

(ENDORSED)
FILED
AUG 20 2018

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2 Deputy District Attorney
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Clerk of the Court
Superior Court of CA County of Santa Clara
BY R. Burciaga DEPUTY

5
6 Attorneys for Plaintiffs

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**

10 PEOPLE OF THE STATE OF CALIFORNIA,
11 Plaintiff,
12 v.
13 ADOREME, INC., a Delaware Corporation,
14 Defendant.

CASE NO. **18CV332846**
STIPULATION FOR ENTRY OF FINAL
JUDGMENT

15
16 Plaintiff, the People of the State of California, appears through its attorneys: Jeffrey F. Rosen,
17 District Attorney of Santa Clara County, by Jennifer Deng, Deputy District Attorney. Defendants
18 AdoreMe, Inc., (hereinafter "DEFENDANT") appear through their attorney, Orrick, Herrington &
19 Sutcliffe L.L.P., by Mark Mermelstein.
20

21 **IT IS HEREBY STIPULATED that:**

- 22
23 1. The proposed Final Judgment, a copy of which is attached hereto as Exhibit A, and by
24 this reference made a part hereof, may be entered in the above-entitled matter and that said entry of
25 judgment may be ordered by a Judge of the Superior Court.
26 2. Defendant acknowledges that it has been represented by legal counsel throughout all of
27 the negotiations which preceded the execution of this stipulation, and that it has executed this
28 stipulation with the consent and on the advice of such counsel.

1 3. Defendant hereby waives the right to appeal, to attempt to set aside or vacate, or
2 otherwise to attack, directly or collaterally, the attached proposed Final Judgment between the People
3 and the Defendants entered pursuant to this stipulation.

4 4. Defendant agrees to be bound as of the date of its officer's signature on this stipulation
5 by the provisions of the proposed Final Judgment as though ordered by the Court, and the Defendants
6 waives any further notice or service of this Final Judgment.

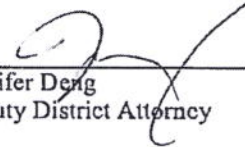
7 5. The filing of this Stipulation and Final Judgment Pursuant to Stipulation may be made
8 by the ex parte appearance of the People without further notice to Defendant.

9 6. That this stipulation may be signed by counsel and the parties in counterpart.

10 **FOR THE PEOPLE:**

11 DATED: 3/16/18
12

JEFFREY F. ROSEN
SANTA CLARA COUNTY DISTRICT ATTORNEY

13
14 By 
15 Jennifer Deng
16 Deputy District Attorney
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1 **FOR DEFENDANTS: AdoreMe, Inc.**

2 DATED: 2018/03/06

3

4

By 
Morgan Hernandez Waiche, CEO

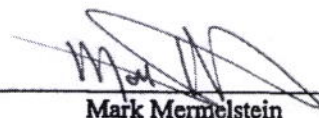
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Approved as to form:

7 DATED: 2018/03/21

By


Mark Mermelstein
Attorney for Defendants, Orrick, Herrington & Sutcliffe
L.L.P.

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Exhibit A

1 JEFFREY F. ROSEN, District Attorney
2 (State Bar #163589)
3 Jennifer Deng, Deputy District Attorney
4 (State Bar # 206285)
5 70 West Hedding Street, West Wing
6 San Jose, California 95110
7 Telephone: (408) 792-2875

8 *Attorneys for Plaintiff*

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SANTA CLARA

11 PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 v.

14 ADOREME, INC., a Delaware Corporation,

15 Defendant.

CASE NO.

[PROPOSED]
FINAL JUDGMENT PURSUANT TO
STIPULATION

16
17 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, appears through its attorneys
18 Jeffrey F. Rosen, District Attorney, County of Santa Clara, by Jennifer Deng, Deputy District
19 Attorney; and Defendant AdoreMe, Inc., a Delaware Corporation, (hereinafter "DEFENDANT")
20 appear through its attorney, Orrick, Herrington & Sutcliffe L.L.P., by Mark Mermelstein.

