

STATE OF WISCONSIN
MILWAUKEE COUNTY

CIRCUIT COURT

SHOREWEST REALTORS, INC.
17540 W. North Avenue
Brookfield, WI 53008

Individually and On Behalf of All Others
Similarly Situated

Case No:

Plaintiff,

Case Classification Codes:
30301 (Money Judgment)
30303 (Other Contracts)

vs.

JOURNAL SENTINEL, INC.
333 W. State Street
Milwaukee, WI 53203

Defendant.

CLASS ACTION COMPLAINT

Plaintiff, Shorewest Realtors, Inc., brings this class action lawsuit against Defendant, Journal Sentinel Inc., on behalf of itself and all others similarly situated, and alleges, upon personal knowledge as to its own actions and upon information and belief as to all other facts alleged in this Complaint, as follows:

SUMMARY OF CLAIMS

1. This class action lawsuit alleges statutory violations of the Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100.18 *et. seq.* (“WDTPA”), and common law claims for breach of contract and unjust enrichment.

2. Plaintiff is a member and proposed representative of a class consisting of all individuals and entities from January 1, 1996 to the present who paid to place advertisements in

the Milwaukee Journal Sentinel (the “MJS”) and, as explained below, were overcharged by the Defendant for advertisements placed in the MJS as a result of the practices and conduct complained of in this Complaint. As detailed below, during the proposed class period (January 1, 1996 to the present), Defendant overstated the circulation rates for the MJS and used these artificially inflated rates to surreptitiously overcharge Plaintiff and at least thousands of other proposed class members for advertising in the MJS.

THE PARTIES

3. Plaintiff, Shorewest Realtors, Inc. (“Shorewest”), is a Wisconsin corporation with its principal place of business located at 17450 W. North Avenue, Brookfield, Wisconsin 53008. Before July 30, 1997, Shorewest was known as Wauwatosa Realty Company. Shorewest, a family owned and operated business, is Wisconsin’s largest home seller, operating twenty-one (21) offices throughout the Greater Milwaukee Area. In connection with promoting and operating its business, Shorewest, acting on behalf of itself and its real estate agents, has, at all times pertinent to this action, routinely advertised in the daily and weekend editions of the MJS. Shorewest has paid the advertising rates stated by the Defendant with the understanding that those rates were based on an accurate accounting of the MJS’s circulation rates.

4. Defendant, Journal Sentinel, Inc. (“JSI”), is a Wisconsin corporation with its principal place of business located at 333 West State Street, Milwaukee Wisconsin, 53203. JSI is a subsidiary of Journal Communications, Inc. (NYSE: JRN), a diversified media and communications company with operations in publishing, radio and television broadcasting, telecommunications and printing services, which also maintains its principal place of business at 333 West State Street, Milwaukee, Wisconsin 52303. JSI has been publishing the MJS since

April 2, 1995, when The Milwaukee Journal merged with the Milwaukee Sentinel.

5. Upon information and belief, more than two-thirds of all class members (defined below) are residents of the State of Wisconsin.

CLASS ACTION ALLEGATIONS

6. Plaintiff brings this lawsuit on behalf of itself and all others similarly situated, as members of the proposed plaintiff class (the “Class”), defined as follows:

All individuals and entities who from January 1, 1996 to the present paid to advertise in the MJS.

Specifically excluded from the proposed Class is Defendant, its officers, directors and employees and the Judge to whom this case is assigned.

7. This action is brought and may properly be maintained as a class action pursuant to Wis. Stat. § 803.08. This action satisfies the requirements enumerated in Section 803.08 in that it presents questions of common interests on behalf of numerous parties, the joinder of whom is impracticable.

8. Numerosity/Impracticability of Joinder: On information and belief, the members of the Class number in at least the thousands. As a result, the Class is so numerous that joinder of all members in a single action is impracticable. Class members should be readily identifiable from information and records in JSI’s possession, custody or control. The disposition of these claims will provide substantial benefits to the Class.

