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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOHN DOE, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

ESCAPE MONTHLY, LLC, a Wyoming
limited liability company; and DOES – 10
inclusive,

Defendant.

Case No. **'15CV2378 BEN JMA**

CLASS ACTION COMPLAINT FOR:

1. VIOLATIONS OF CALIFORNIA'S
AUTOMATIC RENEWAL LAW
(BUSINESS AND PROFESSIONS
CODE §§ 17600-17604);
2. VIOLATIONS OF CALIFORNIA'S
UNFAIR COMPETITION LAW
(BUSINESS AND PROFESSIONS
CODE §§ 17200-17204); and
3. INJUNCTIVE RELIEF (BUSINESS
AND PROFESSIONS CODE § 17535)

DEMAND FOR JURY TRIAL

1 Plaintiff John Doe¹ (“Plaintiff”), on behalf of himself and all others similarly
2 situated, complains and alleges as follows:

3 INTRODUCTION & OVERVIEW OF CLAIMS

4 1. Plaintiff brings this class action on behalf of himself and a class of others
5 similarly situated consisting of all persons in California who, within the applicable
6 statute of limitations period, purchased subscriptions to products sold online by Escape
7 Monthly, LLC (“Escape Monthly” or “Defendant”). The class of others similarly
8 situated to Plaintiff is referred to herein as “Class Members.” The claims for damages,
9 restitution, injunctive and/or other equitable relief, and reasonable attorneys’ fees and
10 costs under California Business and Professions Code (hereinafter “Cal. Bus. & Prof.
11 Code”) §§ 17602, 17603, 17604, 17535) and 17200, et seq., and California Code of
12 Civil Procedure § 1021.5. Plaintiff and Class Members are consumers for purposes of
13 Cal. Bus. & Prof. Code §§ 17600-17606.

14 2. During the Class Period Defendant made automatic renewal or continuous
15 service offers to consumers in and throughout California and (a) at the time of making
16 the automatic renewal or continuous service offers, failed to present the automatic
17 renewal offer terms or continuous service offer terms, in a clear and conspicuous
18 manner and in visual proximity to the request for consent to the offer before the
19 subscription or purchasing agreement was fulfilled in violation of Cal. Bus. & Prof.
20 Code § 17602(a)(1); (b) charged Plaintiff’s and Class Members’ credit or debit cards,
21 or third-party account (hereinafter “Payment Method”) without first obtaining
22 Plaintiff’s and Class Members’ affirmative consent to the agreement containing the
23 automatic renewal offer terms or continuous service offer terms in violation of Cal.
24 Bus. & Prof. Code § 17602(a)(2); and (c) failed to provide an acknowledgment that
25 includes the automatic renewal or continuous service offer terms, cancellation policy,

26
27 ¹ *Does I Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1072-73 (9th Cir. 2000) (noting that plaintiff and class are
28 more likely to proceed to the merits if plaintiff permitted to proceed anonymously to prevent defendant from attempting to
moot lawsuit by making an individual Rule 68 offer to plaintiff).

1 and information regarding how to cancel in a manner that is capable of being retained
2 by the consumer in violation of Cal. Bus. & Prof. Code § 17602(a)(3). As a result, all
3 goods, wares, merchandise, or products sent to Plaintiff and Class Members under the
4 automatic renewal of continuous service agreements are deemed to be an unconditional
5 gift pursuant to Cal. Bus. & Prof. Code § 17603.

6 3. As a result of the above, Plaintiff, on behalf of himself and Class
7 Members, seeks damages, restitution, declaratory relief, injunctive relief and reasonable
8 attorneys' fees and costs pursuant to Cal. Bus. & Prof. Code, §§ 17603, 17203, 17204,
9 and 17535, and Code of Civil Procedure § 1021.5.

10 **JURISDICTION AND VENUE**

11 4. This Court has diversity jurisdiction over this class action pursuant to 28
12 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the
13 amount in controversy exceeds five million dollars (\$5,000,000.00), exclusive of
14 interest and costs, and is a class action in which some members of the class are citizens
15 of different states than Defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

16 5. This Court also has personal jurisdiction over Defendant because
17 Defendant currently does business in this state.

18 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
19 Defendant is subject to personal jurisdiction in this District and a substantial portion of
20 the conduct complained of herein occurred in this District.

21 **PARTIES**

22 8. Plaintiff resides in this judicial district. Plaintiff purchased a subscription
23 plan from Defendant in California during the Class Period. Plaintiff and Class
24 Members are consumers as defined under Cal. Bus. & Prof. Code § 17601(d).

25 9. Defendant Escape Monthly, LLC is a Wyoming limited liability company
26 with its principal place of business located at 690 Hwy 89, Suite 200, Jackson,
27 Wyoming 83001. Defendant operates and, at all times during the Class Period, has
28 done business throughout California. Also during the Class Period, Defendant made,

1 and continues to make, automatic renewal or continuous service offers to consumers in
2 California. Defendant sells luxury products from around the world, including artisan
3 products, through subscriptions in order to purportedly permit its subscribers to
4 “escape” even though they are not able physically to “escape” to exotic locales.

5 10. The true names and capacities of the Defendants sued herein as DOES 1
6 through 10, inclusive, are currently unknown to Plaintiff, who therefore sue such
7 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is
8 legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of
9 Court to amend this Complaint to reflect the true names and capacities of the DOE
10 Defendants when such identities become known.