21 It appears to the Court that Plaintiff and Defendant (hereinafter referred to as the
22 "PARTIES") hereto have stipulated and consented to the entry of this Final Judgment Pursuant to
23 Stipulation ("Final Judgment") without taking of proof, without trial or adjudication of any factual
24 or legal issue herein, and without this Final Judgment constituting evidence or an admission or
25 denial by the Defendant regarding any issue of fact or law alleged in the complaint, and the Court
26 having considered the matter and pleadings, and good cause appearing therefore;
27
28

1 A. **"Automatic Renewal Plan"** means a plan or arrangement in which a paid subscription
2 or purchasing agreement is automatically renewed at the end of a definite term for a
3 subsequent term. It also includes "free trial" offers that convert to automatic payment
4 unless cancelled by the consumer.

5 B. **"Automatic Renewal Offer Terms"** mean the following Clear and Conspicuous
6 disclosures:

- 7 i. That the subscription or purchasing agreement will continue until the consumer
8 cancels;
- 9 ii. The description of the cancellation policy that applies to the offer;
- 10 iii. The recurring charges that will be charged to the consumer's credit or debit card
11 or payment account with a third party as part of the Automatic Renewal Plan or
12 arrangement, and that the amount of the charge may change, if that is the case,
13 and the amount to which the charge will change, if known;
- 14 iv. The length of the automatic renewal term or that the service is continuous, unless
15 the length of the term is chosen by the consumer; and
- 16 v. The minimum purchase obligation, if any.

17 C. **"Clear and Conspicuous"** means:

- 18 i. In larger type than the surrounding text, or in contrasting type, font, or color to the
19 surrounding text of the same size, or set off from the surrounding text of the same
20 size by symbols or other marks, in a manner that clearly calls attention to the
21 language.
- 22 ii. In the case of an audio communication, in a volume and cadence sufficient to be
23 readily audible and understandable (or in text that is consistent with subparagraph
24 7Ci. above) and in temporal proximity, to the request for consent to the offer.
- 25 iii. In the case of video communication, (e.g., television or streaming video), in a
26 volume and cadence sufficient to be readily audible and understandable (or in text
27

1 that is in clearly readable font size and color for a sufficient duration for an
2 ordinary consumer to read and comprehend the disclosure that is consistent with
3 subparagraph 7.C.i. above) and in temporal proximity to the consent to the offer.

- 4 iv. In communications made through interactive media such as the Internet, online
5 services and software:
- 6 a. The disclosure shall be "Unavoidable," meaning that a disclosure must be
7 presented in such a manner that consumers viewing an advertisement will
8 be exposed to the disclosure in the course of communication without
9 having to take affirmative actions, such as scrolling down a page, clicking
10 on a link to other pages, activating a pop-up window, or entering a search
11 term to view the disclosure;
- 12 b. The disclosure shall be presented in a form consistent with Subsection
13 7.C.i., 7.C.ii, and 7.C.iii of this definition in addition to any audio or video
14 presentation of it; and
- 15 c. The disclosure shall be "in close proximity" which shall mean on the same
16 webpage, online service page, or other electronic display, and proximate to
17 the triggering representation, and shall not be accessed or displayed
18 through hyperlinks, pop-ups, interstitials, or other means;
- 19 v. In all instances, the disclosure shall be presented prior to the subscription or
20 purchasing agreement fulfillment and in visual proximity to the fulfillment of said
21 subscription or purchasing agreement, and displayed in an understandable
22 language and syntax, and with nothing contrary to, inconsistent with, or in
23 mitigation of the disclosures used in any communication with the consumer.
- 24 vi. In all instances, the consumer's affirmative consent to the agreement containing
25 the "Automatic Renewal Offer Terms" must be obtained prior to charging the
26 consumer's credit or debit card or the consumer's account with a third party for an
27

1 Automatic Renewal Plan.

2 D. **“Forfeited Store Credit”** means monies paid by California Consumers for unused store
3 credit that Defendant forfeited and have not been refunded to those customers or been
4 subject to a chargeback in relation to those customers.

5 E. **“Payment Vacation”** means an AdoreMe feature which requires the customer to
6 affirmatively elect to avoid recurring charges for up to two months according to the
7 Automatic Renewal Plan.

