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Civil Action No.

## JURY TRIAL DEMANDED

Defendants.

Plaintiffs Lorri Fishman and Kristine Lowry-DeTurk (hereinafter “Plaintiffs”), by and through Plaintiffs’ attorneys, bring this action against Defendants Sheridan Labs (“Sheridan”) and Phoenix Labs, Inc. (“Phoenix”) (collectively “Defendants”), on behalf of themselves and all others similarly situated, and allege the following pursuant to the investigation of Plaintiffs’ counsel and based on information and belief, except as to allegations specifically pertaining to Plaintiffs, which are made upon personal knowledge.

1. This is a consumer rights class action lawsuit brought by Plaintiffs on behalf of a class of all similarly situated consumers participating in a “trial” of Equinox skincare products (the “Equinox Products,” defined below) against Defendants for fraudulent billing practices, fraudulent advertising, deceptive trade practices, and breach of contract. This action seeks to remedy Defendants’ design and use of deceptive and misleading marketing practices (also known as and referred to herein as “Negative Option” or “Free-To-Pay”) intending to trick and

cause consumers, such as Plaintiffs and the Class, to unknowingly and automatically enroll in unauthorized membership or subscription programs whereby Defendants charged and continued to charge consumers' credit cards without their knowledge, information, or consent.

2. Defendants sell Equinox skin-care products directly to consumers over the Internet by uniformly advertised free "trials." Unbeknownst to unsuspecting consumers, consumers who respond to the "risk-free" or "trial" ads are instead enrolled in a Free-to-Pay conversion program that costs each consumer hundreds of dollars.

3. In connection with the advertised "trial" offers for their Equinox Products, Defendants' predatory business model utilizes a host of highly misleading, confusing, unlawful, deceptive, and unfair acts or practices that deceived and are likely to deceive consumers. These acts or practices include but are not limited to the following: (1) failing to provide consumers, such as Plaintiffs and the Class, with all the material terms of the Free-To-Pay conversion; (2) failing to disclose to consumers, such as Plaintiffs and the Class, all material terms of the Free-To-Pay conversion in a clear and conspicuous manner; (3) failing to clearly and conspicuously disclose to consumers, such as Plaintiffs and the Class, all material terms of the transactions before obtaining their billing information; (4) failing to obtain the express informed consent of consumers, such as Plaintiffs and the Class, before charging their credit cards, debit cards, or bank accounts; and (5) failing to provide a simple mechanism for consumers, such as Plaintiffs and the Class, to stop recurring charges from being placed on their credit cards, debit cards, or bank accounts.

4. By falsely presenting the Equinox Products via a risk-free "trial" offer when it is not, and by further failing to disclose the terms and conditions of their Free-To-Pay conversion plan, Defendants perpetrate a fraud on consumers and violate the common law and applicable state statutes.

## **THE PARTIES**

### ***Plaintiffs***

5. Plaintiff Lorri Fishman (“Plaintiff Fishman”) is citizen of the State of Illinois, residing in Cook County. Plaintiff, an individual consumer, signed up for a free trial of Equinox Products, fell victim to Defendants’ fraudulent billing scheme and was subjected to Defendants’ unlawful policies and/or practices set forth herein.

6. Plaintiff Kristine Lowry-DeTurk (“Plaintiff Lowry-DeTurk”) is citizen of the State of California, residing in Marin County. Plaintiff, an individual consumer, signed up for a free trial of Equinox Products, fell victim to Defendants’ fraudulent billing scheme and was subjected to Defendants’ unlawful policies and/or practices set forth herein.

### ***Defendants***

7. Defendant Sheridan Labs, Inc. (“Defendant Sheridan”) is a Nevada corporation and health and medical product manufacturer with its principal place of business at 14953 S Heritagecrest Way Ste C, Bluffdale, Utah. Defendant Sheridan manufactures, advertises and sells the Equinox Products as alleged herein. The decisions, acts and omissions alleged herein were conceived, implemented, and at all times carried out by Defendant Sheridan directly or in concert with Defendant Phoenix Labs, Inc.

8. Defendant Phoenix Labs Inc. (“Defendant Phoenix”) is a corporation with its principal place of business at 2551 East Ave S. Suite G100 Palmdale, California. Defendant Phoenix manufactures, advertises and sells the Equinox Products as alleged herein. The decisions, acts and omissions alleged herein were conceived, implemented, and at all times carried out by Defendant Phoenix directly or in concert with Defendant Sheridan.

### **JURISDICTION AND VENUE**

9. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of five million dollars (\$5,000,000.00) and is a class action in which members of the Class of Plaintiffs are citizens of states different from Defendants. Further, greater than two-thirds of the Class members reside in states other than the state in which Defendants are citizens.

10. This Court has personal jurisdiction over Defendants because they are authorized to do business and are conducting business throughout the United States, including Illinois; they have specifically marketed and sold the Equinox Products in the United States, including in Illinois; they have sufficient minimum contacts with the various states of the United States, including Illinois; and/or sufficiently avail themselves of the markets of the various states of the United States, including Illinois, through their promotion, sales, and marketing within the United States, including Illinois, to render the exercise of jurisdiction by this Court permissible.

11. Venue is proper in this district under 28 U.S.C. § 1391 because Defendants transact business in, contract to supply products in, are found within, and have agents in this District, and caused injury or damage in this District by acts or omissions outside of this District while regularly doing and soliciting business in this District.

### **FACTUAL ALLEGATIONS**

#### ***“Free-To-Pay” Conversions***

12. A “Free-To-Pay” conversion is a practice whereby consumers are automatically billed for a product, service and/or membership if consumers do not take affirmative steps to cancel during an advertised free trial period.

13. Under the Federal Trade Commission (the “FTC”) Guide Concerning the Use of the Word “Free” and Similar Representations, a business, in using the word “free,” must exert “*extreme* care so as to avoid any possibility that consumers will be misled or deceived.”

14. The Attorneys General of the states of Arkansas, Illinois, Kansas, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, Ohio, Oregon, Tennessee, Vermont, and West Virginia have stressed to the FTC the following: “Free to pay conversion marketing uses a form of trickery, and sleight of hand as it were, to reap millions from consumers in a manner flatly contrary to the ordinary rules of consumer transactions. There is an inherent deception built into these plans by the marketers ... .” *See* Vermont, et.al.’s comment to FTC’s “Prenotification Negative Option Rule” (Oct. 13, 2009) (hereinafter “AGs’ Comment Letter”), attached hereto as **Exhibit A**. The AGs’ Comment Letter highlights and details the “significant problems inherent in negative option trial conversions ... .” *See id.* The problems include, but are not limited to, the following:

- A. The misleading character of negative options advertised as involving “free” or “trial” offers. The long-term impression created by this type of terminology is that consumers have *no obligation* to do anything, not that their silence after acceptance of the offer will open them to recurrent charges of unlimited duration;
- B. Consumers’ lack of awareness as to the existence of ongoing periodic charges to their credit cards, debit cards and/or bank accounts, in connection with trial conversions; and
- C. The piling up of trial conversion charges over long periods of time, amounting to substantial amounts of money, even where consumers make little or no use of the goods or services offered.

15. The AGs' Comment Letter further states that "[t]he complaints we receive underscore the inherently deceptive nature of trial conversions, render retailers' disclosures meaningless and confuse and dupe even the most sophisticated consumer." *See id.*

16. The AGs' Comment Letter further states that "[w]hereas in continuity sales plans, consumers receive regular notification with every shipment of merchandise, prompting them to take affirmative steps to cancel the plan if that is their preference, with trial conversions the recurrent charges are the subject of no notification from the seller and continue on silently and without limit." *See id.*

17. Compounding the problems for consumers is their inability to cancel, obtain a refund, or pro-rate charges once they realize their credit cards, debit cards, and/or bank accounts have been charged.

