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

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

Plaintiff,

v.

WEB.COM GROUP, INC., a Delaware  
corporation; and DOES 1 – 10, inclusive,

Defendants.

Case No. 8:17-cv-1210

**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 California who, within the applicable  
6 statute of limitations period up to and including the date of judgment in this action,  
7 purchased subscriptions for products (such as website support services) from Web.com,  
8 Inc. (“Defendant”). The class of others similarly situated to Plaintiff is referred to  
9 herein as “Class Members.” The claims for damages, restitution, injunctive and/or  
10 other equitable relief, and reasonable attorneys’ fees and costs arise under California  
11 Business and Professions Code (hereinafter “Cal. Bus. & Prof. Code”) §§ 17602,  
12 17603, 17604) and 17200, et seq., and California Code of Civil Procedure § 1021.5.  
13 Plaintiff and Class Members are consumers for purposes of Cal. Bus. & Prof. Code §§  
14 17600-17606.

15 2. During the Class Period, Defendant made automatic renewal or continuous  
16 service offers to consumers in California and (a) at the time of making the automatic  
17 renewal or continuous service offers, failed to present the automatic renewal offer terms  
18 or continuous service offer terms, in a clear and conspicuous manner and in visual  
19 proximity to the request for consent to the offer before the subscription or purchasing  
20 agreement was fulfilled in violation of Cal. Bus. & Prof. Code § 17602(a)(1); (b)  
21 charged Plaintiff’s and Class Members’ credit or debit cards, or third-party account  
22 (hereinafter “Payment Method”) without first obtaining Plaintiff’s and Class Members’  
23 affirmative consent to the agreement containing the automatic renewal offer terms or  
24 continuous service offer terms in violation of Cal. Bus. & Prof. Code § 17602(a)(2); and  
25 (c) failed to provide an acknowledgment that includes the automatic renewal or  
26 continuous service offer terms, cancellation policy, and information regarding how to  
27 cancel in a manner that is capable of being retained by the consumer in violation of Cal.  
28 Bus. & Prof. Code §§ 17602(a)(3) and 17602(b). As a result, all goods, wares,

1 merchandise, or products sent to Plaintiff and Class Members under the automatic  
2 renewal of continuous service agreements are deemed to be an unconditional gift  
3 pursuant to Cal. Bus. & Prof. Code § 17603.

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

### 8 **JURISDICTION AND VENUE**

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

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

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

### 19 **PARTIES**

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

23 8. Plaintiff is informed and believes, and upon such information and belief  
24 alleges, that Defendant Web.com Group, Inc. is a Delaware corporation with its  
25 principal place of business located in West Jacksonville, Florida. Defendant operates in  
26 California and has done business in California at all times during the Class Period.  
27 Also during the Class Period, Defendant made, and continues to make, automatic  
28

1 renewal or continuous service offers to consumers in California. Defendant operates a  
2 website which markets website support and construction services 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 (Web.com  
14 Group, Inc. and DOE Defendants will hereafter collectively be referred to as  
15 “Defendant”).

16 **FACTUAL BACKGROUND**

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

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

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

- 26 (1) Fail to present the automatic renewal offer terms or continuous  
27 service offer terms in a clear and conspicuous manner before the  
28 subscription or purchasing agreement is fulfilled and in visual

1 proximity, or in the case of an offer conveyed by voice, in temporal  
2 proximity, to the request for consent to the offer.

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

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

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

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

28 15. 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  
the surrounding text of the same size by symbol ls or other marks, in a manner that  
clearly calls attention to the language."