9. Commonality: There is a well-defined community of interests and common questions of law and fact which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from one Class member to another, and which may be determined without reference to the individual

circumstances of any Class member, include, but are not limited to the following:

- a. Whether JSI's conduct constituted unlawful, unfair and/or deceptive practices, in violation of the WDTA;
- b. Whether JSI's conduct constituted a breach of its contracts with Plaintiff and members of the Class;
- c. Whether JSI was unjustly enriched by and as a result of its conduct;
- d. Whether JSI has participated in and pursued and continues to participate in and pursue the common course of conduct and fraudulent scheme complained of herein;
- e. Whether JSI's wrongful conduct resulted in compensatory or economic damages to the Plaintiff and members of the Class;
- f. Whether Plaintiff and members of the Class are entitled to punitive damages and, if so, the amount of such damages;
- g. Whether JSI should be entitled to disgorge certain funds or provide restitution to Plaintiff and the Class and, if so, the amount and nature of disgorgement and restitution to be required of Defendant in light of its improper conduct; and
- h. The nature of further and additional relief to which Plaintiff and members of the Class are or may be entitled.

10. Typicality of Claims: The representative Plaintiff's claims are typical of the claims of the Class because Plaintiff and all Class members were injured by the same wrongful practices in which JSI engaged. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of Class members, and are based on the same legal theories. The only difference between Plaintiff and individual members of the Class could be the amount

of damages sustained, which is an amount that can be readily determined, and does not bar or in any way impair class certification.

11. Adequacy of Representation: Plaintiff is a representative who will fully and adequately protect the interests of the members of the Class, and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither Plaintiff nor its attorneys have interests that are contrary to or conflicting with those of the Class.

12. Superiority/Manageability: A class action is superior to other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are likely to be millions of dollars, the individual damages incurred by each Class member resulting from JSI's wrongful conduct are, as a general matter, too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting separate claims is remote and, even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Relief concerning Plaintiff's rights under the laws herein alleged and with respect to the Class would be proper. JSI has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief

with regard to the members of the Class as a whole.

GENERAL FACTUAL ALLEGATIONS

13. Over the past twenty years, and in particular, during the last decade, there has been a substantial growth in the number of media outlets from which consumers can obtain news and information. These outlets, in the form of cable television, internet websites and various other mediums, have significantly increased competition among news organizations for viewers/readers necessary to ensure continued viability and profitability.

14. In the newspaper industry, profitability is principally based on two factors -- circulation and advertising. The two factors are closely related and are virtually coextensive in that the rates which newspapers can charge customers for advertising are directly tied to the newspaper's represented and reported circulation. As circulation rates and readership increase, advertisers are willing to pay more in an effort to reach those consumers. These principles apply to the MJS -- as they do virtually all newspapers in the United States.

15. The interplay between circulation rates and advertising dollars is critical to the profitability of a newspaper as advertising frequently constitutes between seventy to eighty percent (70%-80%) of a newspaper's revenue. Monies received from subscription charges and certain other miscellaneous categories constitute the remaining twenty to thirty percent (20%-30%) of a newspaper's revenue.

16. Unlike many major metropolitan markets, where two or more papers compete for the dominant market share, since the merger of The Milwaukee Journal with the Milwaukee Sentinel on April 2, 1995, the MJS has enjoyed a unique position as the only major daily newspaper in the Milwaukee metropolitan area.

17. As a result of the lack of competition, as well as through JSI's own efforts, the MJS represents that it has one of the highest market penetration rates of any metropolitan newspaper in the country. As of the last quarter of 2004, the MJS, as the largest daily newspaper in Wisconsin, represented that it had circulation rates of approximately 240,581 for its weekday paper and 435,127 for its Sunday paper.

18. Although maintaining its dominant market position as effectively the only newspaper in the Greater Milwaukee Area certainly affords the MJS substantial and meaningful benefits, it also necessarily has resulted in the MJS facing greater challenges in attracting new readers and maintaining or increasing circulation. Simply put, unlike other, competitive markets where newspapers can attempt to draw readers from their competitors by attempting to make their respective newspapers more desirable, in light of the MJS's market dominance, JSI does not possess any similar opportunity to increase its circulation and, instead, is effectively required to attract new newspaper readers to maintain and/or increase circulation.