18. Because consumer complaints about aggressive sales tactics by many businesses against online users were so pervasive, Senator John D. Rockefeller IV, Chairman of the U.S. Senate Committee on Commerce, Science, and Transportation (the "Senate Committee"), launched an investigation into e-commerce marketing practices in May of 2009.

19. The Senate Committee opened its investigation after thousands of online consumers complained to State Attorneys General, the Better Business Bureau, and other consumer advocates of misleading and deceptive enrollment in membership plans. Similar to Plaintiffs, these consumers complained that they did not consent to enrolling in membership plans and only learned that they were enrolled in membership plans after eventually seeing unauthorized charges on their credit card or checking account statements.

20. The investigation by the Senate Committee found abundant evidence that the aggressive sales tactics many companies use against consumers have undermined consumer confidence in the Internet and thereby harmed American society.

21. The Senate Committee also found that sellers used a “free trial” period to automatically enroll members, after which they periodically charged consumers until consumers affirmatively canceled the memberships. These marketing schemes took advantage of consumers’ expectations that they would have an opportunity to accept or reject the membership at the end of the “free trial” period.

22. As a result of the investigation and findings, it was determined that Free-To-Pay conversions require a heightened level of disclosure to avoid misleading the reasonable consumer.

23. In an effort to protect consumers against these Free-To-Pay conversions, legislation entitled the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C.S. § 8401 *et seq.*, was enacted and signed into law on December 29, 2010.

24. ROSCA prohibits sellers from charging or attempting to charge any consumer for services over the Internet unless the seller:

- A. clearly and conspicuously discloses all material terms to consumers *before* obtaining billing information;
- B. obtains the consumer’s express and informed consent *before* charging the consumer; and
- C. provides “simple mechanisms” for consumers to stop recurring charges.

25. Guidance from the FTC indicates that the “material terms” in Free-To-Pay conversions include, but are not limited to, the following:

- A. the fact that the consumer will be charged a specified amount each payment period (e.g., each month) until he or she cancels;
- B. the fact that the amount of the charge may change, if true, and the amount to which it will change, if known;

- C. the date on or about which the consumer will be charged each payment period;
- D. how the consumer may cancel, including necessary contact information, such as an e-mail address or phone number;
- E. the fact that the site has a no-refund policy, if true;
- F. the minimum purchase obligation, if any;
- G. the length of the free trial period; and
- H. the date by, or the time period within, which a cancellation request must be received to avoid being charged at all.

***Defendants' Unlawful Free-To-Pay Conversion Scheme***

26. Defendants are direct marketing companies that discover and develop consumer products in the beauty and skincare categories. They advertise their products on the internet via third-party websites, Defendant-owned dedicated product websites and pop-up ads, some of which use celebrity endorsers such as Ellen Degeneres and Doctor Oz.<sup>1</sup>

27. Defendants' products include Equinox brand and RVTL brand skincare Products (the "Equinox Products"), including but not limited to "Equinox Beauties," "Equinox Day & Night Skin Renewal," "Equinox Instant Wrinkle Reducer," "Equinox Multi Peptide Serum," "Equinox DNA," "Equinox Serum," "OutsideIn Skin," and "RVTL Anti-Aging Cream." Defendants represent that Equinox Products possess anti-aging properties that improve the appearance of the skin.<sup>2</sup>

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<sup>1</sup> See <http://before-and-after.webs.com/ha.htm>; <http://bestreducewrinkles.com/ellen-degeneres-rvtl-anti-aging-cream-and-equinox/>; <http://www.ghostcentral.net/womenshealth-daily.com/Re/newreviewjournal.com/newreviewjournal.com/newreviewjournal.com/skin/index48b71.html> (all, last visited 7/16/14).

<sup>2</sup> See <https://www.equinoxskinsystem.com> (last visited 7/16/14). Plaintiffs reserve the right to modify the list of included Equinox Products after discovery in this case proceeds.

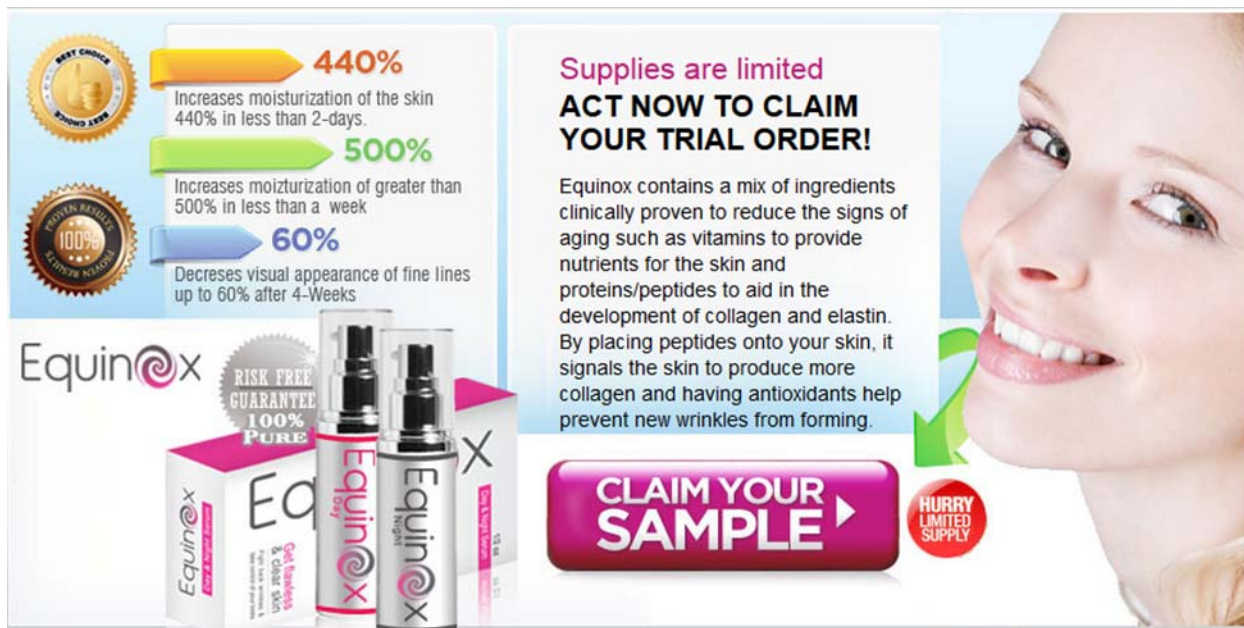


28. Defendants market Equinox Products to consumers through "risk-free" "trial" offers, whereby the consumer is led to believe that she can obtain a "sample" of Equinox Products with no obligation other than payment of nominal shipping and handling charges (typically \$4.95). These representations are false. In accepting Defendants' "trial" offer, consumers are unaware that they are not receiving samples of Equinox Products. Rather, they are receiving full size Equinox Products and are really responsible for paying the entire amount for the full size Products within fourteen days. Consumers are further unaware that, in signing up for a "trial," they are signing up for a Free-To-Pay conversion, whereby the consumers are automatically enrolled in Defendants' Free-To-Pay continuity plan.

29. Defendants systematically enroll all purchasers in their continuity plan pursuant to which Defendants automatically send consumers 30 day supplies of Equinox Products on a periodic basis and bill the credit card or debit card the purchaser provided for payment of the shipping and handling charges associated with the "trial."

