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23
24 **UNITED STATES DISTRICT COURT**
25 **CENTRAL DISTRICT OF CALIFORNIA**
26

27 VICTORIA KISSEL, individually and on
28 behalf of all others similarly situated,

Plaintiff,

v.

FRESHDESK, INC., a Delaware
corporation; and DOES 1 – 10, inclusive,

Defendants.

Case No. ___2:16-cv-02777

CLASS ACTION COMPLAINT FOR:

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

1 Plaintiff Victoria Kissel (“Plaintiff”), on behalf of herself 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 herself and a class of others
5 similarly situated consisting of all persons in the United States who, within the
6 applicable statute of limitations period, purchased subscriptions for any products and/or
7 services from FreshDesk, Inc. (“FreshDesk” or “Defendant”). The class of others
8 similarly situated to Plaintiff is referred to herein as “Class Members.” The claims for
9 damages, restitution, injunctive and/or other equitable relief, and reasonable attorneys’
10 fees and costs arise under California Business and Professions Code (hereinafter “Cal.
11 Bus. & Prof. Code”) §§ 17602, 17603, and 17604) and 17200, *et seq.*, and California
12 Code of Civil Procedure § 1021.5. Plaintiff and Class Members are consumers for
13 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 the United States and (a) at the time of
16 making the automatic renewal or continuous service offers, failed to present the
17 automatic renewal offer terms or continuous service offer terms, in a clear and
18 conspicuous manner and in visual proximity to the request for consent to the offer
19 before the subscription or purchasing agreement was fulfilled in violation of Cal. Bus.
20 & Prof. Code § 17602(a)(1); (b) charged Plaintiff’s and Class Members’ credit or debit
21 cards, 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 and information regarding how to cancel in a manner that is capable of being retained
27 by the consumer in violation of Cal. Bus. & Prof. Code § 17602(a)(3). As a result, all
28 goods, wares, merchandise, products and/or services sent to Plaintiff and Class

1 Members under the automatic renewal of continuous service agreements are deemed to
2 be an unconditional gift pursuant to Cal. Bus. & Prof. Code § 17603.

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

7 **JURISDICTION AND VENUE**

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

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

15 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
16 Defendant is subject to personal jurisdiction in this District and a substantial portion of
17 the conduct complained of herein occurred in this District.

18 **PARTIES**

19 7. Plaintiff purchased a subscription plan from Defendant in California
20 during the Class Period. Plaintiff and Class Members are consumers as defined under
21 Cal. Bus. & Prof. Code § 17601(d).

22 8. Defendant FreshDesk, Inc. is a Delaware corporation. Defendant operates
23 throughout California and the United States and has done business throughout the
24 United States at all times during the Class Period. Also during the Class Period,
25 Defendant made, and continues to make, automatic renewal or continuous service
26 offers to consumers in the United States. Defendant operates a website that markets
27 and sells subscriptions for customer service support services, including email and
28 telephone support, cloud systems and data support.

1 continuous service without first obtaining the consumer's
2 affirmative consent to the agreement containing the automatic
renewal offer terms or continuous service offer terms.

- 3 iii) Fail to provide an acknowledgment that includes the
4 automatic renewal or continuous service offer terms,
5 cancellation policy, and information regarding how to cancel
6 in a manner that is capable of being retained by the consumer.
7 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.

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

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

21 15. Pursuant to Cal. Bus. & Prof. Code § 17601(c), “clear and conspicuous” or
22 “clearly and conspicuously” means “in larger type than the surrounding text, or in
23 contrasting type, font, or color to the surrounding text of the same size, or set off from
24 the surrounding text of the same size by symbol or other marks, in a manner that clearly
25 calls attention to the language.”

26 16. Section 17602(b) provides: “A business making automatic renewal or
27 continuous service offers shall provide a toll-free telephone number, electronic mail
28 address, a postal address only when the seller directly bills the consumer, or another

1 cost-effective, timely, and easy-to-use mechanism for cancellation that shall be
2 described in the acknowledgment specified in paragraph (3) of subdivision (a).”

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 offers subscriptions for customer service support services,
14 including email and telephone support, cloud systems and data support. Defendant’s
15 customer support plans constitute automatic renewal and/or continuous service plans or
16 arrangement for the purposes of Cal. Bus. & Prof. Code § 17601.

17 **Defendant’s Terms of Service**

18 19. During the Class Period, Defendant’s webpage, found at
19 www.freshdesk.com, contained a document entitled “Terms of Service.” This is a
20 lengthy document that sets forth information concerning the recurring nature of
21 Defendant’s subscription programs and the manner in which the subscriptions may be
22 modified or cancelled. However, these terms are buried deep within the Terms of
23 Service and are not set forth where a prospective subscriber finalizes a purchase, and
24 not in a clear of conspicuous manner.

