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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 KATHY LIRA, individually and on behalf
of all others similarly situated,

12 Plaintiff,

13 v.

14 ADOREME, INC. , a Delaware
15 corporation; and DOES 1 – 10, inclusive,

16 Defendants.
17
18

Case No. 8:16-cv-1858

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 Kathy Lira (“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 up to and including May 11, 2016, purchased
7 subscriptions for any products (such as lingerie) from Adoreme, Inc. (“Defendant”).
8 The class of others similarly situated to Plaintiff is referred to herein as “Class
9 Members.” The claims for damages, restitution, injunctive and/or other equitable relief,
10 and reasonable attorneys’ fees and costs arise under California Business and
11 Professions Code (hereinafter “Cal. Bus. & Prof. Code”) §§ 17602, 17603, and 17604)
12 and 17200, *et seq.*, and California Code of Civil Procedure § 1021.5. Plaintiff and
13 Class Members are 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 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) and 17602(b).
28 As a result, all goods, wares, merchandise, or products 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. Plaintiff is informed and believes, and upon such information and belief
23 alleges, that Defendant Adoreme, Inc. is a Delaware corporation with its principal place
24 of business located at 485 7th Avenue, Suite 505, Oak Park, New York 10018.
25 Defendant operates in California and has done business throughout California and
26 throughout the United States at all times during the Class Period. Also during the Class
27 Period, Defendant made automatic renewal or continuous service offers to consumers in
28

1 California and throughout the United States. Defendant operates a website which
2 markets subscriptions for lingerie and related products.

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

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

15 **FACTUAL BACKGROUND**

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

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

22 12. Cal. Bus. & Prof. Code § 17602(a) makes it unlawful for any business
23 making an automatic renewal or continuous service offer to a consumer in this state to
24 do any of the following:

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

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

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

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

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

26 15. Pursuant to Cal. Bus. & Prof. Code § 17601(c), "clear and conspicuous" or
27 "clearly and conspicuously" means "in larger type than the surrounding text, or in
28 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 symbol ls or other marks, in a manner that
clearly calls attention to the language."

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1 16. Section 17602(b) provides: “A business making automatic renewal or
2 continuous service offers shall provide a toll-free telephone number, electronic mail
3 address, a postal address only when the seller directly bills the consumer, or another
4 cost-effective, timely, and easy-to-use mechanism for cancellation that shall be
5 described in the acknowledgment specified in paragraph (3) of subdivision (a).”

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

15 **Defendant’s Business**

16 18. Defendant provides, among other things, monthly subscription programs
17 for lingerie items and related products, including a “VIP Membership”. Defendant’s
18 services plan constitutes an automatic renewal and/or continuous service plan or
19 arrangement for the purposes of Cal. Bus. & Prof. Code § 17601.

20 **Defendant’s Terms & Conditions**

21 19. During the Class Period, Defendant’s webpage, found at
22 www.adoreme.com contained a section entitled “Terms & Conditions”. **This is a**
23 **document in which information concerning the recurring nature of Defendant’s**
24 **subscription programs or the manner in which the subscriptions may be canceled**
25 **was not set forth in clear and conspicuous language, as required by the applicable**
26 **statutes and as set forth below.**

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1 **Defendant's Terms & Conditions Fail to Provide Clear and Conspicuous**
2 **Disclosures As Required by Law.**