11 11. At all relevant times, each and every Defendant was acting as an agent
12 and/or employee of each of the other Defendants and was acting within the course
13 and/or scope of said agency and/or employment with the full knowledge and consent of
14 each of the Defendants. Each of the acts and/or omissions complained of herein were
15 alleged and made known to, and ratified by, each of the other Defendants (Escape
16 Monthly, LLC and DOE Defendants will hereafter collectively be referred to as
17 “Defendant”).

18 **FACTUAL BACKGROUND**

19 **California Business Professions Code §§ 17600-17606**

20 12. On December 1, 2010, sections 17600-17606 of the Cal. Bus. & Prof.
21 Code came into effect. The Legislature’s stated intent for this Article was to end the
22 practice of ongoing charges to consumers’ Payment Methods without consumers’
23 explicit consent for ongoing shipments of a product or ongoing deliveries of service.
24 See Cal. Bus. & Prof. Code § 17600.

25 13. Cal. Bus. & Prof. Code § 17602(a) makes it unlawful for any business
26 making an automatic renewal or continuous service offer to a consumer in this state to
27 do any of the following:
28

- (1) Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer.
- (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.
- (3) Fail to provide an acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. If the offer includes a free trial, the business shall also disclose in the acknowledgment how to cancel and allow the consumer to cancel before the consumer pays for the goods or services.

14. Cal. Bus. & Prof. Code § 17601(a) defines the term “Automatic renewal” as a “plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term.”

15. Cal. Bus. & Prof. Code § 17601(b) defines the term “Automatic renewal offer terms” as “the following clear and conspicuous disclosures: (1) That the subscription or purchasing agreement will continue until the consumer cancels. (2) The description of the cancelation policy that applies to the offer. (3) The recurring charges that will be charged to the consumer's credit or debit card or payment account with a third party as part of the automatic renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known. (4) The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer. (5) The minimum purchase obligation, if any.”

16. Pursuant to Cal. Bus. & Prof. Code § 17601(c), “clear and conspicuous” or “clearly and conspicuously” means “in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from

1 the surrounding text of the same size by symbol ls or other marks, in a manner that
2 clearly calls attention to the language.”

3 17. Section 17603 of Cal. Bus. & Prof. Code provides: “In any case in which a
4 business sends any goods, wares, merchandise, or products to a consumer, under a
5 continuous service agreement or automatic renewal of a purchase, without first
6 obtaining the consumer’s affirmative consent as described in Section 17602, the goods,
7 wares, merchandise, or products shall for all purposes be deemed an unconditional gift
8 to the consumer, who may use or dispose of the same in any manner he or she sees fit
9 without any obligation whatsoever on the consumer’s part to the business, including
10 but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares,
11 merchandise, or products to the business.”

12 **Defendant’s Business**

13 18. Defendant provides, on a monthly basis, a “Vacation in a Box” that
14 includes luxury and artisan items from many locations around the world. Defendant’s
15 subscription for its products, which costs consumers \$49.95 per month, constitutes an
16 automatic renewal and/or continuous service plan or arrangement for the purposes of
17 Cal. Bus. & Prof. Code § 17601.

18 **Defendant’s Terms of Service**

19 19. During the Class Period, Defendant’s webpage contained an inconspicuous
20 hyperlink to a document titled “Terms of Service” (hereinafter the “Terms of Service”).
21 Using a small and light-colored font, Defendant displayed this hyperlink on the very
22 bottom of Escape Monthly’s webpage, www.escapemonthly.com.

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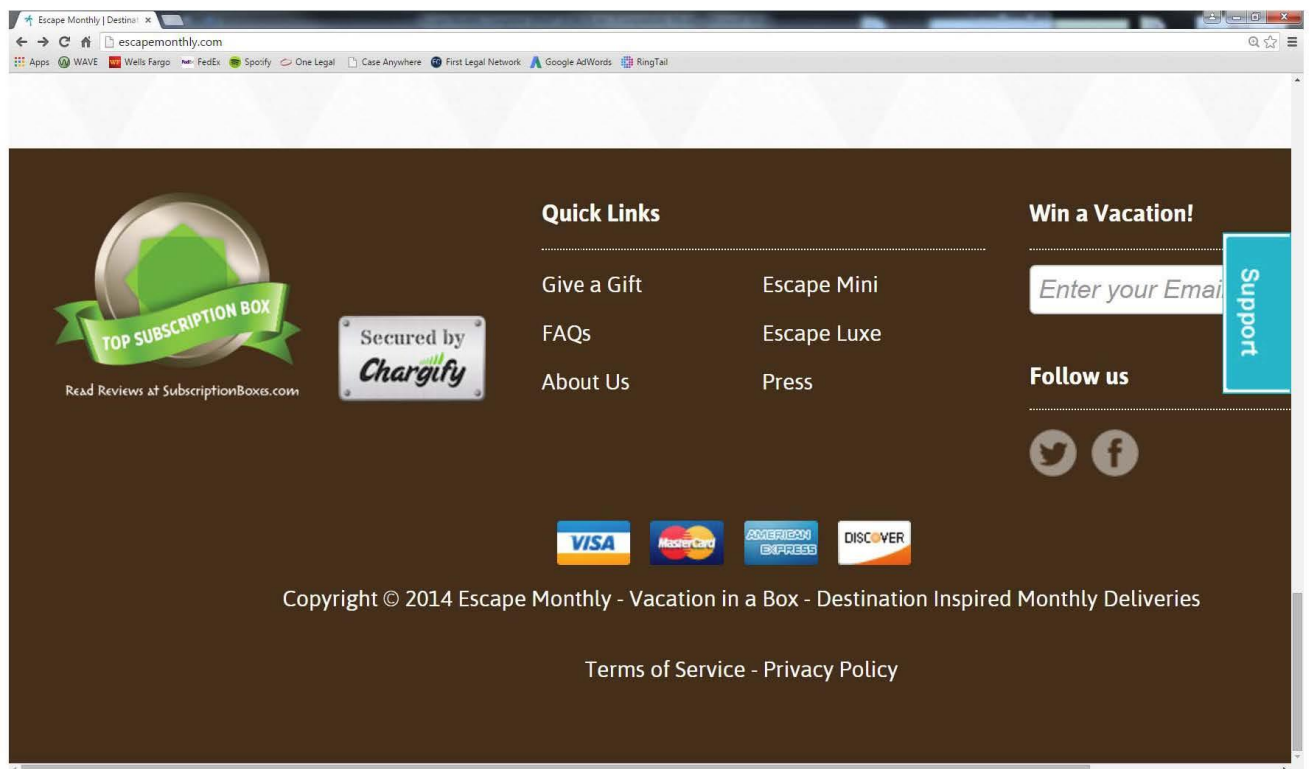
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20. Section 5 of Defendant's Terms of Service titled "PRODUCTS OF SERVICES (if applicable)" provides, in part: "All subscriptions rebill automatically in their provided interval, and by purchasing these subscriptions, you provide consent for recurring charges under your account." This language is in small, undifferentiated type, and is there is nothing that directs the subscriber's attention to its provisions.

