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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

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

13 Plaintiff,

14 v.

15 NEOPETS, INC. a Delaware corporation;  
16 and DOES 1 – 10, inclusive,

17 Defendants.  
18  
19  
20

Case No. 2:15-cv-08395

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)

21 DEMAND FOR JURY TRIAL  
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1 Plaintiff John Doe<sup>1</sup> (“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 for products (such as virtual pets,  
7 and games sold online) from Neopets, Inc. (“Neopets” or “Defendant”). The class of  
8 others similarly situated to Plaintiff is referred to herein as “Class Members.” The  
9 claims for damages, restitution, injunctive and/or other equitable relief, and reasonable  
10 attorneys’ fees and costs arise under California Business and Professions Code  
11 (hereinafter “Cal. Bus. & Prof. Code”) §§ 17602, 17603, 17604, 17535) and 17200, et  
12 seq., and California Code of Civil Procedure § 1021.5. Plaintiff and Class Members are  
13 consumers for purposes of 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 \_\_\_\_\_  
26 <sup>1</sup> *Does I Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1072-73 (9th Cir. 2000) (noting that class is more likely to  
27 be resolved on the merits if where Plaintiff is permitted to file publicly available documents anonymously. Moreover, until  
28 the Supreme Court clarifies the enforceability of pre-certification “Rule 68” offers, as it is expected to do in the pending  
case of *Campbell-Ewald Co. v. Gomez*, allowing Plaintiff to proceed anonymously will prevent Defendant from impermissibly attempting to thwart class-wide relief).

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

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

### 11 **JURISDICTION AND VENUE**

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

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

19 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because  
20 Defendant is subject to personal jurisdiction in this District.

### 21 **PARTIES**

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

25 9. Defendant Neopets, Inc. is a Delaware corporation with its principal place  
26 of business located at 1515 Broadway, New York, New York 10036, with an additional  
27 place of business located at 2377 Crenshaw Blvd., Suite 302, Torrance, California  
28 90501, and at other locations. Defendant operates in California and has done business

1 throughout California at all times during the Class Period. Also during the Class  
2 Period, Defendant made, and continues to make, automatic renewal or continuous  
3 service offers to consumers in California. Defendant operates a virtual pet website  
4 where subscribers may create accounts, own virtual pets, play games, and purchase  
5 virtual items using virtual currencies.

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

12 11. At all relevant times, each and every Defendant was acting as an agent  
13 and/or employee of each of the other Defendants and was acting within the course  
14 and/or scope of said agency and/or employment with the full knowledge and consent of  
15 each of the Defendants. Each of the acts and/or omissions complained of herein were  
16 alleged and made known to, and ratified by, each of the other Defendants (Neopets, Inc.  
17 and DOE Defendants will hereafter collectively be referred to as “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 (1) Fail to present the automatic renewal offer terms or continuous  
2 service offer terms in a clear and conspicuous manner before the  
3 subscription or purchasing agreement is fulfilled and in visual  
4 proximity, or in the case of an offer conveyed by voice, in temporal  
5 proximity, to the request for consent to the offer.
- 6 (2) Charge the consumer's credit or debit card or the consumer's  
7 account with a third party for an automatic renewal or continuous  
8 service without first obtaining the consumer's affirmative consent to  
9 the agreement containing the automatic renewal offer terms or  
10 continuous service offer terms.
- 11 (3) Fail to provide an acknowledgment that includes the automatic  
12 renewal or continuous service offer terms, cancellation policy, and  
13 information regarding how to cancel in a manner that is capable of  
14 being retained by the consumer. If the offer includes a free trial, the  
15 business shall also disclose in the acknowledgment how to cancel  
16 and allow the consumer to cancel before the consumer pays for the  
17 goods or services.

