and deceptive enrollment process, but this time it is a completely different scenario. In this variation, Defendant sends the consumer, regulator, or cell phone carrier to a general information web site that is related to the topic of the original site, but that has no cost and does

not request the consumer's cell phone number. For example, simply typing in the root site <http://insidergamecheats.com> into a web browser takes the consumer to the following site:



Again, Defendants have effectively hidden themselves and the nature of their scheme from regulators, carriers, and consumers.

46. Defendants further scheme to evade detection by using a variety of corporate entities to hide their identity and association with these sites. Each of Defendants' web sites is associated with a unique "short code," which is a five digit identifier for purposes of sending and receiving text messages. These short codes have been registered with the Common Short Code Administration (CSCA) and with the cell phone carriers using a variety of Delaware limited liability corporations with varying names and individual contacts. For example, the short code

associated with <http://hitsonglyrics.net> is registered to Christa Stephens at Topictext.com, LLC in Philadelphia, PA; whereas <http://insidergamecheats.com> is registered to Christa Stephens at Allgame-cheats.org, LLC in Baton Rouge, LA. As a result, when a consumer receives their cell phone bill, the \$9.99 charge placed by Defendants is identified by the Delaware LLC – for example, in the <http://insidergamecheats.com> example provided above, the entry on the consumer’s cell phone bill will read “All Game Cheats: Alerts – allgamecheats-alt.”

47. By using these various corporate entities, Defendants are again attempting to mislead consumers, regulators, and cell phone carriers as to the actual provider of the service. As a result of Defendants’ practices, and the fact that they cycle through many of these corporate identities, Defendants have in essence reduced the number of consumer complaints against any one entity, preventing consumers and regulators from easily connecting these corporate identities. Defendants further have effectively hidden from the cell phone carriers such that even if a carrier were to catch one of the entities engaging in this conduct and cease billing for that entity, Defendants can continue to charge through the use of their other various corporations. To further this deception, Defendants have registered their various short codes to multiple individuals and businesses with addresses in at least North Carolina, Nebraska, California, Massachusetts, New York, Kansas, Colorado, Nevada, Ohio, Louisiana, Arizona, Maryland, Pennsylvania, and Texas. Each of these addresses however is nothing more than a drop box, and on information and belief, any mail received at those addresses is simply forwarded to the corporate address for JAWA.

48. Each of the Defendants has directly engaged in some facet of the overall scheme, by directly owning the site, paying for the site, or by billing consumers for the services advertised on the site. Through this scheme, Defendants have caused the wireless telephone bills

of thousands of Texans to be “crammed” with unauthorized charges and have billed and collected millions of dollars from unsuspecting consumers. While engaging in this cramming operation, Defendants at their various web sites boast of lavish spending including “celebrity” parties, multimillion dollar mansions, exotic cars, and extravagant employee perks. In fact, on information and belief, Defendant Hope is currently constructing a 100,000 square foot home in Scottsdale, featuring such extravagant amenities as a residential IMAX theater and a three story nightclub. Defendants also boast of contributions made to numerous charities and charity events.

FALSE, MISLEADING OR DECEPTIVE ACTS

49. Defendants, as alleged above and detailed below, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§17.46(a) and (b) of the DTPA. Such acts include:

- A. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA § 17.46(b)(2);
- B. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have, in violation of DTPA §17.46(b)(5);
- C. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, in violation of DTPA § 17.46(b)(7);
- D. Advertising goods or services with the intent not to sell them as advertised in violation of § 17.46(b)(9);

- E. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law in violation of § 17.46(b)(12); and
- F. Failing to disclose information concerning goods or services which was known at the time of the transaction with the intent to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed in violation of § 17.46(b)(24).

INJURY TO CONSUMERS

50. Defendants have, by means of these unlawful acts and practices, obtained money or other property from identifiable persons to whom such money or property should be restored.

NECESSITY OF IMMEDIATE RELIEF TO PRESERVE DEFENDANTS' ASSETS

51. Plaintiff requests immediate relief by way of a temporary restraining order and temporary injunction to preserve and protect Defendants' assets from dissipation so that the victims of Defendants' actions can receive the restitution to which they are entitled. As detailed above, Defendants' assets are subject to dissipation because of the lavish lifestyle and spending they have demonstrated through their past conduct. The overwhelming majority of the monies taken in by Defendants constitute contraband. If Defendants' assets are not immediately frozen pending a temporary and permanent injunction hearing, such assets will be subject to dissipation, may be removed from the jurisdiction of this court, may be secreted, all of which would eliminate any possibility that Defendants' victims will receive restitution at final trial.