8 F. **“Person”** means a natural person, organization, or other legal entity, including a
9 corporation, limited liability company, partnership, proprietorship, association,
10 cooperative government or governmental subdivision or agency, or any other group or
11 combination acting as an entity. The terms "customer", "consumer" and "person" as used
12 herein are interchangeable.

13 G. **“Skip”** means an AdoreMe feature which requires the customer to affirmatively elect to
14 avoid a recurring charge according to the Automatic Renewal Plan.

15 H. **“California Consumer”** shall mean any Person who sought or acquired, by purchase,
16 any goods from AdoreMe and said person had a billing address located in the State of
17 California.

18 J. **“Undeliverable email”** means an email that bounces back, meaning it cannot be
19 delivered for some reason, such as, the intended email box is full, the email address is no
20 longer valid, the email server is temporary or permanently unavailable, the email is
21 blocked, or for any other reason (other than an automatic reply).

22 K. **“Defendant”** means AdoreMe, Inc., d/b/a Adore Me and Adoreme.com, Corp., and its
23 successors and assigns, collectively, or in any combination.

24 **INJUNCTION**

25 8. Pursuant to Business and Professions Code sections 17203 and 17535, Defendant, its
26 directors, officers, agents, employees, representatives, successors and assigns acting within the course
27 and scope of their agency or employment are hereby permanently enjoined and restrained from directly
28

1 or indirectly doing any of the following acts or practices:

2 General

- 3 A. Making any false or misleading representations intended to promote sales on its website,
4 advertising, or any other form of marketing.
- 5 B. Making false or misleading representations of any cost to the consumer to purchase,
6 receive, use, or return the initial good or service.
- 7 C. Making false or misleading representations that the consumer will not be charged for
8 any good or service.
- 9 D. Making false or misleading representations that a consumer can use store credit at any
10 time to purchase any good or service.
- 11 E. Making false or misleading representations that a good or service is offered on a “free,”
12 “trial,” “discounted” basis, or words of similar import, denoting or implying the absence
13 of an obligation on the part of the recipient of the offer to affirmatively act in order to
14 avoid charges, including where a charge will be assessed pursuant to the offer unless the
15 consumer takes affirmative steps to prevent or stop such a charge.
- 16 F. Making false or misleading representations that a consumer can obtain a good or service
17 for a processing, service, shipping, handling, or administrative fee with no further
18 obligation.

19 Automatic Renewal Disclosures

- 20 G. Failing to disclose, in a “**Clear and Conspicuous**” manner, all “**Automatic Renewal**
21 **Offer Terms**” before obtaining the consumer’s billing information.

22 Automatic Renewal: Affirmative Consent

- 23 H. Charging any consumer in an Internet-based sale of a good or service sold through an
24 “**Automatic Renewal Plan**” without:
- 25 a. Providing text that “**Clearly and Conspicuously**” discloses the “**Automatic**
26 **Renewal Offer Terms**” before obtaining the consumer’s billing information;
- 27

1 b. Presenting the “**Automatic Renewal Offer Terms**” in a “**Clear and**
2 **Conspicuous**” manner before the subscription or purchasing agreement for a
3 Membership Program is fulfilled and in visual proximity to the consent for the
4 offer as set forth in California Business and Professions Code §17602(a)(1);

5 c. Obtaining a consumer’s affirmative consent to the agreement containing the
6 “**Automatic Renewal Offer Terms**” before charging the consumer’s credit or
7 debit card or the consumer’s account with a third party as set forth in California
8 Business and Professions Code §17602(a)(2);

9 d. Providing a simple mechanism for a consumer to stop recurring charges from
10 being placed on the consumer’s credit card, debit card, bank account, or other
11 financial account.