30. In violation of the FTC requirements concerning Free-To-Pay conversions and applicable laws herein, Defendants do not disclose the billing, return, or use terms and conditions (upon which they now seek to justify charging hundreds of dollars for a "trial" product) in any of their ads or marketing materials. Defendants collect billing information without disclosing, conspicuously or otherwise, any aspect of their Free-To-Pay scheme.

31. To lure consumers on the internet, Defendants use pop-up ads, Facebook ads and Defendant-owned websites promoting a "trial offer" touting that consumers will receive a risk-free trial of the product simply by paying a nominal "shipping & handling" fee.



**440%**  
Increases moisturization of the skin 440% in less than 2-days.

**500%**  
Increases moisturization of greater than 500% in less than a week

**60%**  
Decreases visual appearance of fine lines up to 60% after 4-Weeks

**Supplies are limited  
ACT NOW TO CLAIM  
YOUR TRIAL ORDER!**

Equinox contains a mix of ingredients clinically proven to reduce the signs of aging such as vitamins to provide nutrients for the skin and proteins/peptides to aid in the development of collagen and elastin. By placing peptides onto your skin, it signals the skin to produce more collagen and having antioxidants help prevent new wrinkles from forming.

**CLAIM YOUR SAMPLE**

**HURRY LIMITED SUPPLY**

**Equinox**

**RISK FREE GUARANTEE 100% PURE**

**Equinox Day**

**Equinox Night**



**Equinox DAY & NIGHT**

**Skin Renewal includes**  
Daylight Multi-Peptide Cream - Twilight Multi-Peptide Cream

- ✓ Smooths Creases & Wrinkles for Instant Results
- ✓ Tightens & Visibly Lifts Aging Skin
- ✓ Rejuvenates and Gives You Younger Looking Skin

**Click HERE**

**Equinox 100% Moneyback Guarantee**

**RISK FREE GUARANTEE**

**Equinox**

**Equinox Day**

**Equinox Night**

# Equinox

**74%**

Moisturises skin to 74%  
in just a week

**83%**

Eliminates wrinkles to 83% within  
just 2 days

**79%**

Decreases visual appearance of fine  
lines up to 79% after 4-Weeks



TELL US WHERE TO SEND YOUR  
**TRIAL BOTTLE**

"Most EFFECTIVE and POWERFUL age d



**“I’m 48...  
going on 25!”**

Women of all ages rave about it

- Fewer wrinkles & fine lines
- Decrease Crows Feet
- Fast & Easy No Complicated Steps

SCIENTIFICALLY  
FORMULATED & TESTED  
its a **Trial Offer**



**Supplies are limited**  
**ACT NOW TO CLAIM YOUR TRIAL ORDER!**

Equinox contains a mix of ingredients clinically proven to reduce the signs of aging such as vitamins to provide nutrients for the skin and proteins/peptides to aid in the development of collagen and elastin. By placing peptides onto your skin, it signals the skin to produce more collagen and having antioxidants help prevent new wrinkles from forming.

**CLAIM YOUR SAMPLE ▶**

**HURRY LIMITED SUPPLY**

The advertisement features a close-up of a smiling woman's face on the right side. A green arrow points from the text area on the left towards the woman's face. The background is a light blue and white gradient.

32. When customers click on the pop-up or Facebook ads, or else find the Defendant-operated websites, they are asked to fill out a form to “tell us where to send trial bottle,” where the customer is asked to put in shipping information.

33. After the customer fills out the prominently displayed shipping form, the customer is directed to another webpage whereby the customer’s payment information (i.e., credit card number) is collected to cover the “shipping & handling” fee. Thus, Defendants require consumers to provide credit card or debit card information at the time they sign up for their “trial” of Defendants’ products under the auspices of using this information solely to bill the shipping and handling costs. Defendants then use that credit card and debit card information to automatically enroll consumers in a Free-To-Pay conversion and continuity program,



pursuant to which Defendants automatically send them their products on what is supposedly a 30 day periodic interval.

34. When consumers discover that they have been forced to pay for the “trial” product represented to be free and further realize that they are enrolled in Defendants’ continuity programs and contact Defendants to cancel, Defendants routinely refuse to provide full refunds to consumers and tell consumers that they are entitled to retain exorbitant “restocking” fees.

35. At the time when the credit card information is collected by Defendants, none of the terms and conditions of the Free-To-Pay conversion (i.e. delayed-billing, negative-option, auto-ship and /or automatic future credit card billing program) are disclosed.

36. Rather, the following statement is nowhere near the form completed by the consumer to participate in the “trial offer,” and is instead, buried in tiny print on Defendants’ websites:

To help you get started, we offer a 14-days trial of Equinox with the eligibility of automatic enrollment in our home delivery program. You can try Equinox risk free to determine for yourself, if this product is right for you. When you submit your order, you automatically agree to pay the non-refundable discounted shipping & handling cost of \$4.95 for your trial for a full 30 day supply of Equinox.

If you find that the product is not right for you, simply call our Customer Support Center or the numbers shown on your bank statement you can also send an email to cancel your membership before the end of your 14-day trial period and you will not be charged the full price of the Equinox. Your 14-day trial period begins at the date of order our products are normally delivered within 3 to 5 business days from the time of ordering. If you do not receive your trial bottles within five (5) business days of placing the order, please contact our Customer Service Center or numbers shown on your bank statement our support staff is available to give you more updated information on the estimated delivery time along with the tracking info.<sup>3</sup>

37. Similarly, on [www.equinoxbeauties.com](http://www.equinoxbeauties.com) (last visited 7/16/14) buried in tiny font

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<sup>3</sup> <https://www.equinoxskinsystem.com>, last visited 7/16/14 (all *sic*).

at the bottom of the website, Defendants say:

To help you get started, we offer a 14-days trial of Equinox Beauties with the eligibility of automatic enrollment in our home delivery program. You can try Equinox Beauties risk free to determine for yourself, if this product is right for you. When you submit your order, you automatically agree to pay the non-refundable discounted shipping & handling cost of 4.95 for your trial for a full 30 day supply of Equinox Beauties.

If you find that the product is not right for you, simply call our Customer Support Center or the numbers shown on your bank statement you can also send an email to cancel your membership before the end of your 14-day trial period and you will not be charged the full price of the Equinox Beauties. Your 14-day trial period begins at the date of order our products are normally delivered within 3 to 5 business days from the time of ordering. If you do not receive your trial bottles within five (5) business days of placing the order, please contact our Customer Service Center or numbers shown on your bank statement our support staff is available to give you more updated information on the estimated delivery time along with the tracking info.

38. These terms and conditions do not appear anywhere on Defendants' Facebook or pop-up ads. Even if they did, nowhere do Defendants disclose in these terms or conditions that the customer is to pay anything other than a nominal amount for shipping and handling. Nowhere do Defendants disclose that the customer will be charged for the full amount of the Equinox "trial" products or that they will be sent ongoing products and will be billed automatically for same in order to receive the product to try for fourteen days.

39. Defendants failed to provide Plaintiffs and the Class with all material terms of the Free-To-Pay conversion plan.

40. Defendants failed to disclose to Plaintiffs and the Class all material terms in an effort to induce consumers to subscribe without their express informed consent and/or refrain from cancelling their subscriptions in a timely and effective manner to avoid charges.

41. Defendants knew or should have known that subscribing and/or not cancelling by Plaintiffs and the Class was a likely result of the failure to disclose all material terms.