EQUITABLE RESCISSION

52. All agreements between consumers and Defendants should be subject to the equitable remedy of rescission.

CONSTRUCTIVE TRUST

53. A constructive trust should be placed upon all of Defendants' assets in favor of all consumers victimized by Defendants and in favor of the State of Texas until this Court determines the appropriate amount of restitution and disgorgement.

DISGORGEMENT

54. Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that result from their putting fraudulently converted property to a profitable use. Defendants should be ordered to disgorge all monies fraudulently taken from consumers together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

REPATRIATION OF ASSETS

55. After due notice and a hearing, the court should order that all of Defendants' assets situated outside the jurisdiction of this Court be deposited or repatriated into an appropriate financial institution within the jurisdiction of this Court or into the Court's registry.

REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

56. Plaintiff requests leave of this Court to conduct telephonic, oral, written and other depositions of witnesses and other written discovery prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. Any depositions, telephonic or otherwise, and other written discovery would be conducted with reasonable, shortened notice to Defendants and their attorneys, if known.

TRIAL BY JURY

57. Plaintiff herein requests a jury trial and will tender the jury fee to the Travis County District Clerk's office pursuant to TEX. R. CIV. P. 216 and the TEX. GOV'T CODE ANN. § 51.604.

APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

58. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition. Unless immediately restrained by this Honorable court, Defendants will continue to violate the laws of the STATE OF TEXAS and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public.

59. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, Defendants' successors, assigns, officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

- A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause;

- B. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal from any financial institution or from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by the Company Defendants without further order of this court;
- C. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of Defendants, or subject to access or control by Defendants, without providing Plaintiff and the Court prior notice by motion seeking such access;
- D. Enrolling any new customers until such time as Defendants' web sites and text messages include clear and conspicuous disclosures of all material terms and conditions associated with an advertised good or service, including the price and recurring subscription terms, and the identity of the party offering such good or service, including contact information where the consumer can inquire about the good or service or cancel such good or service;
- E. Billing any customers or causing any customers to be billed until such time as Defendants obtain the consumers' express assent in response to clear and conspicuous web site and text message disclosures of all material terms and conditions associated with an advertised good or

service, including the price and recurring subscription terms, and the identity of the party offering such good or service, including contact information where the consumer can inquire about the good or service or cancel such good or service;

- F. Failing to clearly and conspicuously disclose on its web sites, in any written advertisement or solicitation, and in any oral communication with any consumer or prospective purchaser or buyer, all material terms and conditions associated with the advertised good or service, including the price and recurring subscription terms, and the identity of the party offering such good or service, including contact information where the consumer can inquire about the good or service or cancel such good or service;
- G. Causing a consumer's computer to display different versions of each of Defendants' web sites that provide different disclosures regarding the material terms and conditions associated with Defendants' goods and services;
- H. In any advertisement or other solicitation requesting a consumer's cell phone number which Defendants will use to bill such consumer for their goods or services, failing to clearly and conspicuously disclose, in direct proximity to the location where the consumer provides his / her cell phone number, any price and recurring subscription terms associated with such good or service;

- I. Failing to clearly and conspicuously disclose to consumers a phone number, email address, text message short code, mailing address, and fax number which they can use to cancel any of Defendants' paid recurring subscription services;
- J. In any advertisement that directs a consumer to a web site that requests a consumer's cell phone number which Defendants will use to bill such consumer for their goods or services, failing to clearly and conspicuously disclose any price and recurring subscription terms associated with such good or service;
- K. Failing to obtain a consumer's affirmative assent to be billed for any paid subscription services prior to billing such consumer;
- L. Charging or collecting any amounts for goods or services that do not comply with the terms of this injunction; and
- M. Failing to notify Defendants' successors, assigns, officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants that they should comply with this injunction if they in any manner market, advertise, or attempt to introduce into commerce any of Defendants' goods or services.