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

21 15. Cal. Bus. & Prof. Code § 17601(b) defines the term “Automatic renewal  
22 offer terms” as “the following clear and conspicuous disclosures: (1) That the  
23 subscription or purchasing agreement will continue until the consumer cancels. (2) The  
24 description of the cancelation policy that applies to the offer. (3) The recurring charges  
25 that will be charged to the consumer’s credit or debit card or payment account with a  
26 third party as part of the automatic renewal plan or arrangement, and that the amount of  
27 the charge may change, if that is the case, and the amount to which the charge will  
28 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, four-month, or twelve-month basis, a  
14 subscription for its virtual pet and games products/services, which costs consumers  
15 \$7.95 per month on the monthly plan, \$6.25 per month on the four-month plan, and  
16 \$5.83 per month on the twelve-month plan. Defendant’s product and services plan  
17 constitutes an automatic renewal and/or continuous service plan or arrangement for the  
18 purposes of Cal. Bus. & Prof. Code § 17601.

### 19 **Defendant’s Terms of Use/Privacy Policy**

20 19. During the Class Period, Defendant’s webpage, found at  
21 [www.neopets.com](http://www.neopets.com), at the page entitled “Sign Up with Neopets (Step 1 of 4)” contained  
22 a notation that to move further, the prospective subscriber must check a box entitled “I  
23 agree to the Terms of Use and Privacy Policy,” with links to both the Terms of Use and  
24 the Privacy Policy. **Each of these items is a lengthy document that does not set  
25 forth any information concerning the recurring nature of Defendant’s  
26 subscription programs or the manner in which the subscriptions may be cancelled.**

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Earn \$5 in points when you spend \$50+ [SHOP NOW](#) BIRCHBOX

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Sign Up with Neopets (Step 1 of 4)

**Create a Username**  
Your username must be between 6 and 20 characters long (letters, numbers or underscores only).

**Create a Password**  
Your password must be at least 6 characters long, and include at least 2 numbers. You may also use [!@#%&\*~&quot;+&lt;\_&gt;] and capitalisation matters (A is different from a).

**Re-enter Password**

I agree to the Terms of Use & Privacy Policy

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Sign Up with Neopets (Step 2 of 4)

**Who Are You?**

 Country:  State:  Gender:  Male  Female Date of Birth: (month) (day) (year)

Note: Please correctly enter your Date of Birth, as you will need to provide this information to us if you forget your password in the future.

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Sign Up with Neopets (Step 3 of 4)


**Enter Your E-mail Address**

Enter Your E-mail Address

Do not include "http://" or "www." or anything else that isn't part of your actual e-mail address.

Re-enter Your E-mail Address

**Note:** Be sure that e-mails from support@neopets.com are not blocked by your e-mail provider! Some e-mail providers may put e-mails from us into a special junk or spam folder. Please check there first if you are having difficulty receiving e-mails from us.



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Welcome, chanteljohnson | NP: 2,500 | Logout

Sign Up with Neopets (Step 4 of 4)

**Create a Neopet**

**1. Select Your Neopet's Species**

**2. Select Your Neopet's Colour**

**3. Give Your Neopet a Name and a Personality**

**Neopet Name**  
Between 3 and 20 characters long (letters, numbers, underscores)

**Gender**  
Female ▾

**Where does your Neopet like to live?**  
Jungle ▾

**What does your Neopet like doing?**  
Making Friends ▾

**How does your Neopet greet others?**  
Insult from Afar ▾

**4. Select Your Neopet's Stats**


Strength:  A  B  C

Defence:  A  B  C

Movement:  A  B  C

Available Limited Edition Neopets:  
None. Sorry!

**Your Neopet**



Species: Bori

Colour: Blue

**Note:** We have suggested a set of characteristics for your Neopet, but feel free to make any changes you like.

**NEXT** →

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1 **Defendant’s Terms of Use/Privacy Policy Fail to Provide Clear and Conspicuous**  
2 **Disclosures As Required by Law.**

3           20. Within the Terms of Use/Privacy Policy, Defendant failed to state in clear  
4 and conspicuous language (*i.e.*, in larger type than the surrounding text, or in  
5 contrasting type, font, or color to the surrounding text of the same size, or set off from  
6 the surrounding text of the same size by symbols of other marks, in a manner that  
7 clearly calls attention to the language) that:

- 8           (i) The subscription or purchasing agreement will continue until the  
9 consumer cancels;
- 10           (ii) Describes the cancellation policy that applies to the offer;
- 11           (iii) Recurring charges that will be charged to the consumer’s Payment  
12 Method account with a third party as part of the automatic renewal  
13 plan or arrangement, and that the amount of the charge may change,  
14 if that is the case, and the amount to which the charge will change, if  
15 known; and
- 16           (iv) The length of the automatic renewal term or that the service is  
17 continuous unless the length of tile term is chosen by the consumer.  
18

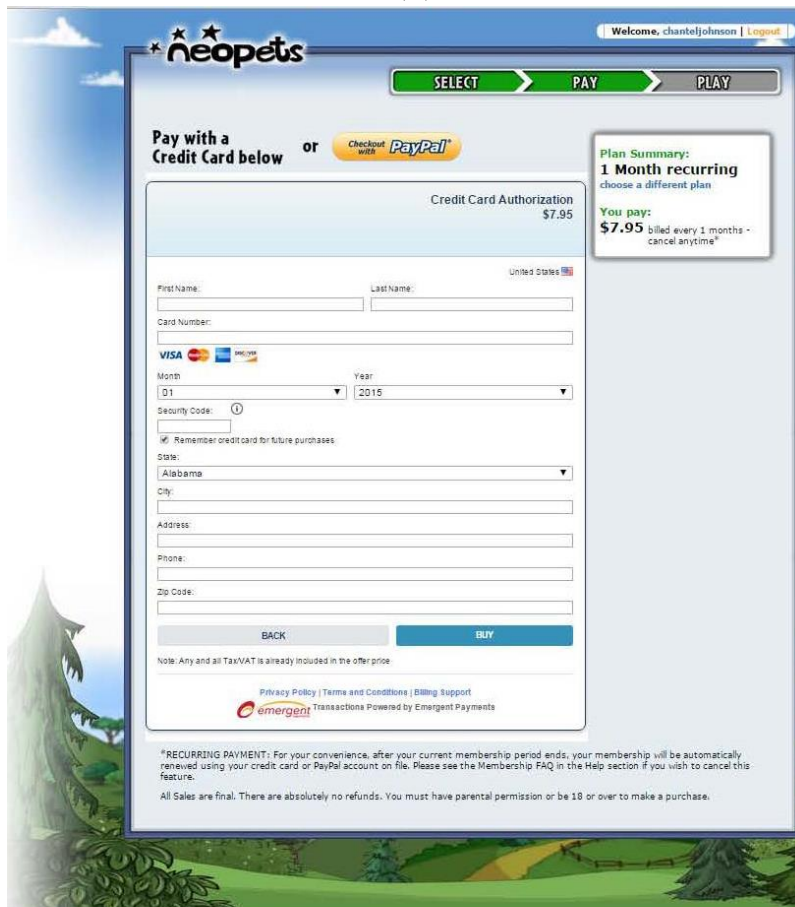
19 **Defendant Failed to Present the Automatic Renewal Offer Terms or Continuous**  
20 **Service Offer Terms in a Clear and Conspicuous Manner Before the Subscription**  
21 **or Purchasing Agreement was Fulfilled and in Visual Proximity to the Request for**  
22 **Consent to the Offer in Violation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

23           21. During the Class Period, Defendant made, and continues to make, an  
24 automatic renewal offer for its subscriptions plans to Consumers in California,  
25 including Plaintiff and Class Members. After going through the four steps to sign up  
26 with Neopets (a succession of four screens, the first of which is referenced in paragraph  
27 19, above), the potential subscriber has the option to do the “Neopets Tutorial,” and  
28

1 then is moved to a screen entitled “Select A Membership Plan,” where the three  
 2 different plans noted above are presented. At the bottom of this page, almost entirely in  
 3 small print, the website states: “RECURRING PAYMENT: For your convenience, after  
 4 your current membership period ends, your membership will be automatically renewed  
 5 using your credit card or PayPal account on file. Please see the Membership FAQ in  
 6 the Help Section if you wish to cancel this feature.” A further paragraph, in the same  
 7 small print, states: “All Sales are final. There are absolutely no refunds. You must  
 8 have parental permission or be 18 or over to make a purchase.” At this stage, the  
 9 subscriber is invited to click on a button called “Next.” Apart from this language in  
 10 small print, this webpage did not, and does not, contain automatic renewal offer terms  
 11 or continuous service offer terms as defined by Cal. Bus. & Prof. Code § 17601(b).