19. In light of increased competition from alternative media sources and declining newspaper readership due to demographic trends favoring alternative media sources, during the class period of January 1, 1996 to the present ("Class Period"), upon information and belief, the MJS has not been able to maintain or increase circulation rates and, as a result, JSI has found it difficult to maintain or increase advertising revenues.

20. Faced with the reality of its stagnant market share and the increasing competition from other media outlets, upon information and belief, JSI, from at least January 1, 1996 to the present, has knowingly overstated the MJS's weekday and weekend circulation rates for the express purpose of charging and extracting higher rates from advertisers.

21. The fraudulent and deceptive conduct engaged in by JSI in connection with the overstatement of the MJS's circulation has been deliberate and systematic.

22. During the Class Period, JSI has encouraged and implemented numerous policies, strategies and schemes to falsely inflate circulation. None of these practices were permissible under any commonly accepted industry standards for calculating newspaper circulation. These practices include, but are not limited to, counting papers in the circulation numbers which were:

- distributed for free to homes, businesses and on street corners
- donated to schools
- distributed for free by the thousands at large community events such as Summerfest, the Harley Davidson Festival, sporting events and parades
- returned to the printing facility (having never been distributed to customers) and which were thrown into dumpsters, transported off-site and destroyed by a salvage company
- printed, never left the printing facility, and which were thrown directly into dumpsters, transported off-site and destroyed by a salvage company
- distributed for free in various neighborhoods which were routinely targeted for free distribution
- distributed to apartment complex tenants as part of a scheme with apartment complex managers wherein the cost (at a reduced rate) of the daily subscription was included in the rent and JSI reimbursed (as essentially a kickback) the subscription amount to the complex manager

23. Upon information and belief, after it was disclosed that certain other major newspapers had similarly misrepresented their circulation rates in order to increase advertising revenues, JSI began developing a plan and scheme to conceal its past misrepresentations of circulation rates, including the publication of an article in the April 16, 2005 edition of the MJS that grossly understated the nature and extent of the practices employed by JSI to overstate the

circulation of the MJS.

24. Upon information and belief, in furtherance of its effort to cover up its own misconduct, JSI recently terminated two employees and demoted another as a result of their participation in the pervasive scheme to overstate circulation rates.

PLAINTIFF'S ADVERTISING

25. At all times pertinent to this action, Shorewest has frequently advertised in both the weekday and weekend editions of the MJS. Shorewest on its own behalf and on behalf of its agents has placed advertisements in the main section of the MJS, as well as in special preprints or inserts which are placed in the MJS, most typically in the weekend or holiday editions. In order pay JSI for this expensive advertising, many of Shorewest's own agents have contributed to Shorewest's advertising budget in order to promote the specific properties listed by the individual agents.

26. In connection with advertising in the MJS, Shorewest has been charged and paid advertising rates by JSI based on stated circulation rates which, unbeknownst to Shorewest (and its agents), have been artificially inflated by Defendant. Had JSI accurately reported the MJS's circulation rates, Shorewest would have been charged and paid less for advertising in the MJS.

27. JSI's conduct as to Shorewest is not isolated or unique and, in fact, Defendant collected advertising dollars from all Class members based on the improperly inflated circulation rates described in this Complaint.

TOLLING OF STATUTE OF LIMITATIONS

28. The Plaintiff and the members of the Class could not, through the exercise of reasonable care or diligence, have discovered the acts of JSI until recently. Therefore, any

applicable statute of limitations have been tolled and do not bar the claims asserted.

COUNT I

(Violation of the Wisconsin Deceptive Trade Practices Act, Wis Stats. § 100.18 et. seq.)