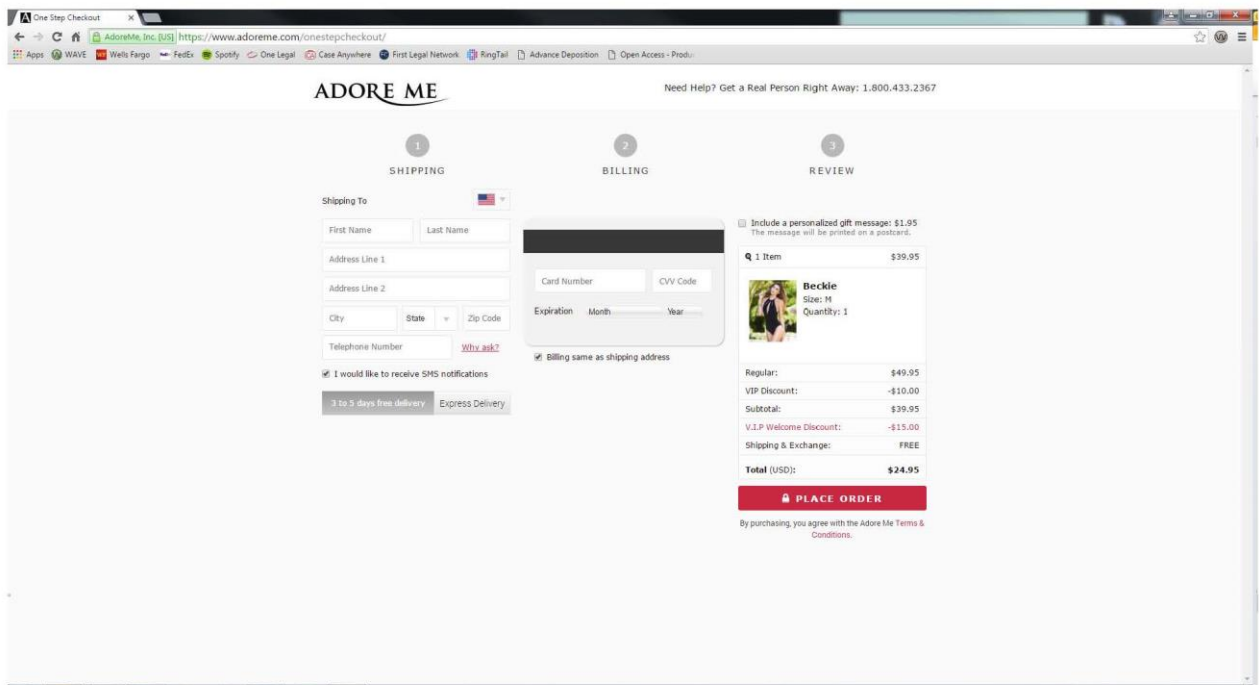
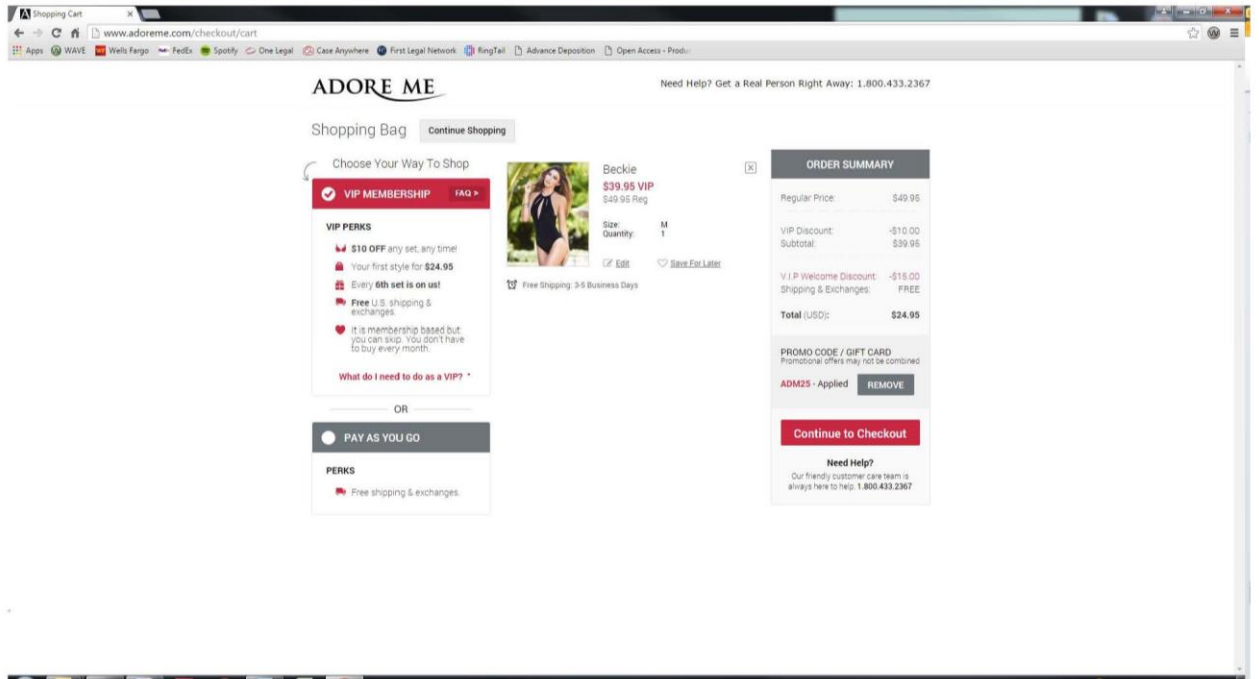
3 20. Within the Terms & Conditions, Defendant failed to state in clear and
4 conspicuous language (*i.e.*, in larger type than the surrounding text, or in contrasting
5 type, font, or color to the surrounding text of the same size, or set off from the
6 surrounding text of the same size by symbols of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