22. After the potential subscriber is invited to login in order to continue, the customer sees a screen entitled “Pay with a Credit Card below or Checkout with PayPal.” The customer is invited to submit personal billing and credit card information, and then click on “BUY.” At the bottom of this page (as with the page referenced in paragraph 21 above), almost entirely in small print, the website states: “RECURRING PAYMENT: For your convenience, after your current membership period ends, your membership will be automatically renewed using your credit card or PayPal account on file. Please see the Membership FAQ in the Help Section if you wish to cancel this feature.” A further paragraph, in the same small print, states: “All Sales are final. There are absolutely no refunds. You must have parental permission or be 18 or over to make a purchase.” Apart from this language in small print, this webpage did not, and does not, contain automatic renewal offer terms or continuous service offer terms as defined by Cal. Bus. & Prof. Code § 17601(b).



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

5 24. 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)**

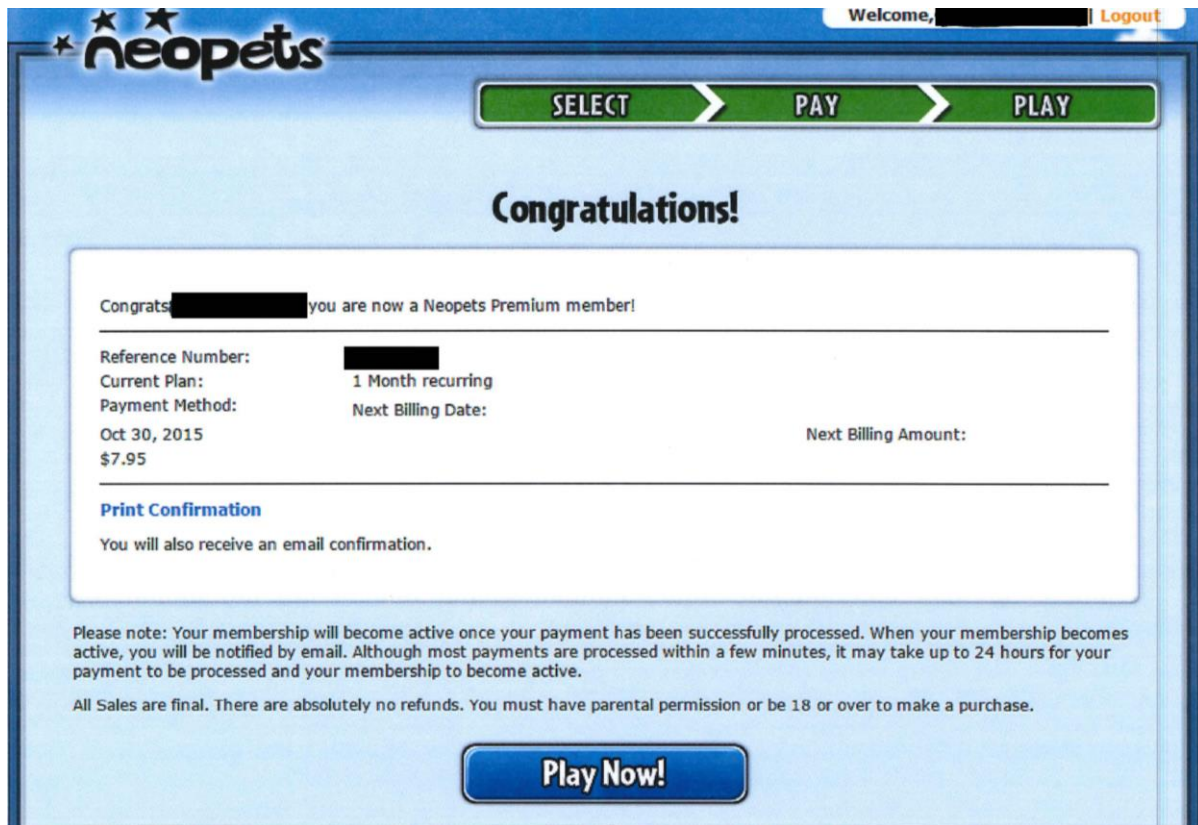
15 25. Furthermore, and in addition to the above, after Plaintiff and Class  
16 Members subscribed to one of Defendant's subscription plans, Defendant sent to  
17 Plaintiff and Class Members a document entitled "Congratulations!" and a "Welcome  
18 and Account Activation" email, but has failed, and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