42. Defendants failed to disclose to Plaintiffs and the Class all material terms in a clear and conspicuous manner. For example:

- A. Defendants placed some material terms in places where a reasonable consumer would not actually perceive and understand the disclosures within the context of the entire website;
- B. Defendants placed some material terms in locations on web pages where they were not likely to be seen;
- C. Defendants failed to label some material terms to indicate the importance and relevance of the information;
- D. Defendants used text that was not easy to read on the screen;
- E. Defendants required consumers to scroll on certain web pages to read some material terms;
- F. Defendants placed some material terms in the terms and conditions form that it knew or should have known consumers did not typically read;
- G. Defendants prominently featured and highlighted non-material terms and advertisements in large font size and color highlights to distract attention away from the material terms;
- H. Defendants prominently featured and highlighted “Trial Offer” pop-up and Facebook ads, and failed to indicate anywhere on those ads that consumers have the right to cancel within a period of time or charges will apply;
- I. Defendants omitted or buried key language concerning the cost, charge to credit/debit cards used to sign up for the “Trial Offer,” the Free-To-Pay conversion and the process for cancelling the “Trial Offer” and subscription;



and/or

- J. Defendants failed to clearly and conspicuously inform consumers about how to cancel by putting the cancellation information away from any information relating to the membership cost.

43. Defendants by intentional concealment of material terms prevented consumers, including Plaintiffs and the Class, from acquiring material information.

44. Defendants failed to clearly and conspicuously disclose to Plaintiffs and the Class all material terms before obtaining their billing information.

45. Defendants failed to obtain the express informed consent of Plaintiffs and the Class before charging their credit cards, debit cards, and/or bank accounts. For example:

- A. Guidance from the Illinois Attorney General and other Attorney Generals indicate that in a Free-To-Pay conversion, express informed consent cannot be given at the outset of a trial period because the trial period is most often touted without obligation or risk free and because it can and does lull customers into a state of forgetfulness; rather, only at the end of the trial does the relationship between consumer and business transform into one in which the consumer is actually being charged;
- B. Defendants did not obtain the express informed consent of Plaintiffs and the Class before charging their credit cards, debit cards, and/or bank accounts because Defendants did not first notify the consumers or otherwise obtain any consent from the consumers at the end of the “Trial”;
- C. Defendants did not obtain the express informed consent of Plaintiffs and the Class before charging their credit cards, debit cards, and/or bank accounts

because Defendants did not send any reminder or any periodic reminder to help prevent the continuation of unknowing or unwanted memberships and charges to their credit cards, debit cards, and/or bank accounts;

- D. Defendants did not obtain the express informed consent of Plaintiffs and the Class because the consumers did not give any affirmative statement agreeing to purchase the goods or services and/or were not aware that the charges would be billed to their credit cards, debit cards, and/or bank accounts;
- E. Defendants did not obtain the express informed consent of Plaintiffs and the Class to charge their credit cards, debit cards, and/or bank accounts because they did not perform any affirmative action to demonstrate their consent to be charged;
- F. Defendants did not obtain the express informed consent of Plaintiffs and the Class to charge their credit cards, debit cards, and/or bank accounts because their silence or inaction is not express informed consent, and;
- G. Defendants did not obtain the express informed consent of Plaintiffs and the Class to charge their credit cards, debit cards, and/or bank accounts because they did not receive all material terms before giving any asserted express informed consent.

46. Defendants failed to provide Plaintiffs and the Class with a simple mechanism for them to stop recurring charges from being placed on their credit cards, debit cards, and/or bank accounts. For example:

- A. Defendants did not provide a simple mechanism because Plaintiffs and the Class could not cancel by the same method that consumers enrolled in the subscription

service such as by merely clicking on a confirmation button on Defendants' websites;

B. Defendants did not provide a simple mechanism for cancelling because Defendants did not conspicuously provide Plaintiffs and the Class a toll-free phone number to call and cancel; and

C. Defendants refused to refund or pro-rate membership fees.

***Plaintiffs' Experiences***

***Plaintiff Fishman***

47. In March of 2014, Plaintiff Fishman signed up for a 14-day trial sample of Equinox Products. She discovered the products via a pop-up ad on the Internet. Plaintiff Fishman paid for the products using her Visa debit card, which is linked to her checking account with Partnership Financial Credit Union. Plaintiff does not recall seeing anything about Defendant's continuity plan at the time she signed up for the 14 day trial of the Equinox Products. At all times, Plaintiff believed that she would receive "trial" Products and be responsible to pay only nominal shipping and handling charges.

48. On March 14, 2014, Defendants charged Plaintiff Fishman's account the amounts of \$4.95 and \$3.97 for shipping and handling charges.

49. Plaintiff received her Equinox Products from Defendants several days after she signed up for the "trial."

50. In early April, Plaintiff Fishman received a second supply of Equinox Products from Defendants. Plaintiff Fishman was not expecting to receive the Products, she did not want them, and she did not provide any form of signed or written authorization to Defendants to charge her for them.

51. Without Plaintiff Fishman's authorization, Defendants charged her checking account as follows: March 28, 2014 (\$99.00); April 2, 2104 (\$93.00); April 14, 2014 (\$99.95).

52. Shortly after receiving the additional products, on or about April 17, 2014, Plaintiff Fishman called Defendants' customer service number. Plaintiff Fishman advised the customer service representative that she had received Equinox Products that she had never ordered, that she did not want the products, and that she did not want to be charged for the products. Plaintiff was informed for the first time of her "membership" in Defendants' automatic renewal plan. The customer service representative further advised Plaintiff that her membership would be cancelled. After Plaintiff insisted on a full refund of the amount improperly charged to her debit card, the customer service representative refused, asserting that Defendants would be entitled to retain \$20 per product in "restocking" fees. The customer service representative offered a partial refund for only 2 of the products improperly charged to Plaintiff and provided instructions to Plaintiff on how to return the Products.

53. On April 17, 2014, Plaintiff Fishman received two emails (one from the email address [customerservice@equinoxbeauties.com](mailto:customerservice@equinoxbeauties.com) and the other from the email address [customerservice@rvtlskin.com](mailto:customerservice@rvtlskin.com)) confirming her conversation with Defendants' customer service representative.

54. Plaintiff Fishman shipped the products back shortly after receiving Defendants' instructions and received credits to her account on May 8, 2014 in the amounts of \$79.00 and \$73.00.

55. To date, Plaintiff Fishman has not received a complete refund of all of the amounts charged and the refunded amounts represent only a portion of the total improper charges to her account stemming from the Equinox Products.

***Plaintiff Lowry-DeTurk***

56. On June 1, 2014, Plaintiff Lowry-DeTurk signed up for a 14-day trial sample of Equinox Products. She discovered the Products via an ad on the Internet using Ellen Degeneres and Dr. Oz to promote Equinox Products. Plaintiff Lowry-DeTurk paid for the products using her credit card issued by Wells Fargo Bank. Plaintiff does not recall seeing anything about Defendant's continuity plan at the time she signed up for the 14 day trial of the Equinox Products. At all times, Plaintiff believed that she would receive "trial" products and would be responsible to pay only nominal shipping and handling charges.

57. Subsequent to her signing up for the "trial," Defendants charged Plaintiff Lowry-DeTurk's credit card for shipping and handling charges.

58. Plaintiff Lowry-DeTurk received her Equinox Products from Defendants several days after she signed up for the "trial."