- 8 i) The subscription or purchasing agreement will continue until the
9 consumer cancels (there is language in capitals stating that the
10 subscription will continue after the free trial period unless canceled,
11 but language concerning recurring charges thereafter is not so
12 prominently displayed);
- 13 ii) Described the cancellation policy that applies to the offer;
- 14 iii) Recurring charges that will be charged to the consumer's Payment
15 Method account with a third party as part of the automatic renewal
16 plan or arrangement, and that the amount of the charge may change,
17 if that is the case, and the amount to which the charge will change, if
18 known; and
- 19 iv) The length of the automatic renewal term or that the service is
20 continuous unless the length of tile term is chosen by the consumer.

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

25 21. During the Class Period, Defendant made an automatic renewal offer for
26 its subscriptions plans to Consumers in California and throughout the United States,
27 including Plaintiff and Class Members. On the pages on the website where a
28 prospective subscriber is invited to complete a purchase, the pages did not contain

1 automatic renewal offer terms or continuous service offer terms as defined by Cal. Bus.
 2 & Prof. Code § 17601(b). The pages indicate that a member of the VIP Membership
 3 may skip months, but do not explicitly provide a specific method or vehicle to cancel
 4 that membership.



1 22. As a result, prior to charging Plaintiff and Class Members, Defendant
2 failed to obtain Plaintiff's and Class Members' affirmative consent to language
3 containing the automatic renewal offer terms or continuous service offer terms.

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

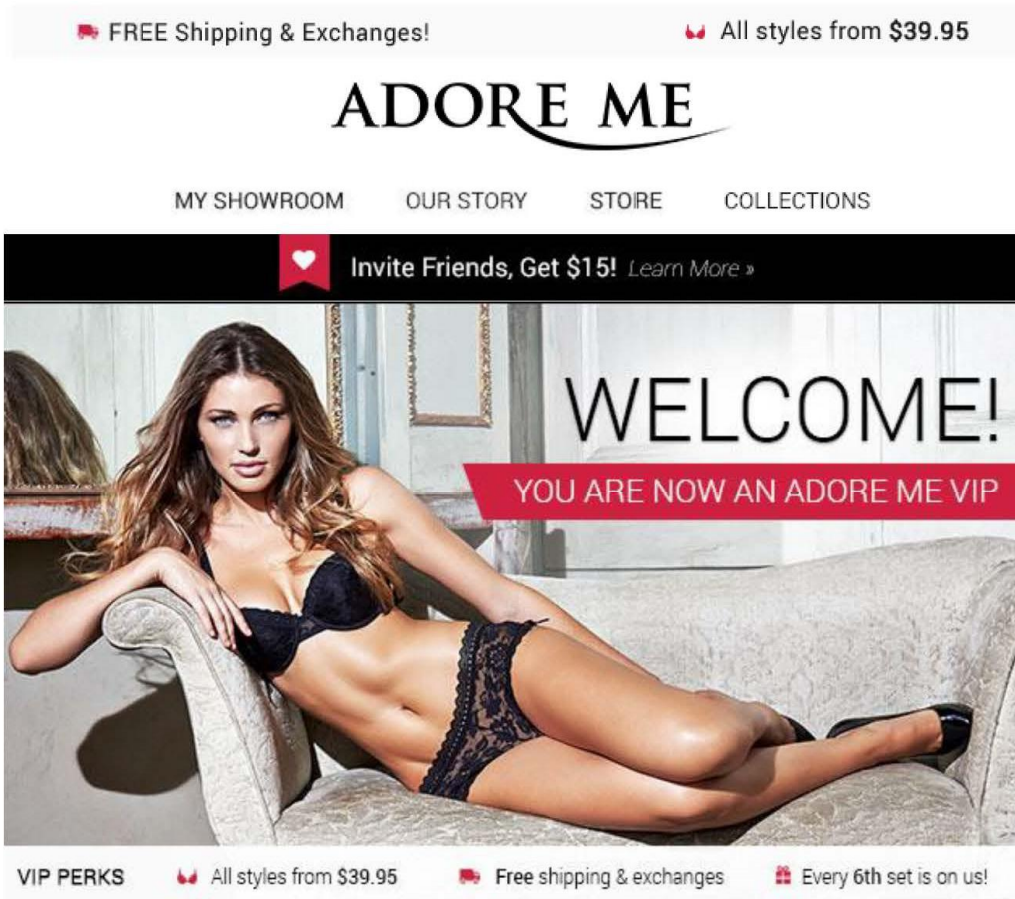
12 24. Plaintiff's counsel previously notified Defendant of violations contained
13 on Defendant's website by letter dated July 13, 2016, which was sent by overnight
14 delivery. Since that date, Defendant has purported to make changes in some of the
15 language of its website pages where subscriptions are purchased and in its "Terms and
16 Conditions" in order to address the challenged violations, a fact which underscores
17 strongly the correctness and validity of Plaintiff's position and of the factual and legal
18 contentions set forth in this Complaint. Notwithstanding counsel's letter and the
19 remedial changes made in Defendant's website, Defendant has not refunded to Plaintiff
20 or the Class Members any of the funds they paid for subscriptions on Defendant's
21 website.