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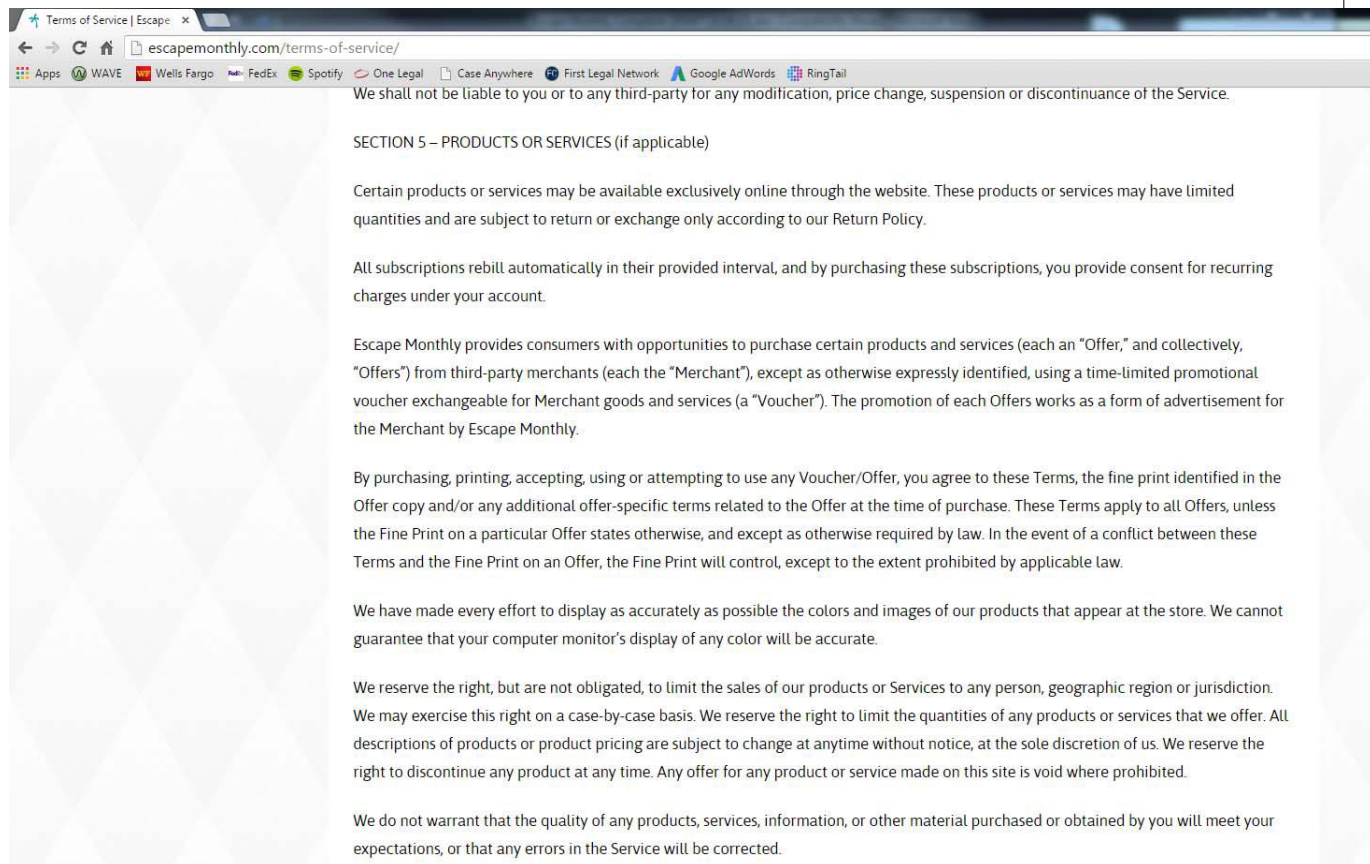
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21. Section 16 of Defendant’s Terms of Service provides, in part, as follows:

“You may terminate these Terms of Service at any time by notifying us that you no longer wish to use our Services, or when you cease using our site.” That language is also in in small, undifferentiated type, and there is nothing that directs the subscriber’s attention to its provisions.