25 **Defendant’s Terms of Service Fail to Provide Clear and Conspicuous Disclosures**

26 **As Required by Law.**

27 20. Within the Terms of Service, Defendant failed to state in clear and
28 conspicuous language (*i.e.*, in larger type than the surrounding text, or in contrasting

1 type, font, or color to the surrounding text of the same size, or set off from the
2 surrounding text of the same size by symbols of other marks, in a manner that clearly
3 calls attention to the language) that:

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

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

18 21. During the Class Period, Defendant made, and continues to make, an
19 automatic renewal offer for its subscriptions plans to consumers throughout the United
20 States, including Plaintiff and Class Members. On the pages of Defendant's website
21 where the potential subscriber ultimately is invited to "choose a plan" and "proceed to
22 payment", the automatic renewal offer terms or continuous service offer terms as
23 defined by Cal. Bus. & Prof. Code § 17601(b) are not included.

Plans & Billing

Current Plan : Estate

Your trial will expire in 30 Days

Your account will get deactivated after the trial period.
To continue using Freshdesk, please choose a plan below.

Choose Plan

Note: If you downgrade a plan, you might lose some of the existing features

Currency : USD

Sprout Free for 3 agents Email Ticketing Feedback Widget Knowledge Base Automations Phone Integration Mobile Apps Built-in Integrations Choose Plan	Blossom \$19 per agent/month Everything in Sprout Multiple Mailboxes Custom Domain Social Support Satisfaction surveys Community Forums Gamification Choose Plan	Garden \$29 per agent/month Everything in Blossom Integrated Live Chat Multiple Languages Multi Product Support Multiple Timezones CSS Customization Choose Plan	Estate \$49 per agent/month Everything in Garden Agent Collision Custom Roles Custom SSL Enterprise Reporting Portal Customization Choose this plan...	Forest \$79 per agent/month Everything in Estate Custom Mail Servers Secure IP Restriction Choose Plan
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Help Desk Software by Freshdesk | Submit Feedback | Browse Community

Current Plan : Estate

Your trial will expire in 30 Days

Your account will get deactivated after the trial period.
To continue using Freshdesk, please choose a plan below.

Choose Plan

Note: If you downgrade a plan, you might lose some of the existing features

Currency : USD

Sprout Free for 3 agents Email Ticketing Feedback Widget Knowledge Base Automations Phone Integration Mobile Apps Built-in Integrations Choose Plan	Blossom \$19 per agent/month Everything in Sprout Multiple Mailboxes Custom Domain Social Support Satisfaction surveys Community Forums Gamification Choose Plan	Garden \$29 per agent/month Everything in Blossom Integrated Live Chat Multiple Languages Multi Product Support Multiple Timezones CSS Customization Choose Plan	Estate \$49 per agent/month Everything in Garden Agent Collision Custom Roles Custom SSL Enterprise Reporting Portal Customization Billing: Monthly Agents: 1 x \$49 x 1 Total: \$49 All your future payments will be in USD Proceed to Payment	Forest \$79 per agent/month Everything in Estate Custom Mail Servers Secure IP Restriction Choose Plan
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Help Desk Software by Freshdesk | Submit Feedback | Browse Community

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Plans & Billing

Selected Plan : Estate
You will be billed \$49 Monthly. [Click here to change your currency.](#)
Please note that you cannot change the currency once you enter the card information.

Credit card information

First Name * Last Name *

Card Number *

Expiry * CVV *

Month * Year * (Last 3-4 digits)

Card address line 1 * Card address line 2

Card address city * Card address zip

Card address country * Card address state *

United States Choose state

Add Payment Method Cancel

Billing

Please note that if you choose to begin your subscription now, we will charge your card and make your account active immediately.

12 22. As a result, prior to charging Plaintiff and Class Members, Defendant
13 failed, and continues to fail, to obtain Plaintiff's and Class Members' affirmative
14 consent to any language containing any automatic renewal offer terms or continuous
15 service offer terms as defined by Cal. Bus. & Prof. Code § 17601(b).

16 23. Because of Defendant's failure to gather affirmative consent to the
17 automatic renewal terms, all services provided to Plaintiff and Class Members under
18 the automatic renewal or continuous service agreement are deemed to be an
19 unconditional gift pursuant to Cal. Bus. & Prof. Code § 17603, and Plaintiff and Class
20 Members may use or dispose of the same in any manner they see fit without any
21 obligation whatsoever on their part to Defendant, including, but not limited to, bearing
22 the cost of, or responsibility for, Defendant's services and products.