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 offers, at its website, found at [www.register.com](http://www.register.com), various  
17 subscriptions for website support and construction services. Defendant’s product and  
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 Web.com Master Services Agreement**

21           19. During the Class Period, Defendant’s webpage, found at  
22 [www.register.com](http://www.register.com), contained a section entitled “Web.com Master Services  
23 Agreement”. **This is a lengthy document in which the information concerning the  
24 recurring nature of Defendant’s subscription programs and the manner in which  
25 the subscriptions may be canceled was, at all relevant times, not set forth in clear  
26 and conspicuous language, as required by the applicable statutes and as set forth  
27 below.**

28 ///

1 **Defendant's Web.com Master Services Agreement Fails to Provide Clear and**  
2 **Conspicuous Disclosures As Required by Law.**

3 20. During the Class Period, within the Web.com Master Services Agreement,  
4 Defendant failed to state in clear and conspicuous language (*i.e.*, in larger type than the  
5 surrounding text, or in contrasting type, font, or color to the surrounding text of the  
6 same size, or set off from the surrounding text of the same size by symbols of other  
7 marks, in a manner that clearly 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), (2).**

25 21. During the Class Period, Defendant made an automatic renewal offer for  
26 its subscriptions plans to Consumers in the United States, including Plaintiff and Class  
27 Members. On the pages where the subscriber essentially finalized the purchase, there  
28 was no description of that policy. Accordingly, the website did not contain automatic

1 renewal offer terms or continuous service offer terms as defined by Cal. Bus. & Prof.  
2 Code § 17601(b).

3 **[Insert pages 5-7 from the 2/14/17 scrape.]**

4 22. As a result, during the class period, prior to charging Plaintiff and Class  
5 Members, Defendant failed to obtain Plaintiff's and Class Members' affirmative  
6 consent to the automatic renewal offer terms or continuous service offer terms as  
7 required by Cal. Bus. & Prof. Code § 17602(a)(1), (2).

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

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

18 24. Furthermore, and in addition to the above, after Plaintiff and Class  
19 Members subscribed to one of Defendant's subscription plans, Defendant sent to  
20 Plaintiff and Class Members email follow-ups to their purchase, but has failed, and  
21 continues to fail, to provide an acknowledgement that includes the automatic renewal or  
22 continuous service offer terms, cancellation policy, and information on how to cancel in  
23 a manner that is capable of being retained by Plaintiff and Class Members in violation  
24 of Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b).

25 **[Insert 2 emails dated 2/22/17 – there are other emails but they seem to be same as**  
26 **the 2 on 2/22]**

27 ///

28 ///



**CLASS ACTION ALLEGATIONS**

1  
2 25. Plaintiff brings this action, on behalf of herself and all others similarly  
3 situated, as a class action pursuant to Rule 23(a) of the Federal Rules of Civil  
4 Procedure. The proposed Class (the “Class”) that Plaintiff seeks to represent is  
5 composed of and defined as:

6 **“All persons within California that, within the applicable statute of**  
7 **limitations period up to and including entry of judgment in this**  
8 **matter, purchased any product or service in response to an offer**  
9 **constituting an “Automatic Renewal” as defined by § 17601(a) from**  
10 **Web.com Group, Inc., its predecessors, or its affiliates, via the website**  
11 **www.register.com.”**

12 26. Excluded from the Class are governmental entities, Defendant, any entity  
13 in which Defendant has a controlling interest, and Defendant’s officers, directors,  
14 affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries,  
15 and assigns, and individuals bound by any prior settlement. Also excluded from the  
16 Class is any judge, justice, or judicial officer presiding over this matter.

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

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

27 29. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all  
28 members of the Class that predominate over any questions affecting only individual

1 members of the Class. These common legal and factual questions, which do not vary  
2 from class member to class member, and which may be determined without reference to  
3 the individual circumstances of any class member, include, but are not limited to, the  
4 following:

- 5 i. Whether during the Class Period Defendant failed to present the  
6 automatic renewal offer terms, or continuous service offer terms, in  
7 a clear and conspicuous manner before the subscription or  
8 purchasing agreement was fulfilled and in visual proximity to the  
9 request for consent to the offer in violation of Cal. Bus. & Prof.  
10 Code § 17602(a)(1);
- 11 ii. Whether during the Class Period Defendant charged Plaintiff's and  
12 Class Members' Payment Method for an automatic renewal or  
13 continuous service without first obtaining the Plaintiff's and Class  
14 Members' affirmative consent to the automatic renewal offer terms  
15 or continuous service offer terms in violation of Cal. Bus. & Prof.  
16 Code § 17602(a)(2);
- 17 iii. Whether during the Class Period Defendant failed to provide an  
18 acknowledgement that included the automatic renewal or continuous  
19 service offer terms, cancellation policy, and information on how to  
20 cancel in a manner that is capable of being retained by Plaintiff and  
21 Class Members, in violation of Cal. Bus. & Prof. Code §  
22 17602(a)(3);
- 23 iv. Whether during the Class Period Defendant failed to provide an  
24 acknowledgment that describes a cost-effective, timely, and easy-to-  
25 use mechanism for cancellation in violation of Cal. Bus. & Prof.  
26 Code § 17602(b);
- 27 v. Whether Plaintiff and the Class Members are entitled to restitution  
28 of money paid in circumstances where the goods and services

1 provided by Defendant are deemed an unconditional gift in  
2 accordance with Cal. Bus. & Prof. Code § 17603;

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

5 vii. Whether Plaintiff and Class Members are entitled to injunctive relief  
6 under Cal. Bus. & Prof. Code § 17203;

7 viii. Whether Plaintiff and Class Members are entitled to attorneys' fees  
8 and costs under California Code of Civil Procedure § 1021.5; and

9 ix. The proper formula(s) for calculating the restitution owed to Class  
10 Members.

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

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

19 32. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available  
20 methods of fair and efficient adjudication of this controversy, since individual litigation  
21 of the claims of all Class members is impracticable. Even if every Class member could  
22 afford individual litigation, the court system could not. It would be unduly burdensome  
23 to the courts in which individual litigation of numerous issues would proceed.  
24 Individualized litigation would also present the potential for varying, inconsistent, or  
25 contradictory judgments and would magnify the delay and expense to all parties and to  
26 the court system resulting from multiple trials of the same complex factual issues. By  
27 contrast, the conduct of this action as a class action, with respect to some or all of the  
28 issues presented herein, presents fewer management difficulties, conserves the

1 resources of the parties and of the court system, and protects the rights of each Class  
2 member.

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

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

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

15 **FIRST CAUSE OF ACTION**

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

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

21 36. The foregoing paragraphs are alleged herein and are incorporated herein  
22 by reference.

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

24  
25 (a) It shall be unlawful for any business making an automatic renewal or  
26 continuous service offer to a consumer in this state to do any of the  
following:

27 (1) Fail to present the automatic renewal offer terms or continuous  
28 service offer terms in a clear and conspicuous manner before the

1 subscription or purchasing agreement is fulfilled and in visual  
2 proximity, or in the case of an offer conveyed by voice, in temporal  
3 proximity, to the request for consent to the offer.

4 38. Plaintiff and Class Members purchased Defendant's website construction  
5 and support services and related products for personal, family or household purposes.  
6 Defendant failed to present the automatic renewal offer terms, or continuous service  
7 offer terms, in a clear and conspicuous manner and in visual proximity the request for  
8 consent to the offer before the subscription or purchasing agreement was fulfilled.

9 39. As a result of Defendant's violations of Cal. Bus. & Prof. Code §  
10 §17602(a)(1), Defendant is subject under Cal. Bus. & Prof. Code § 17604 to all civil  
11 remedies that apply to a violation of Article 9, of Chapter 1, of Part 3, of Division 7 of  
12 the Cal. Bus. & Prof. Code.

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

15 **SECOND CAUSE OF ACTION**

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

17 **BEFORE THE SUBSCRIPTION IS FULFILLED**

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

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

20 41. The foregoing paragraphs are alleged herein and are incorporated herein  
21 by reference.