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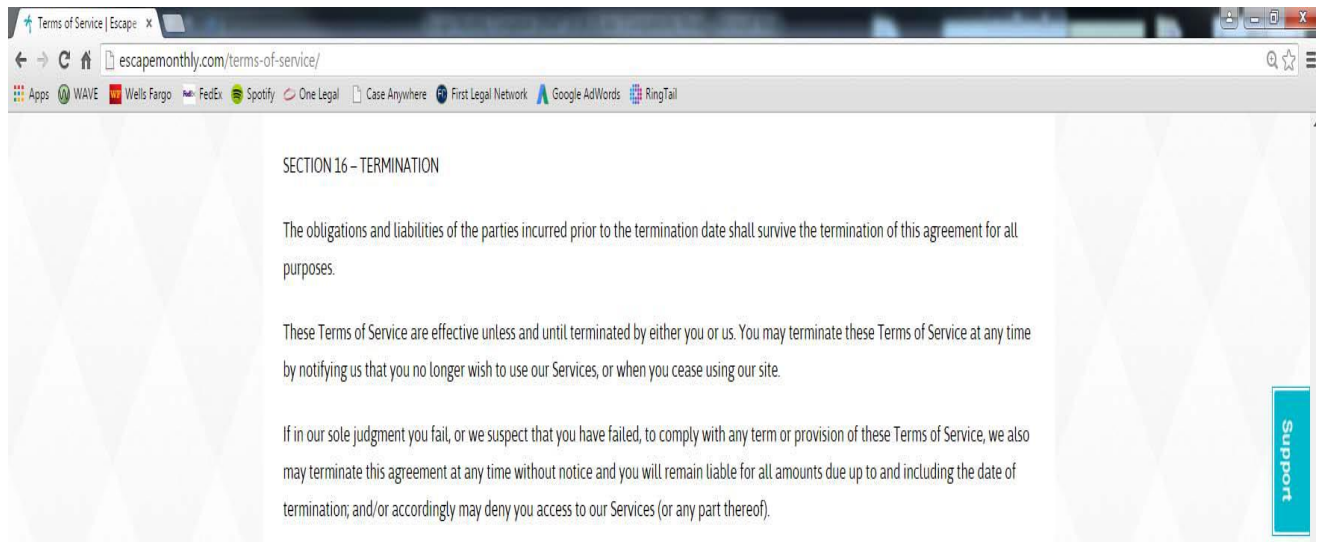
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Defendant's Terms of Service Fail to Provide Clear and Conspicuous Disclosures As Required by Law.

22. Within the Terms of Service, Defendant failed to state in clear and conspicuous language, *i.e.*, in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols of other marks, in a manner that clearly calls attention to the language that:

- (i) The subscription or purchasing agreement will continue until the consumer cancels;
- (ii) Describes the cancellation policy that applies to the offer;
- (iii) Recurring charges that will be charged to the consumer's Payment Method account with a third party as part of the automatic renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known;
- (iv) The length of the automatic renewal term or that the service is continuous unless the length of the term is chosen by the consumer; and

1 (v) There is a minimum purchase obligation, if any.

2 **Defendant Failed to Present the Automatic Renewal Offer Terms or Continuous**
3 **Service Offer Terms in a Clear and Conspicuous Manner Before the Subscription**
4 **or Purchasing Agreement was Fulfilled and in Visual Proximity to the Request for**
5 **Consent to the Offer in Violation of Cal. Bus. & Prof. Code § 17602(a)(1).**

6 23. During the Class Period, Defendant made, and continues to make, an
7 automatic renewal offer for its subscriptions plans to Consumers in California,
8 including Plaintiff and Class Members. In order to purchase a subscription plan from
9 Defendant's website, Plaintiff and Class Members have to click on a hyperlink labeled
10 "Start Your Escape" located on the Defendant's webpage.

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15,054 people like this

[Join Today](#)
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[HOW IT WORKS](#)
[TRAVEL LOG](#)

Join Escape Monthly Today

JULY 2014: INDIA
Total Retail Value: \$79.71

YOU DESERVE IT!

You deserve a vacation every month, but it can be hard to get away. Join Escape Monthly to relax and renew with a monthly delivery of luxury products from all over the world. Each month brings you a different destination. Relax and pamper yourself... you deserve it!

START YOUR ESCAPE

\$49.95 monthly
FREE SHIPPING, SHIPS MID-MONTH

DESTINATION INSPIRED THEMES
Travel the world from your doorstep

RELAX & RENEW WITH LUXURY PRODUCTS
Artisan goods from all over the world

LUXURY FOR LESS
Average retail value of up to \$200

"We have a 1 year old daughter... joining improved my mental health! Lol"
Bethany, Facebook

Each month is a different destination. Try products from all over the world!
Cici, SubscriptionBoxes.com

VACATION IN A BOX
Get a box full of luxury products from new destinations every month.

TRAVEL THE WORLD
Each month is a different destination. Try products from all over the world!

YOU COULD WIN A TRIP
Every month, one of our members wins a trip to the destination!

\$49.95 monthly

START YOUR ESCAPE

FREE SHIPPING, SHIPS MID-MONTH

1 “Create your Account” which directs Plaintiff and Class Members either to “Create
2 Account” or to Log In to an existing account. Apart from the inconspicuous hyperlink
3 to “Terms of Service – Privacy Policy,” this webpage did not, and does not, contain
4 automatic renewal offer terms or continuous service offer terms as defined by Cal. Bus.
5 & Prof. Code § 17601(b).

