

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

SANDY JUDD, TARA HERIVEL and
COLUMBIA LEGAL SERVICES, for
themselves, and on behalf of all similarly
situated persons,

Plaintiffs,

v.

AMERICAN TEL. AND TEL. COMPANY; and
T-NETIX, INC.,

Defendants.

No. 00-2-17565-5 SEA

**ORDER GRANTING T-NETIX,
INC.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO
APPLICATION OF STATUTORY
DAMAGES**

This matter came before the Court on the motion of Defendant T-Netix, Inc. for partial summary judgment on the legal issue of how statutory damages would be computed under RCW 80.36.530 should Plaintiffs prevail at trial. The Court considered the following materials and conducted oral argument on the motion on July 20, 2012:

1. T-Netix, Inc.'s Motion for Partial Summary Judgment as to Application of Statutory Damages;
2. AT&T's Response to T-Netix's Motion for Partial Summary Judgment as to Application of Statutory Damages;

3. Plaintiffs' Response to T-Netix's Motion for Partial Summary Judgment as to Application of Statutory Damages;
4. T-Netix, Inc.'s Reply in Support of Motion for Partial Summary Judgment as to Application of Statutory Damages;
5. Plaintiffs' Response to AT&T's Due Process Argument re: Statutory Damages;
6. T-Netix's Supplemental Reply in Support of Motion for Partial Summary Judgment as to Application of Statutory Damages (Due Process Issue);
7. AT&T's Reply to Due Process Argument re Statutory Damages; and
8. AT&T's Compendium of Cases for Due Process Reply.

Based on the foregoing, the Court GRANTS T-Netix's motion for partial summary judgment and concludes that, if Plaintiffs prove their claims at trial, the statutory damages of \$200 under RCW 80.36.530 will be assessed on a per-consumer basis. The Court's conclusion is based on the following analysis:

RCW 80.36.530 provides in pertinent part:

... Acts in violation of RCW 80.36.510, 80.36.520, or 80.36.524 are not reasonable in relation to the development and preservation of business, and constitute matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. It shall be presumed that damages to the consumer are equal to the cost of the service provided plus two hundred dollars.

Plaintiffs contend that this provision allows them to recover \$200 **per violation**, i.e., per collect call in which the required rate disclosure was not made. Defendants T-Netix and AT&T contend that this provision only allows Plaintiffs to recover \$200 per consumer, regardless of the number of collect calls that consumer received. The differing legal interpretations are of great importance to the parties because the financial exposure T-Netix could face under Plaintiffs' interpretation of RCW 80.36.530 would exceed \$43 million and the financial exposure AT&T could face would exceed \$600 million.

When called on to interpret a statute, the court’s primary obligation is to give effect to the legislature’s intent. Restaurant Development, Inc. v. Cananwill, Inc., 150 Wn.2d 674, 681–82, 80 P.3d 598 (2003). If the legislature uses certain language in one statute and uses different language in another statute, that fact evidences a difference in legislative intent. In re Forfeiture of One 1970 Chevrolet Chevelle, 166 Wn.2d 834, 842, 215 P.3d 166 (2009).

The legislature has, on many occasions, enacted laws imposing statutory damages for consumer law violations and has specified that these damages are to be assessed on a “per violation” basis. *See* RCW 80.36.390(6) (any person aggrieved by repeated unwanted telephone solicitations may bring a civil action to recover statutory damages “of at least one hundred dollars for each individual violation of this section”); RCW 19.190.090 (any person injured by misleading email solicitations may bring a civil action and “seek up to five hundred dollars per violation, or actual damages, whichever is greater”); RCW 19.270.060 (a provider of computer software or owner of a web site or trademark who is adversely affected by computer spyware may bring an action to recover “either actual damages or one hundred thousand dollars per violation, whichever is greater”); RCW 9.26A.140 (any person who unlawfully sells telephone records is subject to legal action for actual damages or “liquidated damages of five thousand dollars per violation, whichever is greater”).

There are also several instances in which the legislature chose not to use the “per violation” language. *See* RCW 80.36.540 (damages to the recipient of an unsolicited fax “are five hundred dollars or actual damages, whichever is greater”); RCW 19.320.040 (foreign worker not provided mandatory labor law disclosures from employer shall receive “an amount between two hundred dollars and five hundred dollars, or actual damages, whichever is greater”); RCW 19.162.070 (court may award “the greater of three times the actual damages sustained by

the person or five hundred dollars” in an action alleging deceptive use of pay-per-call information delivery services).

The Court presumes that the legislature did not intend to impose a per violation penalty under RCW 80.36.530 because it did not use any words indicating such an intent. Had the legislature so intended, it would have inserted the words “per violation” or “for each violation” into the statute. The legislature did not use these words when it established the statutory damages in RCW 80.36.530 and this is, in the Court’s opinion, dispositive of the issue.

The parties, in their briefing, focused on the applicability of the rule of lenity to the statutory construction process and on the Defendants’ due process challenge to the Plaintiffs’ “per violation” interpretation of the statute. Because the Court finds the Defendants’ interpretation of RCW 80.36.530 to be the correct one, the Court sees no need to reach the rule of lenity or constitutional issues.

T-Netix’s motion for partial summary judgment is GRANTED. If Plaintiffs prove their claims at trial, the statutory damages of \$200 under RCW 80.36.530 will be assessed on a per-consumer basis.

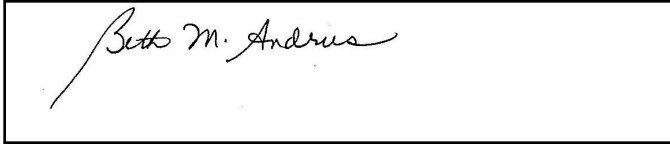
Dated this 6th day of August, 2012.

 \s\ (E-FILED)
Judge Beth M. Andrus
King County Superior Court

King County Superior Court
Judicial Electronic Signature Page

Case Number: 00-2-17565-5
Case Title: JUDD ET ANO VS AMERICAN TELEPHONE &
TELEGRAPH CO ET AL DBA
Document Title: ORDER

Signed by Judge: Beth Andrus
Date: 8/7/2012 9:00:00 AM

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Judge Beth Andrus

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