59. On or around June 16, 2014, Plaintiff Lowry-DeTurk was charged for the full price of her "trial" Equinox Products.

60. On or around July 5, 2014 Plaintiff Lowry-DeTurk received a second supply of Equinox Products from Defendants. Plaintiff Lowry-DeTurk was not expecting to receive the products, she did not want them, and she did not provide any form of signed or written authorization to Defendants to charge her for them. Plaintiff Lowry-DeTurk was charged for this second round of Equinox Products on July 2, 2014, prior to having received them.

61. Without Plaintiff Lowry-DeTurk's authorization, Defendants charged her checking account as follows: June 16, 2014 (\$99.00 and \$93.00); July 2, 2014 (\$105.95 and \$99.95).

62. Shortly after receiving the second shipment of Equinox Products in early July of

2014, Plaintiff Lowry-DeTurk called Defendants' customer service number numerous times. She contacted Defendants numerous times because Defendants would refuse to transfer her to a supervisor and customer service personnel would hang up on her. During each of these calls, Plaintiff Lowry-DeTurk advised Defendants' customer service representative that she had received Equinox Products that she had never ordered, that she did not want the Products, and that she did not want to be charged for the Products. During her last communication with Defendants' customer service department, when Plaintiff insisted on a full refund of all amounts improperly charged to her credit card, the customer service representative refused, asserting that Defendants would be entitled to retain exorbitant "restocking" fees. The customer service representative then offered a partial refund for 2 of the products improperly charged to Plaintiff.

63. Plaintiff Lowry-DeTurk received two credits to her account on July 9, 2014 of \$60.00 each.

64. To date, Plaintiff Lowry-DeTurk has not received a complete refund of all of the amounts charged and the refunded amounts represent only a portion of the total improper charges to her account stemming from the Equinox Products.

### ***Class Members' Experiences***

65. Numerous consumers who signed up for Defendants' "trial" of Equinox Products have complained of Defendants' fraudulent business practices and described their unsuccessful attempts at obtaining a full refund. The following represents a small sampling of Internet postings by Equinox Product "trial" consumers complaining of misleading, confusing, unlawful, deceptive and unfair acts and practices:

Requested samples - charged for same - then billed for merchandise never ordered nor received. Disputed charge with credit card company. Not resolved. Not able to resolve with company directly. Company said must go through credit card company. Credit card company said must go through Equinox. Both claim

dispute [sic.] settled but I have no product nor refund.

[posted on June 4, 2014 at <http://www.scambook.com/company/view/116036/Equinox-Skin-Care> (last visited July 16, 2014) by a customer who was billed \$105.95 for “samples”]

\* \* \*

I ordered the sample from this company on 4/18/14 and I did not order the full product.

They say [sic.] I had 14 days to cancel, and I did not see that on their webpage. I contacted them and they have refused to credit me for the product that I never received...

They are total scammers!

[posted on June 2, 2014 at <http://www.scambook.com/company/view/116036/Equinox-Skin-Care> (last visited July 16, 2014) by a customer who was billed \$173.40 for a “sample”]

\* \* \*

After ordering the trial offer for shipping charges Equinox [sic.] continued to ship product and bill my credit card. New shipments were returned unopened by UPS. Contacted our bankcard and was notified that we are subject [sic.] to a \$20 restocking fee on two shipments. Will see if what [sic.] happens.

[posted on May 18, 2014 at <http://www.scambook.com/company/view/116036/Equinox-Skin-Care> (last visited July 16, 2014) by a customer who was billed \$397.90 for a “trial offer”]

\* \* \*

I clicked on an ad in facebook for a free trial of this product. There was nothing that said they would charge me \$200 in 14 days - although from what I see in the other complaints, it wouldn't have made a difference if I had called. When I saw the charges on my credit card I called Equinox and was treated very rudely by people I could barely understand. Then I was told that the \$200 was for new product and that I could return it once received for a full credit, but when I told him that was 2 weeks ago and I haven't received anything he told me that was for the product I already received, but he would cancel my order. What does that mean? I have been using the product daily for 3 weeks and see zero results. This is all a scam and would tell anyone to stay away from this company!

[posted on November 6, 2013 at <http://www.ripoffreport.com/r/Equinox-Skin-Care/Nevada/Equinox-Skin-Care-Free-Trial-is-a-Scam-and-the-Product-does-nothing-Nevada-1097443> (last visited July 16, 2014) by a customer who was billed \$200.00 for a “free trial”]

\* \* \*

I saw an ad with Ellen Degeneres with comments by Dr. Oz re: Flawless Skin and RVTL Anti aging creams. 2 “free” samples were to be shipped with only about \$9.00 shipping costs. I read all there was at that site and there was NO mention of a recurring shipment and billing if order not cancelled within 14 days. I received that shipment but then I received another a few days later. I checked my credit card and saw that I was being charged 5 different times for varying amounts from \$73 up to \$105. I called my bank immediately and cancelled the card.

I called the RVTL number and spoke with a man who spoke very bad English but the gist of it was I could return the products for a partial refund or nothing at all. I only received 2 more products but had been charged for 5 plus they would keep a \$20 “restocking” fee per item. I never received 3 of these shipments so didn’t see the need for a “ restocking fee.

My bank got on to the project and so far they have gotten all but \$38 refunded and they are going for that too. I have read a number of reviews and we all were “sucker punched” by this company. One review said to file a report with with [sic.] the California Justice Dept. and I will. (One of the offices for RVTL/Equinox is located in Ca.)

[posted on November 6, 2013 at <http://www.complaintslist.com/2014/500-stolen-by-equinox-and-rvttl-anti-aging/> (last visited July 16, 2014) by a customer who was billed \$482.84 for “free” samples]

\* \* \*

This company offers you a free trial of anti aging cream. Your only cost is shipping and handling in the amount of \$5.00 dollars. However, once you use your your [sic.] credit card or debit card they charge your card an unauthorized amount about ten days later \$200.00 dollars.

I called to complain, they state they will give you a refund of \$50.00 for each product (2). Which means they will credit you \$100.00 dollars and they billed you \$200.00 dollars. Their explanation a re-stocking fee 0f [sic] \$50.00 dollars per product.

However no products are returned for restocking because they sent a free trial offer.

Reported to [sic.] this scam to my bank due to unauthorized charges other than the shipping fee.

[posted on April 15, 2014 at <http://www.complaintslist.com/2014/500-stolen-by-equinox-and-rvttl-anti-aging/> (last visited July 16, 2014) by a customer who was billed over \$200.00 for a “free trial”]



\* \* \*

This is a total scam!! I ordered a trial from Facebook, so was not provided w/the terms and conditions. I was billed for a shipment before I even had given the product a trial, Received 2 more shipments, and returned to sender. Since the first was over 30 days, I only rec'd a refund of \$20 (of product billed at \$99)! I was told that I couldnot [sic.] receive the full amount as it was over 30 days. Was told by customer service rep that I should have read the terms and conditions (that didn't appear w/the [sic] Facebook offer!), that there is not [sic] manager to speak with, and that he has the same authority as any manager! I wouldn't even give them one star if I could give none. I now have no money and no product! I am also upset that the only return address on the products was for an address without the name. There are so many things going on with this company, I can't say more now!

[posted on February 14, 2014 at <http://www.sitejabber.com/reviews/www.equinoxbeauties.com> (last visited July 16, 2014) by a customer who was billed \$99 for a "trial"]

\* \* \*

This is a total SCAM. I am a lawyer and I know how to read. I ordered a free trial offer. All my confirmations were through EquinoxDNA.com. THEIR Terms and Conditions state: "Your 14-day trial period begins once the product is delivered." I cancelled within that period; yet I was charged \$99.00. When I called to correct the obvious error, the Customer Service representative referred me to another website (EquinoxBeauties.com), where the Terms and Conditions state: "Your 14-day period begins when you place your order...." Apart from the contridicting [sic] Terms and Conditions for the same product, a "trial period" is just that, you "try" it. How can you try it, if you haven't received it!? I will check to see if anyone has filed a law suit against these con artists.