6 25. After selecting “Create Account,” Plaintiff and Class Members are
7 navigated to a webpage titled “Escape Monthly Checkout.” This webpage directs them
8 to enter their personal information and credit card/billing information. Apart from a
9 simple statement that the \$49.95 charge is a “Recurring Fee (every 1 month)” in
10 inconspicuous type, this webpage did not, and does not, contain automatic renewal
11 offer terms or continuous service offer terms as defined in Cal. Bus. & Prof. Code §
12 17601(b).

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This page is secure.



Escape Monthly Checkout

Escape Monthly is a destination-inspired monthly delivery of luxury products to help you relax, renew and escape!

Purchase Summary:

→ \$49.95 Recurring Fee (every 1 month)

Today's Total: \$49.95 then \$49.95 at first renewal on 11/10/2015

Shipping Information:

* First Name <input type="text"/>	* Last Name <input type="text"/>
* Shipping Address 1 <input type="text"/>	Shipping Address 2 <input type="text"/>
* Shipping Country United States ▼	* Shipping State Please select ▼
* Shipping City <input type="text"/>	* Shipping ZIP Code <input type="text"/>

Billing Information


Coupon code Validate

* First Name on Account <input type="text"/>	* Last Name on Account <input type="text"/>
* Card Number <input type="text"/>	

No spaces or dashes, please

CVV


* Expiration Date ▼ ▼



Billing ZIP Code

Contact Information:

* Email Address



PLACE MY ORDER

1 28. As a result, prior to charging Plaintiff's and Class Members' Payment
2 Method, Defendant failed and continues to fail, to obtain Plaintiff's and Class
3 Members' affirmative consent to the Terms of Service containing the automatic
4 renewal offer terms or continuous service offer terms.

5 29. Because of Defendant's failure to gather affirmative consent to the
6 automatic renewal terms, all goods, wares, merchandise, or products, sent to Plaintiff
7 and Class Members under the automatic renewal or continuous service agreement are
8 deemed to be an unconditional gift pursuant to Cal. Bus. & Prof. Code § 17603, and
9 Plaintiff and Class Members may use or dispose of the same in any manner they see fit
10 without any obligation whatsoever on their part to Defendant, including, but not limited
11 to, bearing the cost of, or responsibility for, shipping any goods, wares, merchandise or
12 products.

13 **Defendant Failed to Provide an Acknowledgment as Required by Cal. Bus. &**
14 **Prof. Code §17602(a)(3)**

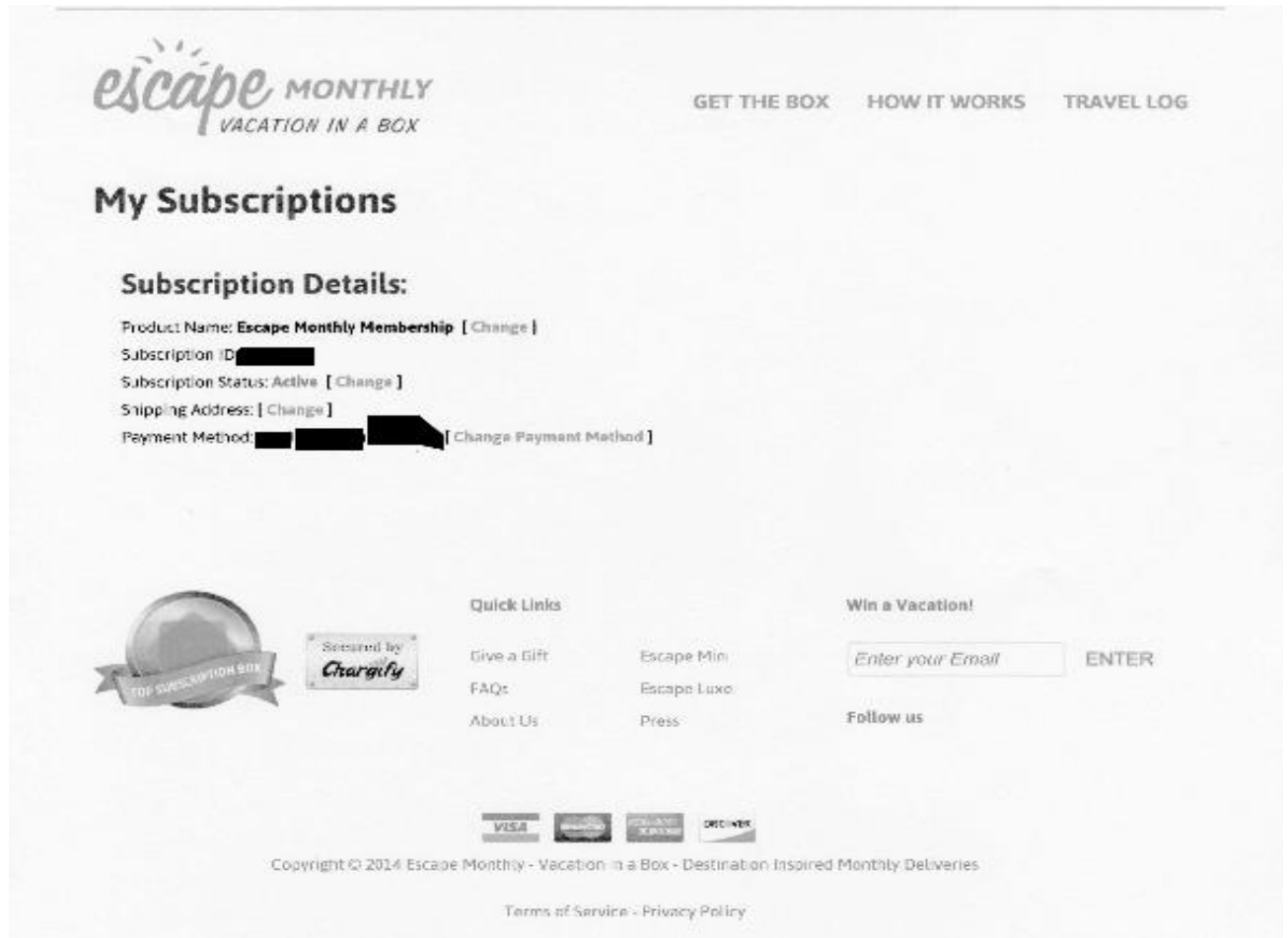
15 30. Furthermore, and in addition to the above, after Plaintiff and Class
16 Members subscribed to one of Defendant's subscription plans, Defendant sent to
17 Plaintiff and Class Members a document entitled "My Subscriptions" but has failed,
18 and continues to fail, to provide an acknowledgement that includes the automatic
19 renewal or continuous service offer terms, cancellation policy, and information on how
20 to cancel in a manner that is capable of being retained by Plaintiff and Class Members
21 in violation of Cal. Bus. & Prof. Code § 17602(a)(3). Moreover, Defendant failed to
22 provide Plaintiff and Class Members with an acknowledgement regarding how to
23 cancel the subscription and allow Plaintiff and Class Members to cancel before
24 payment.