12 I. In an offer conveyed on the telephone or in person, failing to present the “**Automatic**
13 **Renewal Offer Terms**” in a “**Clear and Conspicuous**” manner before the subscription
14 or purchasing agreement for a Membership Program is fulfilled and in temporal
15 proximity, to the request for consent to the offer as set forth in California Business and
16 Professions Code §17602(a)(1);

17 J. For all written offers with an “**Automatic Renewal Plan**” (including over the Internet or
18 other web-based applications or services), a consumer’s express informed consent shall
19 be obtained, prior to Defendant obtaining any Billing Information from consumers,
20 through a checkbox, signature, or other substantially similar method, that consumers
21 must affirmatively select or sign to accept the “**Automatic Renewal Offer.**”
22 Immediately adjacent to such check box, signature or substantially similar method,
23 Defendant shall disclose all such costs associated with the “**Automatic Renewal Plan**”
24 that the consumer is agreeing to pay such costs, the length of any trial period that
25 consumers must cancel within to avoid being charged, and that the consumer must cancel
26 to avoid being charged. This disclosure shall contain no additional information and shall
27

1 be "**Clear and Conspicuous**" in relation to any other information provided on the page
2 relating to costs, risks, or obligations associated with any "**Automatic Renewal Offer,**"
3 including any terms referring to "free", "trial", and "processing fee".

4 K. For all oral offers including a "**Automatic Renewal Plan,**" Defendant shall, in addition
5 to disclosing the "**Automatic Renewal Offer Terms,**" disclose a description of the
6 good or service, the name of the seller or provider of the good or service, the length of
7 any trial period, the deadline (by date or frequency) by which the consumer must act in
8 order to stop all recurring charges, and the mechanism to stop any recurring charges.
9 Prior to obtaining any Billing Information from a consumer, the defendant must either
10 (a) comply with the requirements for written offers set forth above, in connection with
11 requiring the consumer to join the Automatic Renewal Plan online, or (b) obtain
12 affirmative and unambiguous oral confirmation that the consumer:

- 13 1. Consents to authorizing payment for any goods or services;
- 14 2. Understands that the transaction includes a "**Automatic Renewal Plan;**" and
- 15 3. Understands the specific affirmative steps the consumer must take to prevent
16 further charges.

17 L. In the event that Defendant enrolls a consumer in an Automatic Renewal Plan through
18 oral communications only (e.g., telephone call), then Defendant shall maintain for three
19 (3) years from the date of each such transaction, a voice recording of the entire
20 transaction, including the prescribed statements set out in Subsection 7.B. of the Section
21 entitled "Definitions" and the cancellation process described in paragraph M. below.
22 Each recording must be retrievable by date and by the consumer's name, telephone
23 number, or Billing Information and must be provided upon request to the consumer, the
24 consumer's bank, or any law enforcement entity.

25
26 Automatic Renewal: Acknowledgement

27 M. Failing to provide an acknowledgment that includes the "**Automatic Renewal Offer**

1 **Terms,**” the cancellation policy and how a consumer can cancel the membership prior
2 to incurring any charge, set forth in a “**Clear and Conspicuous**” manner, and in a
3 manner that is capable of being retained by the consumer as set forth in California
4 Business and Professions Code §17602(a)(3);

5 1. If the order which includes an “**Automatic Renewal Plan**” is placed on the
6 Internet or through any other web-based services or application, the acknowledgment
7 shall be sent as soon as practicable by email to the email address provided at the time
8 of purchase. The acknowledgment shall prominently state in the subject line of the
9 email “Order Confirmation”.

10 2. If the order which includes the “**Automatic Renewal Offer**” is placed over the
11 telephone or some other written form other than the Internet or other web-based
12 services or application, and no consumer email address is provided, the Defendant
13 shall provide the written acknowledgment either by USPS first class mail or in
14 written form with the product if such notice will be timely in allowing the Consumer
15 a reasonable opportunity to cancel the free trial prior to being charged.