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

24 25. Furthermore, and in addition to the above, after Plaintiff and Class
25 Members subscribed to one of Defendant's subscription plans, Defendant sent to
26 Plaintiff and Class Members a document entitled "Welcome to the VIP Life!", but has
27 failed, and continues to fail, to provide an acknowledgement that includes the automatic
28 renewal or continuous service offer terms, cancellation policy, and information on how

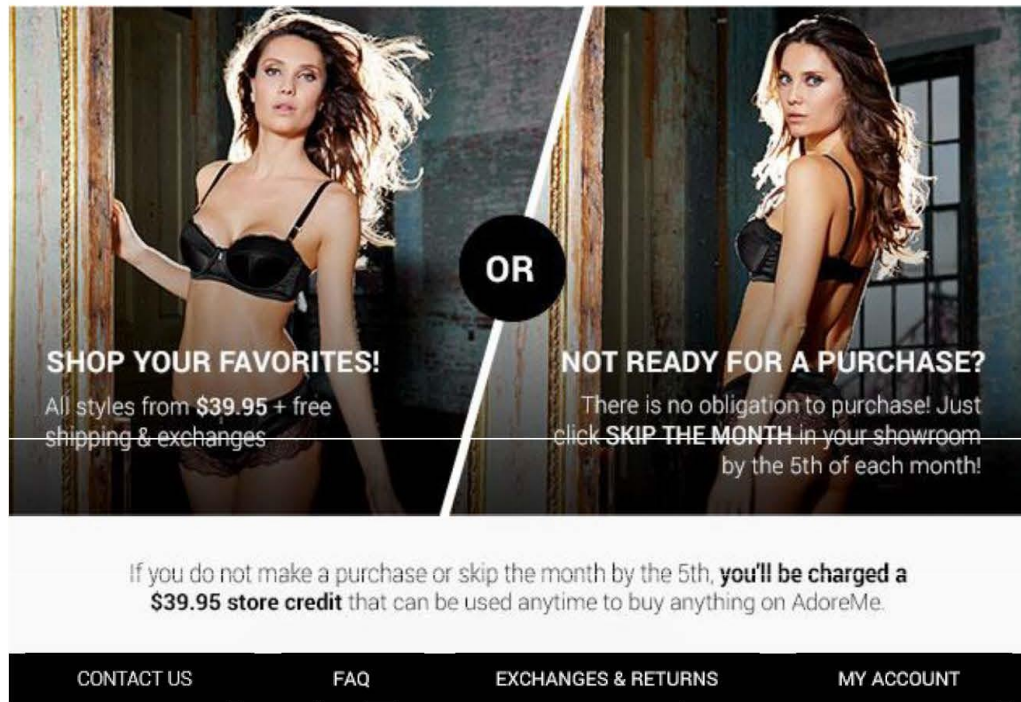
1 to cancel in a manner that is capable of being retained by Plaintiff and Class Members
2 in violation of Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b). Moreover,
3 Defendant failed to provide Plaintiff and Class Members with an acknowledgement
4 regarding how to cancel the subscription and allow Plaintiff and Class Members to
5 cancel before payment. The acknowledgment indicates that a member of the VIP
6 Membership may skip months, and that if the member does not make a purchase or skip
7 a month she will be charged \$39.95 that can be used to purchase items later, but does
8 not explicitly provide a specific method or vehicle to cancel that membership.