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

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

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

1 43. Plaintiff and Class Members purchased Defendant's website construction  
2 and support services and related products for personal, family or household purposes.  
3 Defendant charged, and continues to charge Plaintiff's and Class Members' Payment  
4 Method for an automatic renewal or continuous service without first obtaining  
5 Plaintiff's and Class Members affirmative consent to the Web.com Master Services  
6 Agreement containing the automatic renewal offer terms or continuous service offer  
7 terms.

8 44. As a result of Defendant's violations of Cal. Bus. & Prof. Code §  
9 17602(a)(2), Defendant is liable to provide restitution to Plaintiff and Class Members  
10 under Cal. Bus. & Prof. Code § 17603.

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

13 **THIRD CAUSE OF ACTION**

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

17 **(CAL. BUS. & PROF. CODE §§ 17602(a)(3), 17602(b))**

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

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

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

22  
23 (a) It shall be unlawful for any business making an automatic renewal or  
24 continuous service offer to a consumer in this state to do any of the  
following:

25 (3) Fail to provide an acknowledgment that includes the  
26 automatic renewal or continuous service offer terms,  
27 cancellation policy, and information regarding how to cancel in  
28 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. Plaintiff and Class Members purchased Defendant’s website construction and support services and related products for personal, family or household purposes. 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.

50. As a result of Defendant’s violations of Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b), 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.

51. Plaintiff, on behalf of herself 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 her own behalf and on behalf of the Class, against All Defendants)**

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

53. Cal. Bus. & Prof. Code § 17200, *et seq.* (the “UCL”) prohibits unfair competition in the form of any unlawful or unfair 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

1 bring such an action on behalf of himself or herself and others similarly situated who  
2 are affected by the unlawful and/or unfair business practice or act.

3 54. Since December 1, 2010, and continuing during the Class Period,  
4 Defendant has committed unlawful and/or unfair business acts or practices as defined  
5 by the UCL, by violating Cal. Bus. & Prof. Code §§ 17602(a)(1), 17602(a)(2),  
6 17602(a)(3) and 17602(b). The public policy which is a predicate to a UCL action  
7 under the unfair prong of the UCL is tethered to a specific statutory provision. *See* Cal.  
8 Bus. & Prof. Code §§ 17600, 17602.

9 55 Plaintiff has standing to pursue this claim because she suffered injury in  
10 fact and has lost money or property as a result of Defendant's actions as set forth  
11 herein. Plaintiff purchased Defendant's website construction and support services and  
12 related products for personal, family, or household purposes.

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

19 57. 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 58. 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 59. Plaintiff has assumed the responsibility of enforcement of the laws and  
2 public policies specified herein by suing on behalf of herself and other similarly-  
3 situated Class Members. Plaintiff's success in this action will enforce important rights  
4 affecting the public interest. Plaintiff will incur a financial burden in pursuing this  
5 action in the public interest. An award of reasonable attorneys' fees to Plaintiff is thus  
6 appropriate pursuant to California Code of Civil Procedure § 1021.5.

7 60. Plaintiff, on behalf of herself and Class Members, request relief as  
8 described below.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff requests the following relief:

11 A. That the Court determine that this action may be maintained as a class  
12 action, and define the Class as requested herein;

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

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

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

27 E. That the Court find and declare that Defendant has violated Cal. Bus. &  
28 Prof. Code § 17602(b) by failing to provide an acknowledgment that describes a toll-

1 free telephone number, electronic mail address, a postal address only when the seller  
2 directly bills the consumer, or another cost-effective, timely, and easy-to-use  
3 mechanism for cancellation;

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

7 G. That the Court award to Plaintiff and Class Members damages and full  
8 restitution due to Defendant's UCL violations, pursuant to Cal. Bus. & Prof. Code §§  
9 17200-17205 in the amount of their subscription agreement payments;

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

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

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

17  
18 Dated: July 16, 2017

PACIFIC TRIAL ATTORNEYS, APC

19 By: /s/ Scott J. Ferrell

20 Scott. J. Ferrell

21 Attorneys for Plaintiff  
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