23 **Defendant Failed to Provide an Acknowledgment as Required by Cal. Bus. &**
24 **Prof. Code §§ 17602(a)(3) and 17602(b)**

25 24. Furthermore, and in addition to the above, after Plaintiff and Class
26 Members subscribed to one of Defendant's subscription plans, Defendant sent to
27 Plaintiff and Class Members a document entitled "FreshDesk Invoice", but has failed,
28 and continues to fail, to provide an acknowledgement that includes the automatic

1 renewal or continuous service offer terms, cancellation policy, and information on how
2 to cancel in a manner that is capable of being retained by Plaintiff and Class Members
3 in violation of Cal. Bus. & Prof. Code § 17602(a)(3). Moreover, Defendant failed to
4 provide Plaintiff and Class Members with an acknowledgement regarding how to
5 cancel the subscription and allow Plaintiff and Class Members to cancel before
6 payment, as required by Cal. Bus. & Prof. Code § 17602(b).

7 ----- Forwarded message -----

8 From: <billing@freshdesk.com>

9 Date: [REDACTED]

10 Subject: Freshdesk Invoice

11 To: [REDACTED]

12 Invoice



13 Freshdesk Inc.
14 311 California Street, Suite 420, San Francisco, CA 94104, USA
15 Phone: +1 (866) 832-3090, Tax ID: 33-1218825

16 [REDACTED]
17 Study Hut Redondo



18 Invoice Number : [REDACTED]
19 Invoice Date : [REDACTED]
20 Invoice Amount : \$19.00

21 Billing Address

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Date	Description	Unit Cost	Units	Amount
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	Blossom Monthly Plan	\$19.00	1	\$19.00
				TOTAL \$19.00

Bank Details

Bank Name : [REDACTED]
 Bank Address : [REDACTED]
 Account # : [REDACTED]
 Routing # : [REDACTED]
 Swift Code # : [REDACTED]
 Paypal ID : [REDACTED]

In case of check payments (only for US), please mail the check to the following address:
 340 S Lemon Ave #7585,
 Los Angeles,
 California 91789

For questions/concerning regarding this invoice, please contact billing@freshdesk.com

Powered by [ChargeBee](#)

CLASS ACTION ALLEGATIONS

25. Plaintiff brings this action, on behalf of herself 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 within the United States that, within the applicable statute of limitations period, purchased any product in response to an

1 **offer constituting an “Automatic Renewal” as defined by § 17601(a)**
2 **from FreshDesk, Inc. its predecessors, or its affiliates.”**

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

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

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

- 19 i) Whether Defendant failed to present the automatic renewal offer
20 terms, or continuous service offer terms, in a clear and conspicuous
21 manner before the subscription or purchasing agreement was
22 fulfilled and in visual proximity to the request for consent to the
23 offer in violation of Cal. Bus. & Prof. Code § 17602(a)(1);
- 24 ii) Whether Defendant failed to provide an acknowledgment that
25 describes a cost-effective, timely, and easy-to-use mechanism for
26 cancellation in violation of Cal. Bus. & Prof. Code § 17602(b);
- 27 iii) Whether Defendant charged Plaintiff’s and Class Members’
28 Payment Method for an automatic renewal or continuous service

1 without first obtaining the Plaintiff's and Class Members'
2 affirmative consent to the automatic renewal offer terms or
3 continuous service offer terms in violation of Cal. Bus. & Prof.
4 Code§ 17602(a)(2);

5 iv) Whether Defendant failed to provide an acknowledgement that
6 included the automatic renewal or continuous service offer terms,
7 cancellation policy, and information on how to cancel in a manner
8 that is capable of being retained by Plaintiff and Class Members, in
9 violation of Cal. Bus. & Prof. Code § 17602(a)(3);

10 v) Whether Plaintiff and the Class Members are entitled to restitution
11 of money paid in circumstances where the goods and services
12 provided by Defendant are deemed an unconditional gift in
13 accordance with Cal. Bus. & Prof. Code§ 17603;

14 vi) Whether Plaintiff and Class Members are entitled to restitution in
15 accordance with Cal. Bus. & Prof. Code §§ 17200, 17203;

16 vii) Whether Plaintiff and Class Members are entitled to attorneys' fees
17 and costs under California Code of Civil Procedure § 1021.5; and

18 viii) The proper formula(s) for calculating the restitution owed to Class
19 Members.

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

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

28

1 **CONSPICUOUSLY AND IN VISUAL, PROXIMITY TO THE REQUEST FOR**
2 **CONSENT OFFER (CAL. BUS. & PROF. CODE§ 17602(a)(1))**

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

4 35. The foregoing paragraphs are alleged herein and are incorporated herein
5 by reference.

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

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

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

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

19 38. As a result of Defendant's violations of Cal. Bus. & Prof. Code §
20 §17602(a)(1), Defendant is subject under Cal. Bus. & Prof. Code § 17604 to all civil
21 remedies that apply to a violation of Article 9, of Chapter 1, of Part 3, of Division 7 of
22 the Cal. Bus. & Prof. Code.