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CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a class action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure. The proposed Class (the “Class”) that Plaintiff seeks to represent is composed of and defined as:

“All persons in California that, within the applicable statute of limitations period, purchased any product or service in response to an offer constituting an “Automatic Renewal” as defined by § 17601(a) from Escape Monthly, LLC, its predecessors, or its affiliates.”

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1 32. This action is brought and may be properly maintained as a class action
2 pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-
3 (3). This action satisfies the numerosity, typicality, adequacy, predominance and
4 superiority requirements of those provisions.

5 33. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual
6 joinder of all of its members is impractical. While the exact number and identities of
7 Class members are unknown to Plaintiff at this time and can only be ascertained
8 through appropriate discovery, Plaintiff is informed and believes the Class includes
9 hundreds of thousands of members. Plaintiff alleges that the Class may be ascertained
10 by the records maintained by Defendant.

11 34. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all
12 members of the Class which predominate over any questions affecting only individual
13 members of the Class. These common legal and factual questions, which do not vary
14 from class member to class member, and which may be determined without reference to
15 the individual circumstances of any class member, include, but are not limited to, the
16 following:

- 17 i. (a) Whether Defendant failed to present the automatic renewal offer
18 terms, or continuous service offer terms, in a clear and conspicuous
19 manner before the subscription or purchasing agreement was
20 fulfilled and in visual proximity to the request for consent to the
21 offer in violation of Cal. Bus. & Prof. Code § 17602(a)(1);
- 22 ii. Whether Defendant charged Plaintiff's and Class Members'
23 Payment Method for an automatic renewal or continuous service
24 without first obtaining the Plaintiff's and Class Members'
25 affirmative consent to the Terms and Conditions containing the
26 automatic renewal offer terms or continuous service offer terms in
27 violation of Cal. Bus. & Prof. Code § 17602(a)(2);
- 28

- 1 iii. Whether Defendant failed to provide an acknowledgement that
- 2 included the automatic renewal or continuous service offer terms,
- 3 cancellation policy, and information on how to cancel in a manner
- 4 that is capable of being retained by Plaintiff and Class Members, in
- 5 violation of Cal. Bus. & Prof. Code § 17602(a)(3);
- 6 iv. Whether Defendant's Terms of Service contained the automatic
- 7 renewal offer terms and/or continuous service offer terms as defined
- 8 by Cal. Bus. & Prof. Code § 17601;
- 9 v. Whether Plaintiff and the Class Members are entitled to restitution
- 10 of money paid in circumstances where the goods and services
- 11 provided by Defendant are deemed an unconditional gift in
- 12 accordance with Cal. Bus. & Prof. Code § 17603;
- 13 vi. Whether Plaintiff and Class Members are entitled to restitution in
- 14 accordance with Cal. Bus. & Prof. Code §§ 17200, 17203;
- 15 vii. Whether Plaintiff and Class Members are entitled to injunctive relief
- 16 under Cal. Bus. & Prof. Code § 17535;
- 17 viii. Whether Plaintiff and Class Members are entitled to attorneys' fees
- 18 and costs under California Code of Civil Procedure § 1021.5; and
- 19 ix. The proper formula(s) for calculating the restitution owed to Class
- 20 Members.

21 35. [Fed. R. Civ. P. 23(a)(3)] Plaintiff's claims are typical of the claims of the
 22 members of the Class. Plaintiff and all members of the Class have sustained injury and
 23 are facing irreparable harm arising out of Defendant's common course of conduct as
 24 complained of herein. The losses of each member of the Class were caused directly by
 25 Defendant's wrongful conduct as alleged herein.

26 36. [Fed. R. Civ. P. 23(a)(4)] Plaintiff will fairly and adequately protect the
 27 interests of the members of the Class. Plaintiff has retained attorneys experienced in the
 28 prosecution of class actions, including complex consumer and mass tort litigation.