29. The allegations of each of the foregoing paragraphs are incorporated as if fully set forth herein.

30. JSI, by the conduct described herein, made, published, disseminated, circulated and placed before the public representations or statements of fact which were untrue, deceptive and/or misleading with the intent to increase the consumption of JSI's services and/or induce the public to enter into obligations relating to the purchase of JSI's services, in violation of Wis. Stats. § 100.18(1).

31. As a result of the nature of JSI's deceptive conduct, all consumers who paid for advertising in the MJS during the Class Period suffered pecuniary losses. A finding that JSI's challenged conduct violated the law will also operate as a finding that each and every Class member suffered pecuniary damage as a result of the uniform conduct of JSI in collecting artificially inflated advertising charges from all Class members and the causal connection necessarily flowing therefrom.

32. JSI's conduct described herein was wanton, willful, malicious and/or intentional. By artificially inflating the circulation rates of the MJS, and concomitantly imposing increased advertising charges, JSI acted maliciously toward Plaintiff and members of the Class, and also acted with intentional or, at a minimum, reckless disregard for their rights.

33. JSI's conduct described in the preceding paragraphs of this Complaint was not isolated or unique to the Plaintiff but was widespread, covering the time period of at least the Class Period until the filing of this Complaint, affecting thousands of customers, and was a

regular and intended business practice of JSI, which was instituted and implemented with a view towards unfairly profiting at the expense of its advertisers, who and which are represented by the Plaintiff.

COUNT II
(Breach of Contract)

34. The allegations of each of the foregoing paragraphs are incorporated as if fully set forth herein.

35. JSI entered into contracts with Plaintiff and members of the Class and represented that Plaintiff and members of the Class were being charged advertising rates based on stated circulation rates of the MJS.

36. Contrary to JSI's representations, the circulation rates of the MJS were lower than actually stated.

37. By charging and collecting advertising rates based on the falsely stated circulation rates, JSI, as described herein, breached its contracts with Plaintiff and members of the Class.

38. By its conduct described herein, JSI also breached its obligations of good faith and fair dealing, which are implied in every contract in Wisconsin.

39. As a result of JSI's breach of its explicit and implied contractual obligations, Plaintiff and members of the Class have been injured and sustained damages in an amount to be determined at trial.

COUNT III
(Unjust Enrichment)

40. The allegations of each of the foregoing paragraphs are incorporated as if fully set forth herein.

41. Plaintiff and members of the Class, by paying advertising rates to JSI that were predicated on falsely inflated circulation rates for the MJS, conferred a substantial and unwarranted benefit upon JSI.

42. By continuing to accept these monies that were based on the improperly inflated circulation rates, JSI had knowledge of, appreciated and retained the benefits conferred by Plaintiff and members of the Class.

43. The circumstances surrounding the acceptance and retention of these benefits are inequitable because JSI knowingly charged and collected advertising rates based on artificially inflated circulation rates.

44. JSI's acceptance and retention of these benefits would be inequitable under all of the circumstances.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of itself and all Class members, prays for judgment against Defendant as follows:

A. For an order certifying that this action may be maintained as a class action, appointing Plaintiff and its counsel to represent the Class, and directing that reasonable notice of this action be given by Defendant to Class members;

B. For a permanent injunction enjoining Defendant, its officers, directors, employees, agents, partners or representatives, successors and any and all persons acting in concert from directly or indirectly engaging in the wrongful acts and practices described above;

C. For an order directing disgorgement or restitution of all improperly collected charges and interest obtained;

- D. For general damages to be proven at the time of trial;
- E. For statutory damages;
- F. For punitive damages;
- G. For an award of costs and expenses incurred in this action, including but not limited to costs recoverable pursuant to Wis. Stat. § 100.18(11);
- H. For reasonable attorneys' fees as provided by law and statute, including but not limited to reasonable attorneys' fees recoverable pursuant to Wis. Stat. § 100.18(11);
- I. For pre-and post-judgment interest as provided by law in an amount according to proof at trial; and
- J. For such other and further relief as the Court may deem necessary, proper and just under all of the circumstances.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

THE DEHLER LAW FIRM, S.C.

Dated: April 25, 2005

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