[posted on July 14, 2013 at <http://www.sitejabber.com/reviews/www.equinoxbeauties.com> (last visited July 16, 2014) by a customer who was billed \$99 for a "trial"]

66. A Google search for "equinox skin care complaints" results in pages upon pages of websites that collectively reflect hundreds of complaints from customers who have been defrauded by Defendants.

67. One such page is a Facebook page dedicated to Defendants' scam.<sup>4</sup> The following is a small sampling of the over 70 posts on this dedicated Facebook page:

They Equinox Skin Care Ripoff [sic.] deliberately rip-off people then put the blame onto the people for believing the misleading advertising like free trial no strings attached !!!! Equinox does not make it clear that they will keep stealing money from your credit card every month!!! They are getting away with it and seem to be allowed to do this because they expect the buyer to beware fully realising[sic] that most buyers can be mislead by them and are laughing all the way to the bank. They flat out refuse to give refunds and try to fob you off with sending out more product and then trying to charge you again even when they say they will not take any more money from your credit card. They are dishonest and deliberately misleading and say it isn't their fault when they steal money from you with out your permission.

[posted by a customer on March 27, 2014]

This is now being marketed under several different names of product and is a total scam. My GAP Visa card by GEGRB refused to refund my money because they said I should have looked at the website to read terms and conditions on a different page. I didn't even realize that I had been connected to a website - it was just a pop up window to enter my address for the free sample and card info for shi...pping charges. Free sample, my \*\*%^\$#. It cost me \$200, which I certainly cannot spare right now. Will never ever order any trials of anything ever again. Cannot believe that I got to this scam via a Facebook advertisement!!!! Facebook should be ashamed to continually use those "Ellen DeGeneres' Secret" ads. They should sever all connection with this company. I think the parent company is Skin Anti Aging and based out of Great Britain.

[posted by a customer on January 23, 2014]

Another ripped off person unfortunately. I cancelled with them, received cancellation number and email confirmation but they have still taken another [sic] lot of money, more than the previous month!!!!!!!!!!!!!!

[posted by a customer on January 2, 2014]

68. A search of the Better Business Bureau's (the "BBB") website reflects 394 complaints filed with the BBB against Defendant Sheridan in the past three years, the majority

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<sup>4</sup> <https://www.facebook.com/EquinoxSkinCareRipoff?ref=stream&filter=2>

of which relate to the fraudulent business practices complained of herein.<sup>5</sup> A complaint filed with the Bureau on June 9, 2014 states as follows:

Complaint: They advertise a trial offer suggesting that all you pay for is the shipping for the first order. Then charge you \$100 a couple days later. I ordered the "trial offer" on 03/13, I got the product about 7 days later. On 03/29 we were charged \$93.93, then on 3/31 another 99.99. When we contacted the company on 04/01 they said that they could not find our record. At this point we filled a complaint with our financial institution and they informed us that they would mail us a form to fill out. I filled out the form and was informed that they could not dispute the charge. So we called the company again today 5/16 and they said that they would not do anything for us because we waited more then 30 days. The manager refused to talk to us and the associate said that he could not find our order because after 30 days it is not in their system anymore. These are deceptive practices and I would be happy to return the unused product for a full refund.

69. The BBB gives Defendant Phoenix a grade of “F” and reflects 64 complaints filed with the BBB against Defendant Phoenix in the past three years, the majority of which also relate to the fraudulent business practices complained of herein.<sup>6</sup>

70. Defendants have acted in the same way toward all members of the class by obtaining customer credit card information, ostensibly for “shipping and processing only,” through the pretext of a free-trial offer of skin products, but then issuing unauthorized billings on the credit card number obtained through an unlawful and undisclosed “Free-To-Pay” fraud. Despite having clearly been on notice of the complaints of class members, Defendants have done nothing to remedy their unlawful conduct.

### **CLASS ALLEGATIONS**

71. Plaintiffs bring Counts I and II below as a class action, under Federal Rule of Civil Procedure 23, on behalf of themselves and all others similarly situated. The proposed

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<sup>5</sup> <http://www.bbb.org/utah/business-reviews/health-and-medical-products/sheridan-labs-in-bluffdale-ut-22246339/complaints> (last visited 7/17/14)

<sup>6</sup> <http://www.bbb.org/sanjose/business-reviews/x-ray-labs-medical-and-dental/phoenix-labs-in-palmdale-ca-257466/complaints> (last visited 7/17/14)

Class (“the Class”) is defined as:

All residents of the United States who participated in a trial offer of the Equinox Products for payment of only shipping and processing; provided a credit card or debit card number, and were billed more than the shipping and processing charge without subsequent written authorization. Excluded from the Class are Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with Defendants, including, without limitation, persons who are directors of Defendants. Also excluded is any judicial officer presiding over this matter and the members of their immediate families and judicial staff.

72. Plaintiff Fishman seeks to bring Counts III and IV below, as a class action, under Federal Rule of Civil Procedure 23, on behalf of herself and all similarly situated residents of the State of Illinois. The proposed Class (“the Illinois Subclass”) is defined as:

All residents of Illinois who participated in a trial offer of the Equinox Products for payment of only shipping and processing; provided a credit card or debit card number, and were billed more than the shipping and processing charge without subsequent written authorization. Excluded from the Class are Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with Defendants, including, without limitation, persons who are directors of Defendants. Also excluded is any judicial officer presiding over this matter and the members of their immediate families and judicial staff.

73. Plaintiff Lowry-De-Turk seeks to bring Counts V-VII below, as a class action, under Federal Rule of Civil Procedure 23, on behalf of herself and all similarly situated residents of the State of California. The proposed Class (“the California Subclass”) is defined as:

All residents of California who participated in a trial offer of the Equinox Products for payment of only shipping and processing; provided a credit card or debit card number, and were billed more than the shipping and processing charge without subsequent written authorization. Excluded from the Class are Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with Defendants, including, without limitation, persons who are

directors of Defendants. Also excluded is any judicial officer presiding over this matter and the members of their immediate families and judicial staff

74. Plaintiffs reserve the right to re-define these Classes prior to class certification.

75. The number of persons who are members of the Class (or Subclasses), as described above, is so numerous that joinder of all members in one action is impracticable.

76. Questions of law and fact that are common to the entire Class (or Subclasses) predominate over individual questions because the actions of Defendants complained of herein were generally applicable to the entire Class (or Subclasses). These legal and factual questions include, but are not limited to:

- A. whether Defendants used common, standardized advertisements to offer free trials of products to customers;
- B. whether Defendants represented that the only costs of the free trials were shipping and processing;
- C. whether Defendants billed consumers for more than shipping and processing, without subsequent written authorization to do so;
- D. whether Defendants sent multiple packages of the Equinox Products to customers instead of the 30 day free trial that was offered for the cost of shipping and processing;
- E. whether Defendants were unjustly enriched at the expense of Plaintiffs and the Class; and
- F. whether Plaintiffs and the Class suffered damages as a result of Defendants' conduct.