9 ----- Forwarded message -----
10 From: AdoreMe <info@msg.adoreme.com>
11 Date: Wed, May 11, 2016 at 8:26 AM
12 Subject: Welcome to the VIP Life!
13 To: kathylira@gmail.com



27 HOW THE VIP MEMBERSHIP WORKS

28 Discover your **new showroom** and our **new collections** each month!



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You are receiving this email because you either registered, accepted our invitation to receive emails from Adore Me, or have made a purchase on AdoreMe.com.

To ensure delivery to your inbox, please add info@msa.adoreme.com to your address book.

If you would like to update your email preferences or unsubscribe, [go here](#).

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205 W 39th St., 16th Floor, New York, NY 10018

CLASS ACTION ALLEGATIONS

26. 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 California that, within the applicable statute of limitations period, up to and including May 11, 2016, purchased any product or service in response to an offer constituting an “Automatic Renewal” as defined by § 17601(a) from AdoreMe.com, Inc., its predecessors, or its affiliates.”

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1 27. 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 28. [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 29. [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) Whether at all relevant times Defendant's Terms & Conditions
18 contained the automatic renewal offer terms and/or continuous
19 service offer terms as defined by Cal. Bus. & Prof. Code § 17601;
- 20 ii) Whether at all relevant times Defendant failed to present the
21 automatic renewal offer terms, or continuous service offer terms, in
22 a clear and conspicuous manner before the subscription or
23 purchasing agreement was fulfilled and in visual proximity to the
24 request for consent to the offer in violation of Cal. Bus. & Prof.
25 Code § 17602(a)(1);
- 26 iii) Whether at all relevant times Defendant charged Plaintiff's and
27 Class Members' Payment Method for an automatic renewal or
28 continuous service without first obtaining the Plaintiff's and Class

1 Members' affirmative consent to the Terms & Conditions containing
2 the automatic renewal offer terms or continuous service offer terms
3 in violation of Cal. Bus. & Prof. Code § 17602(a)(2);

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

10 v) Whether Defendant failed to provide to Plaintiff and Class Members
11 an acknowledgment that describes a cost-effective, timely, and easy-
12 to-use mechanism for cancellation in violation of Cal. Bus. & Prof.
13 Code § 17602(b);

14 vi) Whether Plaintiff and the Class Members are entitled to restitution
15 of money paid in circumstances where the goods and services
16 provided by Defendant are deemed an unconditional gift in
17 accordance with Cal. Bus. & Prof. Code § 17603;

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

20 viii) Whether Plaintiff and Class Members are entitled to injunctive relief
21 under Cal. Bus. & Prof. Code § 17203;

22 ix) Whether Plaintiff and Class Members are entitled to attorneys' fees
23 and costs under California Code of Civil Procedure § 1021.5; and

24 x) The proper formula(s) for calculating the restitution owed to Class
25 Members.

26 30. [Fed. R. Civ. P. 23(a)(3)] Plaintiff's claims are typical of the claims of the
27 members of the Class. Plaintiff and all members of the Class have sustained injury and
28 are facing irreparable harm arising out of Defendant's common course of conduct as

1 complained of herein. The losses of each member of the Class were caused directly by
2 Defendant's wrongful conduct as alleged herein.

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

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

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

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

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

4 **FIRST CAUSE OF ACTION**

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

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

10 36. The foregoing paragraphs are alleged herein and are incorporated herein
11 by reference.

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

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

16 (1) Fail to present the automatic renewal offer terms or continuous
17 service offer terms in a clear and conspicuous manner before the
18 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.

19 38. At all relevant times Defendant failed to present the automatic renewal
20 offer terms, or continuous service offer terms, in a clear and conspicuous manner and in
21 visual proximity the request for consent to the offer before the subscription or
22 purchasing agreement was fulfilled.