16 Automatic Renewal: Cancellation

17 N. Failing to provide a simple mechanism for consumers to (1) avoid being charged, or
18 charged an increased amount, for the good or service; and (2) immediately stop any
19 recurring charges. Such mechanism must not be difficult, costly, confusing, or time-
20 consuming; and it must be at least as simple as the mechanism the consumer used to
21 initiate the recurring charges. In addition:

22 1. For consumers who entered into the “**Automatic Renewal Plan**” agreement to
23 purchase a good service over the Internet or through other web-based applications
24 or services, Defendant must provide a mechanism, accessible over the Internet or
25 through such other web-based application or service that consumers can easily use
26 to cancel the product or service and to immediately stop all further charges.
27

- 1 O. For consumers who entered into the “**Automatic Renewal Plan**” agreement to purchase
2 a good or service through an oral offer and acceptance, Defendant must maintain a
3 telephone number and a postal address that consumers can easily use to cancel the
4 product or service and to immediately stop all further charges, or to access the simple
5 online cancellation mechanism identified in this section. Defendant must assure that all
6 calls to this telephone number shall be answered during normal business hours and that
7 mail to the postal address is retrieved regularly.
- 8 P. In the case of a **material change** in the “**Automatic Renewal Offer Terms**,” failing to
9 provide the consumer with a “**Clear and Conspicuous**” notice of the material change
10 and information on how to cancel in a manner that is capable of being retained by the
11 consumer as set forth in California Business and Professions Code §17602 (c);
- 12 Q. Using the term “risk free” or “100% Satisfaction”, if the customer could incur any charges
13 as a result of the purchase including but not limited to shipping charges, return shipping
14 charges, return fees or restocking fees, in a misleading manner as set forth in California
15 Business and Professions Code §§17500, 17537(a) and the FTC Guide §251.1 (c)
16 regarding Section 5(c) of the FTC Act, 15 USCS § 45;
- 17 R. Engaging in an unfair business practice as set forth in California Business and Professions
18 Code §17200.
- 19 S. Violating the provisions of California Business and Professions Code §§17601 and 17602.
- 20 T. Violating the provisions of the Restore Online Shoppers Confidence Act, 15 U.S.C. §§
21 8401-8405.

RESTITUTION

22
23
24 9. Pursuant to Business & Professions Code §§ 17203 and 17535, Defendant is hereby ordered
25 to make restitution as follows:

- 26 A. The restitution shall be offered to the class of California Customers (“Class”), who are
27 persons who meet the following criteria (“Eligible Recipients”):
- 28

1 1. At the time the customer incurred charges by AdoreMe: the customer (1) had a
2 California billing address and entered into an Automatic Renewal Plan; (2) paid one
3 or more Automatic Renewal Plan charges or fees from inception of the company to
4 present; and

5 (3) lost or forfeited their store credit; or

6 (3) used their store credit with the following parameters: customer was enrolled in
7 the Automatic Renewal Plan at least 2 months prior to cancelling and accumulated
8 store credits; did not **“Skip”** or have a **“Payment Vacation,”** did not receive a
9 refund of store credits; the consumer’s last purchase using store credits occurred
10 within the same month of cancellation; the customer’s cancellation of their account
11 occurred prior to July 2016; and

12 (a) the consumer placed only two orders; or

13 (b) placed any number of orders and told AdoreMe that it did not understand
14 the Automatic Renewal Plan. (hereinafter **“Used Store Credit”**)

15 B. Following entry of this Stipulated Final Judgment, Defendant shall use all reasonable
16 efforts, including obtaining from third parties such as Defendant’s payment
17 processor(s), to create a list of the most current, complete and accurate names, email
18 addresses, and last-known billing addresses of all Eligible Recipients. The list of
19 Eligible Recipients shall be reduced to a searchable electronic form, including at a
20 minimum, a spreadsheet produced using Microsoft Excel or equivalent software.

21 C. Defendant shall appoint at least one management-level employee to oversee the process
22 of identifying Eligible Recipients. This employee shall prepare and sign a declaration
23 of compliance under penalty of perjury and based on personal knowledge. The
24 declaration of compliance shall describe in detail the steps taken to identify all Eligible
25 Recipients, including a description of the computer files, books and records that were
26 searched or queried, the manner in which they were searched and the individuals
27

1 involved in this process. The declaration shall also attest that the list of Eligible
2 Recipients is accurate and complete, to the best of the declarant's knowledge and belief,
3 whereupon the Defendant shall proceed as follows:

4 i. The Defendant shall send or cause to be sent a refund notice and provide a
5 refund to each Eligible Recipient for the full amount of their Forfeited Store Credit
6 or Used Store Credit.