1 37. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available
2 methods of fair and efficient adjudication of this controversy, since individual litigation
3 of the claims of all Class members is impracticable. Even if every Class member could
4 afford individual litigation, the court system could not. It would be unduly burdensome
5 to the courts in which individual litigation of numerous issues would proceed.
6 Individualized litigation would also present the potential for varying, inconsistent, or
7 contradictory judgments and would magnify the delay and expense to all parties and to
8 the court system resulting from multiple trials of the same complex factual issues. By
9 contrast, the conduct of this action as a class action, with respect to some or all of the
10 issues presented herein, presents fewer management difficulties, conserves the
11 resources of the parties and of the court system, and protects the rights of each Class
12 member.

13 38. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by
14 thousands of individual Class members would create the risk of inconsistent or varying
15 adjudications with respect to, among other things, the need for and the nature of proper
16 notice, which Defendant must provide to all Class members.

17 39. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by
18 individual class members would create a risk of adjudications with respect to them that
19 would, as a practical matter, be dispositive of the interests of the other Class members
20 not parties to such adjudications or that would substantially impair or impede the ability
21 of such non-party Class members to protect their interests.

22 b. [Fed. R. Civ. P. 23(b)(2)] Defendant has acted or refused to act in
23 respects generally applicable to the Class, thereby making appropriate final injunctive
24 relief with regard to the members of the Class as a whole.

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FIRST CAUSE OF ACTION

**FAILURE TO PRESENT AUTOMATIC RENEWAL OFFER TERMS OR
CONTINUOUS SERVICE OFFER TERMS CLEARLY AND
CONSPICUOUSLY AND IN VISUAL, PROXIMITY TO THE REQUEST FOR
CONSENT OFFER (CAL. BUS. & PROF. CODE§ 17602(a)(1))**

(By Plaintiff, on his own behalf and on behalf of the Class, against All Defendants)

40. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

41. Cal. Bus. Prof. Code§ 17602(a)(1) provides:

(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:

(1) Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer.

42. Defendant failed to present the automatic renewal offer terms, or continuous service offer terms, in a clear and conspicuous manner and in visual proximity the request for consent to the offer before the subscription or purchasing agreement was fulfilled.

43. As a result of Defendant's violations of Cal. Bus. & Prof. Code § 17602(a)(1), Defendant is subject under Cal. Bus. & Prof. Code § 17604 to all civil remedies that apply to a violation of Article 9, of Chapter 1, of Part 3, of Division 7 of the Cal. Bus. & Prof. Code.

44. Plaintiff, on behalf of himself and Class Members, requests relief as described below.

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SECOND CAUSE OF ACTION

FAILURE TO OBTAIN CONSUMER'S AFFIRMATIVE CONSENT

BEFORE THE SUBSCRIPTION IS FULFILLED

(CAL BUS. & PROF. CODE §§ 17602(a)(2) and 17603)

(By Plaintiff, on his own behalf and on behalf of the Class, against All Defendants)

45. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

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

(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.

47. Defendant charged, and continues to charge Plaintiff's and Class Members' Payment Method for an automatic renewal or continuous service without first obtaining Plaintiff's and Class Members affirmative consent to the Terms of Service containing the automatic renewal offer terms or continuous service offer terms.

48. As a result of Defendant's violations of Cal. Bus. & Prof. Code § 17602(a)(2), Defendant is liable to provide restitution to Plaintiff and Class Members under Cal. Bus. & Prof. Code § 17603.

49. Plaintiff, on behalf of himself and Class Members, requests relief as described below.

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THIRD CAUSE OF ACTION

**FAILURE TO PROVIDE ACKNOWLEDGMENT WITH
AUTOMATIC RENEWAL TERMS AND INFORMATION REGARDING
CANCELLATION POLICY**

(CAL. BUS. & PROF. CODE§ 17602(a)(3))

(By Plaintiff, on his own behalf and on behalf of the Class, against All Defendants)

50. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

51. Cal. Bus. & Prof. Code§ 17602(a)(3) provides:

(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:

(3) Fail to provide an acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. If the offer includes a free trial, the business shall also disclose in the acknowledgment how to cancel and allow the consumer to cancel before the consumer pays for the goods or services.

52. Defendant failed to provide an acknowledgement that includes the automatic renewal or continuous service offer terms, cancellation policy, and information on how to cancel in a manner that is capable of being retained by Plaintiff and Class Members.

53. As a result of Defendant's violations of Cal. Bus. & Prof. Code § 17602(a)(3), Defendant is subject to all civil remedies under Cal. Bus. & Prof. Code § 17604 that apply to a violation of Article 9, of Chapter 1 of Part 3, of Division 7 of the Cal. Bus. & Prof. Code.

54. Plaintiff, on behalf of himself and Class Members, requests relief as described below.

FOURTH CAUSE OF ACTION

VIOLATION OF THE UNFAIR COMPETITION LAW**(CAL. BUS. & PROF. CODE§ 17200 *et. seq.*)****(By Plaintiff, on his own behalf and on behalf of the Class, against All Defendants)**

55. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

56. Cal. Bus. & Prof. Code § 17200, *et seq.* (the “UCL”) prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice. Cal. Bus. & Prof. Code§ 17204 allows “a 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 or herself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

57. Since December 1, 2010, and continuing to the present, Defendant has committed unlawful, unfair, and/or fraudulent business acts and practices as defined by the UCL, by violating Cal. Bus. & Prof. Code §§ 17602(a)(1), (2), and (3).

58. As a direct and proximate result of Defendant’s unlawful, unfair, and/or fraudulent acts and practices described herein, Defendant has received, and continues to hold, unlawfully obtained property and money belonging to Plaintiff and Class Members in the form of payments made for subscription agreements by Plaintiff and Class Members. Defendant has profited from its unlawful, unfair, and/or fraudulent acts and practices in the amount of those business expenses and interest accrued thereon.