77. All questions as to the representations and publicly disseminated advertisements

and statements attributable to Defendants at issue herein are similarly common. A determination of Defendants' knowledge regarding the misleading and deceptive nature of the statements made and alleged herein on websites, brochures, advertisements and warranties will be applicable to all members of the Class (or Subclasses, as defined above). Further, whether Defendants violated any applicable state laws and pursued the course of conduct complained of herein, whether Defendants acted intentionally or recklessly in engaging in the conduct described herein, and the extent of the appropriate measure of injunctive and declaratory relief, damages and restitutionary relief are common questions to the Class (or Subclasses, as defined above).

78. Plaintiffs' claims are typical of the members of the Class. Plaintiffs purchased Equinox Products pursuant to Defendants' free trial offer and were damaged in the same way because of Defendants' deceptive scheme.

79. Plaintiffs will fully and adequately represent and protect the interests of the Class (or Subclasses, as defined above) because of the common injuries and interests of the members of the Class (or Subclasses) and the singular conduct of Defendants that is or was applicable to all members of the Class (or Subclasses). Plaintiffs have retained counsel who are competent and experienced in the prosecution of class action litigation. Plaintiffs have no interests that are contrary to or in conflict with those of the Class (or Subclasses) they seek to represent.

80. A class action is superior to all other available methods for fair and efficient adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

81. The prosecution of separate actions by individual members of the Class (or Subclasses) would create a risk of inconsistent and varying adjudications concerning the subject

of this action, which adjudications could establish incompatible standards of conduct for Defendants under the laws alleged herein.

82. The claims of the Class (or Subclasses) may be certified under Rule 23(b)(1), (b)(2) and/or (b)(3). The members of the Class (or Subclasses) seek declaratory and injunctive relief but also seek sizeable monetary relief.

## **CLAIMS FOR RELIEF**

### **COUNT I (Breach of Contract)**

83. Plaintiffs re-allege and incorporate by reference paragraphs 1-70 above as if fully set forth herein.

84. Plaintiffs and Defendants entered into a contract the terms of which were that Plaintiffs agreed to pay a nominal shipping and processing charge for a free “Trial” of Equinox Products and Defendants agreed to provide a risk free trial supply of those products on those terms.

85. Plaintiffs performed all conditions required of them under their respective contracts with Defendants, or Plaintiffs’ performance was waived.

86. Plaintiffs paid Defendants for the shipping and processing of the free trial Equinox Products by providing a debit or credit card number, which Defendants charged.

87. Defendants breached each contract by then charging Plaintiffs for more than the represented shipping and processing charge.

88. Defendants also breached each contract by sending Plaintiffs more than the 14 days of “trial” product and billing Plaintiffs’ cards for the extra product.

89. Defendants further breached the contract by automatically sending Plaintiffs additional Product that Plaintiffs did not order, and billing Plaintiffs for same.

90. As a direct and proximate result of Defendants' breach of contract, Plaintiffs have suffered damages.

91. Defendants have taken the same actions toward all members of the Class who have likewise suffered such damages.

92. Plaintiffs and Class members are entitled to damages and injunctive and declaratory relief as claimed below.

**COUNT II**  
**(Unjust Enrichment)**

93. Plaintiffs re-allege and incorporate by reference paragraphs 1-70 above as if fully set forth herein.

94. Defendants billed Plaintiffs and Class members for goods or services that they never requested or ordered.

95. Defendants retained the money they obtained from Plaintiffs and Class members through their credit or debit cards using the fraudulent scheme described herein.

96. This money was collected from Plaintiffs and Class members wrongfully, since Plaintiffs did not request or order the products and did not authorize the charges.

97. Defendants have voluntarily accepted and retained profits and benefits as a result of their scheme, with full knowledge and awareness that, as a result of Defendants' misconduct, Plaintiffs and the Class did not intend to purchase any Equinox Products.

98. Defendants have been unjustly enriched through the receipt of revenue they otherwise would not have enjoyed.

99. Equity and good conscience militate against permitting Defendants to retain these ill-gotten gains.

100. As a direct and proximate result of Defendants' acts, Defendants must disgorge



all such unjust revenue and return it to Plaintiffs.

101. Defendants have acted in the same way toward all members of the class and they have similarly suffered the foregoing harm.

**COUNT III**  
**(Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act)**

102. Plaintiffs re-allege and incorporate by reference paragraphs 1-70 above as if fully set forth herein.

103. Plaintiff Fishman brings this Count on behalf of the Illinois Subclass defined above.

104. The Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS 505/1, *et seq.*, prohibits unfair or deceptive acts or practices in connection with any trade or commerce, including, among other things, “the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact,...whether any person has in fact been misled, deceived, or damaged thereby.”

105. As alleged herein, Defendants represented to Plaintiff Fishman that the Equinox Products she ordered were a free “trial” and that she would only be charged for shipping and processing.

106. Further, Defendants represented that Plaintiff Fishman was providing her credit or debit card number for the purpose of paying for shipping and processing of her free Equinox Products.

107. Defendants’ representations that Plaintiff Fishman would receive a free-trial offer and would only be charged for shipping and processing, and the statement that Plaintiff Fishman’s credit card information was taken for payment of shipping and handling, were made

falsely, with knowledge of the falsity, or with utter disregard and recklessness as to whether such representations were true or false.

108. Defendants' misrepresentations and material omissions constitute unfair competition or unfair, unconscionable, deceptive, fraudulent or unlawful acts or business practices in violation of the ICFA.

109. Defendants' deceptive or unfair practices took place in the course of trade and commerce.

110. Defendants intended for Plaintiff Fishman and the Illinois Subclass to rely on these deceptive and unfair practices when Plaintiff Fishman and the Illinois Subclass signed up for free trials of the Equinox Products. Defendants specifically intended that Plaintiff Fishman and class members would rely on their representations in order to secure customers' payment information so as to charge them more than proper, for products never requested or ordered.

111. Defendants' conduct constitutes unfair acts or practices as defined in the ICFA because Defendants caused substantial injury to Illinois Subclass members that is not offset by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers.

112. Defendants violated the ICFA because, among other things, their conduct violates the Illinois Automatic Contract Renewal Act (815 ILCS 601/1 *et seq.*).

113. Plaintiff Fishman and the Illinois Subclass have suffered injuries in fact and actual damages, including financial losses due to Defendants' violations of the ICFA. These injuries are of the type that the ICFA was designed to prevent and are the direct and proximate result of Defendants' unlawful conduct.

**COUNT IV**  
**(Violation of the Illinois Automatic Contract Renewal Act)**

114. Plaintiffs re-allege and incorporate by reference paragraphs 1-70 above as if fully set forth herein.

115. Plaintiff Fishman brings this Count on behalf of herself and the Illinois Subclass defined above.

116. Defendants are a person, firm, partnership, association, or corporation that sells or offers to sell products or services to consumers, such as Plaintiff Fishman and the Illinois Subclass, pursuant to a contract.

117. The contract automatically renews unless the consumers, such as Plaintiff Fishman and the Illinois Subclass, cancel the contract.

118. Defendants failed to disclose the automatic renewal clause clearly and conspicuously in the contract, including the cancellation procedure.

119. The notice, if any, provided to consumers, such as Plaintiff Fishman and the Illinois Subclass, did not disclose clearly and conspicuously that unless consumers, such as Plaintiff and the Illinois Subclass, cancel the contract it will automatically renew.

120. The notice, if any, provided to consumers, such as Plaintiff Fishman and the Illinois Subclass, did not disclose clearly and conspicuously where consumers, such as Plaintiff Fishman and the Illinois Subclass, can obtain details of the automatic renewal provision.

121. The notice, if any, provided to consumers, such as Plaintiff Fishman and the Illinois Subclass, did not disclose clearly and conspicuously the cancellation procedure.