60. Plaintiff further prays that the Individual Defendants, their agents, relatives and persons in active concert or participation with them, are prohibited from transferring, spending, encumbering, withdrawing, or removing any sum of money from any accounts where monies or proceeds from the operation of the Company Defendants, *have been* placed or deposited; however the Individual Defendants are not prohibited from expending monies for reasonable

living expenses from other accounts standing in their names which do not contain monies or proceeds from the operation of the Company Defendants, or from monies that have been earned or will be earned by them or their family members by virtue of other employment or business ventures wholly unrelated to the operation of the Company Defendants.

61. Plaintiff further prays that this Court order that within five business days following service of an Order from this Court, each Defendant shall:

- A. Submit to the Office of the Texas Attorney General a report of all Texas consumers, including any contact information, including name, address, cell phone number, and email address, as well as any amounts paid to Defendants by such consumers, who have:
 - 1) Complained or otherwise communicated to Defendants or their agents that they did not order Defendants' goods or services; or
 - 2) Received a refund from Defendants after paying for Defendants goods or services.
- B. Submit to the Office of the Texas Attorney General a complete list of any individuals or companies associated with Defendants that either have paid for or registered domain names, or paid for any hosting services, or have registered short codes or otherwise contracted with billing aggregators or cell phone carriers for web sites that seek to charge consumers for goods or services via their cell phone bill.
- C. Submit to the Office of the Texas Attorney General a full and detailed verified report identifying all funds, documents, and assets held by

Defendants, for their benefit, or under their direct or indirect control, jointly or singly.

62. Plaintiff further prays that all billing aggregators, wireless carriers, financial institutions, agents, business entities, or other persons maintaining or having custody or control of any account or other assets of the Company Defendants be ordered to hold and retain within its control and prohibit the transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal of any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by such Defendants except in accordance with any further orders of the Court. Provided, however, that billing aggregators or wireless carriers can use any such funds without further order of the Court to provide refunds to consumers for any amounts those consumers paid to Defendants. All billing aggregators, wireless carriers, financial institutions, agents, business entities, or other persons maintaining or having custody or control of any account or other assets of such Defendants shall further be ordered to provide to the Office of the Texas Attorney General within five business days of service of the Order a certified statement setting forth:

- A. The identification of each account or asset;
- B. The balance of such account as of the close of business on the day on which they receive notice of the Court's Order.

Such billing aggregators, wireless carriers, financial institutions, agents, business entities, or other persons maintaining or having custody or control of any account or other assets of such Defendants shall further provide access to representatives of the Office of the Texas Attorney

General to inspect and copy any records or other documentation pertaining to such accounts or assets.

63. Plaintiff further prays that Defendants advise any financial or brokerage institution, escrow agent, title company, storage facility, commodity trading company, business entity or person maintaining or having custody or control of any account or other asset of Defendants to within five (5) business days of the date of service of this Order, provide to counsel for the Plaintiff and the Defendants/account holders a statement or letter setting forth:

- A. The identification of each account or asset titled in the name, individually or jointly, of Defendants, or held on behalf of, or for the benefit of, Defendants;
- B. The balance of each such account, or a description and estimated value of such assets, as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other assets was remitted; and
- C. The identification of any safe deposit box or storage facility that is either titled in the name individually or jointly, of Defendants, or is otherwise subject to access or control by Defendants.

64. In addition, Plaintiff State of Texas respectfully prays that this Court will:

- A. Order Defendants to restore all money or other property taken from identifiable persons by means of unlawful acts or practices;

- B. Adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in the amount of not more than \$20,000 per violation of the DTPA;
- C. Order Defendants to pay Plaintiff's attorney fees and costs of court pursuant to the TEX. GOVT. CODE, § 402.006(c);
- D. Order Defendants to pay both pre-judgment and post judgment interest on all awards of restitution, damages or civil penalties, as provided by law;
and
- E. Grant all other relief to which Plaintiff State of Texas may show itself entitled.

Respectfully submitted,

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First Assistant Attorney General

BILL COBB
Deputy Attorney General for Civil
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PAUL D. CARMONA
Chief, Consumer Protection & Public Health
Division

A handwritten signature in dark ink, appearing to read "Paul Singer", is written over a horizontal line.

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