59. Plaintiff and similarly-situated Class Members are entitled to restitution pursuant to Cal. Bus. & Prof. 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 and Class Members, from whom they were unlawfully taken.

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60. Plaintiff and similarly situated Class Members are entitled to enforce all applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202.

61. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of himself and other similarly-situated Class Members. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. An award of reasonable attorneys' fees to Plaintiff is thus appropriate pursuant to California Code of Civil Procedure § 1021.5.

62. Plaintiff, on behalf of himself and Class Members, request relief as described below.

FIFTH CAUSE OF ACTION
INJUNCTIVE RELIEF AND RESTITUTION
(CAL. BUS. & PROF. CODE § 17535)

(By Plaintiff, on his own behalf and on behalf of the Class, against All Defendants)

63. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

64. Cal. Bus. & Prof Code § 17535 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 or herself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

65. Since December 1, 2010, and continuing to the present, Defendant has committed unlawful, unfair, and/or fraudulent business acts and practices as defined by the UCL, by violating Cal. Bus. & Prof. Code § 17602.

66. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent acts and practices described herein, Defendant has received and continues to hold unlawfully obtained property and money belonging to Plaintiff and Class Members in the form of payments made for a paid subscription to Defendant's

1 protection plans by Plaintiff and Class Members. Defendant has profited from its
2 unlawful, unfair, and/or fraudulent acts and practices in the amount of those business
3 expenses and interest accrued thereon.

4 67. Plaintiff and similarly situated Class Members are entitled to injunctive
5 relief and/or restitution pursuant to Cal. Bus. & Prof. Code § 17535 for all monies paid
6 by Class Members under the subscription agreements from December 1, 2010 to the
7 date of such restitution, at rates specified by law. Defendant should be required to
8 disgorge all the profits and gains it has reaped and restore such profits and gains to
9 Plaintiff and Class Members, from whom they were unlawfully taken.

10 68. Plaintiff and similarly situated Class Members are entitled to enforce all
11 applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202.

12 69. Plaintiff has assumed the responsibility of enforcement of the laws and
13 public policies specified herein by suing on behalf of himself and other similarly
14 situated Class Members. Plaintiff's success in this action will enforce important rights
15 affecting the public interest. Plaintiff will incur a financial burden in pursuing this
16 action in the public interest. Therefore, an award of reasonable attorneys' fees to
17 Plaintiff is appropriate pursuant to California Code of Civil Procedure § 1021.5.

18 70. Plaintiff, on behalf of himself and similarly situated Class Members,
19 request relief as described below.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. That the Court determine that this action may be maintained as a class action under Rule 23(a) of the Federal Rules of Civil Procedure, and define the Class as requested herein;

B. That the Court find and declare that Defendant has violated Cal. Bus. & Prof. Code § 17602(a)(1) by failing to present the automatic renewal offer terms, or continuous service offer terms, in a clear and conspicuous manner and the visual proximity to the request for consent to the offer before the subscription or purchasing agreement was fulfilled;

C. That the Court find and declare that Defendant has violated Cal. Bus. & Prof. Code § 17602(a)(2) by charging Plaintiff's and Class Members' Payment Method without first obtaining their affirmative consent to the Terms and Conditions containing the automatic renewal offer terms or continuous service terms;

D. That the Court find and declare that Defendant has violated Cal. Bus. & Prof. Code § 17602(a)(3) by failing to provide an acknowledgement that includes the automatic renewal or continuous service offer terms, cancellation policy and information on how to cancel in a manner that is capable of being retained by Plaintiff and Class Members;

E. That the Court find and declare that Defendant has violated the UCL and committed unfair and unlawful business practices by violating Cal. Bus. & Prof. Code § 17602.

F. That the Court award to Plaintiff and Class Members damages and full restitution in the amount of the subscription payments made by them pursuant to Cal. Bus. & Prof. Code § 17603, in an amount to be proved at trial;

G. That Defendant be ordered to pay restitution to Plaintiff and the Class due to Defendant's UCL violations, pursuant to Cal. Bus. & Prof. Code §§ 17200-17205 in the amount of their subscription agreement payments;

1 H. That the Court find that Plaintiff and Class Members are entitled to
2 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17535;

3 I. That Plaintiff and the Class be awarded reasonable attorneys' fees and
4 costs pursuant to California Code of Civil Procedure § 1021.5, and/or other applicable
5 law; and

6 J. That the Court award such other and further relief as this Court may deem
7 appropriate.

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9 Dated: October 20, 2015

NEWPORT TRIAL GROUP, APC

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11 By: /s/ Scott J. Ferrell

12 Scott. J. Ferrell

13 Attorney for Plaintiff
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

Dated: October 20, 2015

NEWPORT TRIAL GROUP, APC

By: /s/ Scott J. Ferrell

Scott. J. Ferrell

Attorney for Plaintiff

CIVIL COVER SHEET

15CV2378 BEN JMA

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JOHN DOE, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Diego, CA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Scott J. Ferrell, Newport Trial Group, 4100 Newport Place Drive, Suite 800, Newport Beach, CA 92660, tel: 949-706-6464

DEFENDANTS

ESCAPE MONTHLY, LLC, a Wyoming limited liability company

County of Residence of First Listed Defendant Teton County, WY

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332

Brief description of cause:

Violation of California Automatic Renewal Law and Unfair Competition Law**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/20/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/Scott J. Ferrell

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.