122. Upon information and belief, Defendants have not established and implemented written procedures to comply with the Illinois Automatic Contract Renewal Act and enforce compliance with its procedures.

123. Upon information and belief, Defendants' failure to comply with the Illinois Automatic Contract Renewal Act was not the result of error.

124. Upon information and belief, Defendants did not provide a full refund or credit for all amounts billed to or paid by consumers, such as Plaintiff Fishman and the Illinois Subclass, from the date of the renewal until the date of the termination of the account, or the date of the subsequent notice of renewal.

**COUNT V**  
**(Violation of the California Automatic Contract Renewal Law, Cal. Bus. & Prof. Code §§ 17602(a) (2) and 17603)**

125. Plaintiffs re-allege and incorporate by reference paragraphs 1-70 above as if fully set forth herein.

126. Plaintiff Lowry-DeTurk brings this Count on behalf of herself and the California Subclass defined above.

127. Cal. Bus. & Prof. Code§ 17602(a)(2) provides that:

(a) It shall be unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state to do any of the following:

...

(2) Charge the consumer's credit or debit card or the consumer's account with a third party for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

128. Defendants charged, and continue to charge, Plaintiff Lowry-DeTurk and Class Members' payment method for an automatic renewal or continuous service without first obtaining Plaintiff Lowry-DeTurk and Class Members' affirmative consent to the automatic

renewal offer terms or continuous service offer terms.

129. As a result of Defendants' violations of Cal. Bus. & Prof. Code § 17602(a) (2), Defendants are liable to provide restitution to Plaintiff Lowry-DeTurk and Class Members under Cal. Bus. & Prof. Code § 17603.

**COUNT VI**  
**(Violation of California Unfair Competition Law, Cal. Bus. & Prof Code § 17200 *et seq.*)**

130. Plaintiffs re-allege and incorporate by reference paragraphs 1-70 above as if fully set forth herein.

131. Plaintiff Lowry-DeTurk brings this Count on behalf of herself and the California Subclass defined above.

132. California Business & Professions Code §§17200, *et seq.* (the "UCL") prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice. Business & Professions Code § 17204 allows "any person who has suffered injury in fact and has lost money or property" to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of himself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

133. Defendants have committed unlawful, unfair, and/or fraudulent business acts and practices as defined by the UCL, by violating Cal. Bus. & Prof. Code § 17602(a)(1) and (2).

134. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent acts and practices described herein, Defendants have received, and continue to hold, unlawfully obtained property and money belonging to Plaintiff Lowry-DeTurk and California Subclass members in the form of payments made for subscription agreements. Defendant has profited from its unlawful, unfair, and/or fraudulent acts and practices.

135. Plaintiff Lowry-DeTurk and California Subclass members are entitled to restitution pursuant to California Business & Professions Code §§ 17203 and 17208 for all monies paid by Class Members under the subscription agreements from December 1, 2010 to the date of such restitution, at rates specified by law. Defendant should be required to disgorge all the profits and gains it has reaped and restore such profits and gains to Plaintiff Lowry-DeTurk and California Subclass members, from whom they were unlawfully taken.

## **COUNT VII**

### **(Violation of California Consumer Legal Remedies Act, California Civil Code § 1750 *et seq.*)**

136. Plaintiffs re-allege and incorporate by reference paragraphs 1-70 above as if fully set forth herein.

137. Plaintiff Lowry-DeTurk brings this Count on behalf of herself and the California Subclass defined above seeking injunctive relief pursuant to the Consumer Legal Remedies Act, California Civil Code §§ 1750 *et seq.* ("CLRA").

138. California Civil Code § 1770(a) (14) specifically prohibits representations that a transaction confers or involves rights, remedies, or obligations, which it does not have or involve or which are prohibited by law.

139. Defendant has violated the CLRA by representing that it had rights and remedies that it did not have, specifically that it had the right to charge Plaintiff and Class Members' payment method without first obtaining Plaintiff Lowry-DeTurk and Class Members' affirmative consent of the Agreement containing the automatic renewal offer terms or continuous service offer terms, and through other conduct described above.

140. Plaintiff Lowry-DeTurk and the Class Members reasonably relied upon those

material misrepresentations.

141. On July 28, 2014, Plaintiff Lowry-DeTurk, through counsel, sent notice and demand letters by certified mail, return receipt requested, to Defendants, pursuant to California Civil Code § 1782. Copies of Plaintiff Lowry-DeTurk's CLRA letters are attached hereto as **Exhibit B**.

142. Pursuant to California Civil Code §§ 1780 and 1781, Plaintiff Lowry-DeTurk and Class Members hereby request certification of Plaintiff's Class, injunctive relief, and attorneys' fees, costs and expenses.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and the Class respectfully request that the Court:

A. Certify this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and designate Plaintiffs as the representatives of the Class;

B. Determine the damages sustained by Plaintiffs and the Class as a result of Defendants' violations of the common law, and award any actual damages proved and direct that Defendants either (a) refund all sums paid by Plaintiffs and the Class for memberships during the Class Period, or (b) disgorge all profits which Defendants made on account of any such memberships sold to Plaintiffs and the Class during the Class Period;

C. Determine the damages sustained by Plaintiff Fishman and the Illinois Sub-Class as a result of Defendants' violations of the Illinois Consumer Fraud and Deceptive Business Practices Act and direct that Defendants either (a) refund all sums paid by Plaintiff Fishman and the Illinois Sub-Class for memberships during the Class Period, or (b) disgorge all profits which Defendants made on account of any such memberships sold to Plaintiff Fishman and the Illinois Sub-Class during the Class Period;

D. Determine the damages sustained by Plaintiff Fishman and the Illinois Sub-Class as a result of Defendants' violations of the Illinois Automatic Contract Renewal Act and direct that Defendants either (a) refund all sums paid by Plaintiffs and the Class for memberships during the Class Period, or (b) disgorge all profits which Defendants made on account of any such memberships sold to Plaintiffs and the Class during the Class Period;

E. Determine the damages sustained by Plaintiff Lowry-DeTurk and the California Sub-Class as a result of Defendants' California UCL violations and direct that Defendants either (a) refund all sums paid by Plaintiff Lowry-DeTurk and the California Sub-Class for memberships during the Class Period, or (b) disgorge all profits which Defendants made on account of any such memberships sold to Plaintiff Lowry-DeTurk and the California Sub-Class during the Class Period;

F. Determine the damages sustained by Plaintiff Lowry-DeTurk and the California Sub-Class as a result of Defendants' violations of Cal. Bus. & Prof. Code § 17603 and direct that Defendants either (a) refund all sums paid by Plaintiff Lowry-DeTurk and the California Sub-Class for memberships during the Class Period, or (b) disgorge all profits which Defendants made on account of any such memberships sold to Plaintiff Lowry-DeTurk and the California Sub-Class during the Class Period;

G. Award Plaintiffs and the Class injunctive relief;

H. Award Plaintiffs and the Class their costs and disbursements of this suit, including, without limitation, reasonable attorneys' fees, expenses and costs;

I. Award pre-judgment and post-judgment interest as provided by law; and

J. Grant Plaintiffs and the Class such other and further relief as the Court may deem just and proper.



**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury on all claims so triable.

Dated: July 29, 2014

Respectfully submitted,

Lorri Fishman and Kristine Lowry-DeTurk,  
individually and on behalf of all others  
similarly situated

By: /s/ Katrina Carroll  
One of the Attorneys for Plaintiffs  
And the Putative Class

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