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## 14 CLASS ACTION ALLEGATIONS

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

19 **“All persons within the United States that, within the applicable**  
20 **statute of limitations period, purchased any product or service in**  
21 **response to an offer constituting an “Automatic Renewal” as defined**  
22 **by § 17601(a) from Neopets, Inc., its predecessors, or its affiliates.”**

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

27 28. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual  
28 joinder of all of its members is impractical. While the exact number and identities of



1 Class members are unknown to Plaintiff at this time and can only be ascertained  
2 through appropriate discovery, Plaintiff is informed and believes the Class includes  
3 hundreds of thousands of members. Plaintiff alleges that the Class may be ascertained  
4 by the records maintained by Defendant.

5 29. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all  
6 members of the Class which predominate over any questions affecting only individual  
7 members of the Class. These common legal and factual questions, which do not vary  
8 from class member to class member, and which may be determined without reference to  
9 the individual circumstances of any class member, include, but are not limited to, the  
10 following:

- 11 i. (a) Whether Defendant failed to present the automatic renewal offer  
12 terms, or continuous service offer terms, in a clear and conspicuous  
13 manner before the subscription or purchasing agreement was  
14 fulfilled and in visual proximity to the request for consent to the  
15 offer in violation of Cal. Bus. & Prof. Code § 17602(a)(1);
- 16 ii. Whether Defendant charged Plaintiff's and Class Members'  
17 Payment Method for an automatic renewal or continuous service  
18 without first obtaining the Plaintiff's and Class Members'  
19 affirmative consent to the Terms and Conditions containing the  
20 automatic renewal offer terms or continuous service offer terms in  
21 violation of Cal. Bus. & Prof. Code § 17602(a)(2);
- 22 iii. Whether Defendant failed to provide an acknowledgement that  
23 included the automatic renewal or continuous service offer terms,  
24 cancellation policy, and information on how to cancel in a manner  
25 that is capable of being retained by Plaintiff and Class Members, in  
26 violation of Cal. Bus. & Prof. Code § 17602(a)(3);

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- 1 iv. Whether Defendant's Terms of Service contained the automatic  
2 renewal offer terms and/or continuous service offer terms as defined  
3 by Cal. Bus. & Prof. Code § 17601;
- 4 v. Whether Plaintiff and the Class Members are entitled to restitution  
5 of money paid in circumstances where the goods and services  
6 provided by Defendant are deemed an unconditional gift in  
7 accordance with Cal. Bus. & Prof. Code§ 17603;
- 8 vi. Whether Plaintiff and Class Members are entitled to restitution in  
9 accordance with Cal. Bus. & Prof. Code §§ 17200, 17203;
- 10 vii. Whether Plaintiff and Class Members are entitled to injunctive relief  
11 under Cal. Bus. & Prof. Code § 17535;
- 12 viii. Whether Plaintiff and Class Members are entitled to attorneys' fees  
13 and costs under California Code of Civil Procedure § 1021.5; and
- 14 ix. The proper formula(s) for calculating the restitution owed to Class  
15 Members.

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

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

24 32. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available  
25 methods of fair and efficient adjudication of this controversy, since individual litigation  
26 of the claims of all Class members is impracticable. Even if every Class member could  
27 afford individual litigation, the court system could not. It would be unduly burdensome  
28 to the courts in which individual litigation of numerous issues would proceed.