23 39. As a result of Defendant's violations of Cal. Bus. & Prof. Code §
24 §17602(a)(1), Defendant is subject under Cal. Bus. & Prof. Code § 17604 to all civil
25 remedies that apply to a violation of Article 9, of Chapter 1, of Part 3, of Division 7 of
26 the Cal. Bus. & Prof. Code.

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1 40. Plaintiff, on behalf of herself and Class Members, requests relief as
2 described below.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO OBTAIN CONSUMER’S AFFIRMATIVE CONSENT**
5 **BEFORE THE SUBSCRIPTION IS FULFILLED**

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

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

8 41. The foregoing paragraphs are alleged herein and are incorporated herein
9 by reference.

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

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

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

19 43. At all relevant times Defendant charged Plaintiff’s and Class Members’
20 Payment Method for an automatic renewal or continuous service without first obtaining
21 Plaintiff’s and Class Members affirmative consent to language containing the automatic
22 renewal offer terms or continuous service offer terms.

23 44. As a result of Defendant’s violations of Cal. Bus. & Prof. Code §
24 17602(a)(2), Defendant is liable to provide restitution to Plaintiff and Class Members
25 under Cal. Bus. & Prof. Code § 17603.

26 45. Plaintiff, on behalf of herself and Class Members, requests relief as
27 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), 17602(b))

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

“A business making automatic renewal or continuous service offers shall provide a toll-free telephone number, electronic mail address, a postal address only when the seller directly bills the consumer, or 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).”

49. At all relevant times 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. Had Defendant provided the proper acknowledgment with information on how to cancel, Plaintiff would have cancelled her automatic subscription prior to being improperly charged after her initial purchase. Likewise, had

1 Defendant provided the proper acknowledgment, Plaintiff and the Class would not have
2 suffered an informational injury for every month they were not provided the substantive
3 information on Defendant's automatic renewal and continuous service offer terms,
4 cancellation policy, and information on how to cancel, but were charged an ongoing,
5 and indefinite monthly subscription fee.

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

10 51. Plaintiff, on behalf of herself and Class Members, requests relief as
11 described below.

12 **FOURTH CAUSE OF ACTION**

13 **VIOLATION OF THE UNFAIR COMPETITION LAW**

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

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

16 52. The foregoing paragraphs are alleged herein and are incorporated herein
17 by reference.

18 53. Cal. Bus. & Prof. Code § 17200, *et seq.* (the "UCL") prohibits unfair
19 competition in the form of any unlawful or unfair business act or practice. Cal. Bus. &
20 Prof. Code § 17204 allows "a person who has suffered injury in fact and has lost money
21 or property" to prosecute a civil action for violation of the UCL. Such a person may
22 bring such an action on behalf of himself or herself and others similarly situated who
23 are affected by the unlawful and/or unfair business practice or act.

24 54. Since December 1, 2010, and continuing to the present, Defendant has
25 committed unlawful business acts or practices as defined by the UCL, by violating Cal.
26 Bus. & Prof. Code § 17602(a)(3). The public policy which is a predicate to a UCL
27 action under the unlawful prong of the UCL is tethered to a specific statutory provision.

28

1 *See* Cal. Bus. & Prof. Code §§ 17600, 17602. As such, no deception or reliance by
2 class members is necessary to assert a claim.

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

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

15 57. Plaintiff and similarly situated Class Members are entitled to enforce all
16 applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202, and to obtain
17 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203.

18 58. Plaintiff, on behalf of herself and Class Members, request relief as
19 described below.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff requests the following relief:

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

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

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

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

12 E. That the Court find and declare that Defendant has violated Cal. Bus. &
13 Prof. Code § 17602(b) by failing to provide an acknowledgment that describes a toll-
14 free telephone number, electronic mail address, a postal address only when the seller
15 directly bills the consumer, or another cost-effective, timely, and easy-to-use
16 mechanism for cancellation;

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

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

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

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

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

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

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7 Dated: October 7, 2016

PACIFIC TRIAL ATTORNEYS, APC

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9 By: /s/ Scott J. Ferrell

10 Scott. J. Ferrell
11 Attorney for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 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/ Scott J. Ferrell
Scott. J. Ferrell