23 39. Plaintiff, on behalf of herself and Class Members, requests relief as
24 described below.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO OBTAIN CONSUMER'S AFFIRMATIVE CONSENT**

27 **BEFORE THE SUBSCRIPTION IS FULFILLED**

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

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

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

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

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

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

12 42. Defendant charged, and continues to charge Plaintiff’s and Class
13 Members’ Payment Method for an automatic renewal or continuous service without
14 first obtaining Plaintiff’s and Class Members affirmative consent to the automatic
15 renewal offer terms or continuous service offer terms.

16 43. As a result of Defendant’s violations of Cal. Bus. & Prof. Code §
17 17602(a)(2), Defendant is liable to provide restitution to Plaintiff and Class Members
18 under Cal. Bus. & Prof. Code § 17603.

19 44. Plaintiff, on behalf of herself and Class Members, requests relief as
20 described below.

21 **THIRD CAUSE OF ACTION**
22 **FAILURE TO PROVIDE ACKNOWLEDGMENT**
23 **WITH AUTOMATIC RENEWAL TERMS AND**
24 **INFORMATION REGARDING CANCELLATION POLICY**
25 **(CAL. BUS. & PROF. CODE §§ 17602(a)(3), 17602(b))**

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

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

46. Cal. Bus. & Prof. Code§ 17602(a)(3) 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
following:

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

8 Cal. Bus. & Prof. Code § 17602(b) provides:

9 “A business making automatic renewal or continuous service offers
10 shall provide a toll-free telephone number, electronic mail address, a
11 postal address only when the seller directly bills the consumer, or
12 another cost-effective, timely, and easy-to-use mechanism for
cancellation that shall be described in the acknowledgment specified
in paragraph (3) of subdivision (a).”

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

17 48. As a result of Defendant’s violations of Cal. Bus. & Prof. Code §§
18 17602(a)(3) and 17602(b), Defendant is subject to all civil remedies under Cal. Bus. &
19 Prof. Code § 17604 that apply to a violation of Article 9, of Chapter 1 of Part 3, of
20 Division 7 of the Cal. Bus. & Prof. Code.

21 49. Plaintiff, on behalf of herself and Class Members, requests relief as
22 described below.

23 **FOURTH CAUSE OF ACTION**

24 **VIOLATION OF THE UNFAIR COMPETITION LAW**

25 **(CAL. BUS. & PROF. CODE § 17200 *et. seq.*)**

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

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

1 51. Cal. Bus. & Prof. Code § 17200, *et seq.* (the “UCL”) prohibits unfair
2 competition in the form of any unlawful or unfair business act or practice. Cal. Bus. &
3 Prof. Code § 17204 allows “a person who has suffered injury in fact and has lost money
4 or property” to prosecute a civil action for violation of the UCL. Such a person may
5 bring such an action on behalf of himself or herself and others similarly situated who
6 are affected by the unlawful and/or unfair business practice or act.

7 52. Since December 1, 2010, and continuing to the present, Defendant has
8 committed unlawful and/or unfair business acts or practices as defined by the UCL, by
9 violating Cal. Bus. & Prof. Code §§ 17602(a)(1), 17602(a)(2), 17602(a)(3), and
10 17602(b). The public policy which is a predicate to a UCL action under the unfair
11 prong of the UCL is tethered to a specific statutory provision. *See* Cal. Bus. & Prof.
12 Code §§ 17600, 17602.

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

19 54. Plaintiff and similarly-situated Class Members are entitled to restitution
20 pursuant to Cal. Bus. & Prof. Code § 17203 for all monies paid by Class Members
21 under the subscription agreements from December 1, 2010, to the date of such
22 restitution at rates specified by law. Defendant should be required to disgorge all the
23 profits and gains it has reaped and restore such profits and gains to Plaintiff and Class
24 Members, from whom they were unlawfully taken.

25 55. Plaintiff and similarly situated Class Members are entitled to enforce all
26 applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202, and to obtain
27 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203.

28

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

6 F. That the Court find and declare that Defendant has violated the UCL and
7 committed unfair and unlawful business practices by violating Cal. Bus. & Prof. Code §
8 17602.

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

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

15 I. That the Court find that Plaintiff and Class Members are entitled to
16 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203;

17 J. That Plaintiff and the Class be awarded reasonable attorneys' fees and
18 costs pursuant to California Code of Civil Procedure § 1021.5, and/or other applicable
19 law; and

20 K. That the Court award such other and further relief as this Court may deem
21 appropriate.

22
23 Dated: April 22, 2016

MILSTEIN, ADELMAN, JACKSON,
FAIRCHILD & WADE, LLP

24
25 By: /s/ Gillian M. Wade

26 Gillian M. Wade
27
28

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2016, I electronically filed the foregoing **CLASS ACTION COMPLAINT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing via electronic mail to all counsel of record.

/s/ Gillian M. Wade
Gillian M. Wade