1 Individualized litigation would also present the potential for varying, inconsistent, or  
2 contradictory judgments and would magnify the delay and expense to all parties and to  
3 the court system resulting from multiple trials of the same complex factual issues. By  
4 contrast, the conduct of this action as a class action, with respect to some or all of the  
5 issues presented herein, presents fewer management difficulties, conserves the  
6 resources of the parties and of the court system, and protects the rights of each Class  
7 member.

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

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

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

### 20 **FIRST CAUSE OF ACTION**

#### 21 **FAILURE TO PRESENT AUTOMATIC RENEWAL OFFER TERMS OR** 22 **CONTINUOUS SERVICE OFFER TERMS CLEARLY AND** 23 **CONSPICUOUSLY AND IN VISUAL, PROXIMITY TO THE REQUEST FOR** 24 **CONSENT OFFER (CAL. BUS. & PROF. CODE§ 17602(a)(I))**

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

26 36. The foregoing paragraphs are alleged herein and are incorporated herein  
27 by reference.

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

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

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

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

13 39. As a result of Defendant’s violations of Cal. Bus. & Prof. Code §  
14 §17602(a)(1), Defendant is subject under Cal. Bus. & Prof. Code § 17604 to all civil  
15 remedies that apply to a violation of Article 9, of Chapter 1, of Part 3, of Division 7 of  
16 the Cal. Bus. & Prof. Code.

17 40. Plaintiff, on behalf of himself and Class Members, requests relief as  
18 described below.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO OBTAIN CONSUMER’S AFFIRMATIVE CONSENT**

21 **BEFORE THE SUBSCRIPTION IS FULFILLED**

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

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

24 41. The foregoing paragraphs are alleged herein and are incorporated herein  
25 by reference.

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

27 (a) It shall be unlawful for any business making an automatic renewal or  
28 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.

43. 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.

44. 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.

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

**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)**

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

47. 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.

48. 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.

49. 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.

50. 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)**

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

52. 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.

53. 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).

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

7 55. Plaintiff and similarly-situated Class Members are entitled to restitution  
8 pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17208 for all monies paid by Class  
9 Members under the subscription agreements from December 1, 2010, to the date of  
10 such restitution at rates specified by law. Defendant should be required to disgorge all  
11 the profits and gains it has reaped and restore such profits and gains to Plaintiff and  
12 Class Members, from whom they were unlawfully taken.

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

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

21 58. Plaintiff, on behalf of himself and Class Members, request relief as  
22 described below.

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

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

27 59. The foregoing paragraphs are alleged herein and are incorporated herein  
28 by reference.

1           60. Cal. Bus. & Prof Code § 17535 allows “any person who has suffered  
2 injury in fact and has lost money or property” to prosecute a civil action for violation of  
3 the UCL. Such a person may bring such an action on behalf of himself or herself and  
4 others similarly situated who are affected by the unlawful, unfair, or fraudulent business  
5 practice.

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

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

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

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

24           65. Plaintiff has assumed the responsibility of enforcement of the laws and  
25 public policies specified herein by suing on behalf of himself and other similarly  
26 situated Class Members. Plaintiff’s success in this action will enforce important rights  
27 affecting the public interest. Plaintiff will incur a financial burden in pursuing this  
28

1 action in the public interest. Therefore, an award of reasonable attorneys' fees to  
2 Plaintiff is appropriate pursuant to California Code of Civil Procedure § 1021.5.

3 66. Plaintiff, on behalf of himself and similarly situated Class Members,  
4 request relief as described below.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff requests the following relief:

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

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

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

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

24 E. That the Court find and declare that Defendant has violated the UCL and  
25 committed unfair and unlawful business practices by violating Cal. Bus. & Prof. Code §  
26 17602.

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28 ///

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

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

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

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

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

14  
15 Dated: October 27, 2015

NEWPORT TRIAL GROUP, APC

16  
17 By: /s/ Scott J. Ferrell

18 Scott. J. Ferrell

19 Attorney for Plaintiff  
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