7 ii. The Defendant will take all reasonable steps to ensure that email notices are
8 not diverted to the recipients' "junk" or "spam" email folder. If the email notice is
9 returned as undeliverable, or is otherwise not successfully delivered, Defendant
10 must mail or cause to be mailed the refund notice with the refund check for the full
11 amount of their Forfeited Store Credit or Used Store Credit.

12 iii. For mailed notices, the Defendant must send the notice by first class mail,
13 address correction service requested with forwarding and return postage guaranteed.
14 The Defendant will run the names and addresses through a national change of
15 address update service before sending.

16 iv. For refunds made by check, Defendant may use the escrow fund held by a
17 third-party escrow agent referenced in the FTC v. AdoreMe, Inc. Stipulated Order
18 for Permanent Injunction and Monetary Judgment in United States District Court
19 Southern District of New York Case #17-CV-9083(ALC) (hereinafter "Escrow
20 Fund").

21 v. For refunds Defendant makes through reverse charges made to Eligible
22 Recipient's credit cards, the Defendant may withdraw funds from the Escrow Fund
23 equal to amounts it has successfully refunded to Eligible Recipients through such
24 reverse charges.

25 vi. Defendant are responsible for all costs of administration of the restitution
26 program.
27

1 D. Defendant shall email the List of Eligible Recipients to Deputy District Attorney
2 Jennifer Deng at the email address listed above. The Defendant shall again notify the
3 District Attorney identified above by email of the successful completion of the notice
4 and the number of notices. Finally, the Defendant shall provide notice to the above
5 described District Attorney of the number of claims paid, the total amount paid in
6 restitution, and shall break down the payments to reflect the payments paid pursuant to
7 each form of notice. The Defendant shall pay a minimum of \$200,000 in restitution to
8 the Class. Defendant shall timely respond to all inquiries by the District Attorney on
9 the details and or progress of the restitution, including but not limited to, disclosure of
10 all circumstances of restitution to individual Class members.

11 E. If the above described District Attorney has any questions or concerns regarding the
12 implementation of the restitution steps described above, the PARTIES shall confer to
13 attempt to resolve the questions or concerns with counsel for the defendants. If the
14 deficiency is not cured or otherwise resolved, the PARTIES may seek direction from
15 the Court.

16 10. Within 120 days of the Effective Date, Defendant shall make additional cy pres
17 restitution by distributing merchandise to the following homeless and/or women's organizations in the
18 State of California with a retail value (ie, the price Defendant sells to consumers) of Two Hundred
19 Fifty Thousand Dollars (\$250,000.00) as follows:

21 A. Defendant shall distribute to each recipient organization, which are located in the State of
22 California, quantities which have the retail dollar values as set forth in Exhibit A.

23 B. Defendant shall provide to each recipient organization, merchandise including at least
24 some sleepwear, loungewear, hosiery and underwear, though the quantities of each type of
25 merchandise provided shall be left to Defendant's sole discretion.

26 C. Defendant shall bear \$5,000 shipping costs, associated with complying with the
27

1 requirements of this Paragraph. Additional shipping costs, not to exceed \$15,000, will
2 be prorated from the three largest donations. Defendant will bear any additional costs,
3 should it exceed the amounts mentioned in this Paragraph.

4 D. Within 180 days of the Effective Date, Defendant shall provide Deputy District
5 Attorney Jennifer Deng with a written report confirming Defendants' compliance with
6 this Paragraph.
7

8 **PENALTIES AND COSTS**

9 11. Defendant is hereby ordered, at the time of the filing of this Final Judgment, to pay
10 civil penalties, costs, and fees in accordance with the terms below:

11 A. Defendant shall pay civil penalties in the amount of Six Hundred Thousand Dollars
12 (\$600,000.00) to the District Attorney of Santa Clara County pursuant to Business and
13 Professions Code §§17206 and 17536, which shall be payable in accordance with the
14 following schedule: \$200,000 upon the filing of the judgment, \$200,000 on January 1,
15 2019, and \$200,000 on January 1, 2020. Civil penalties shall be in the form of cashier's
16 check, money order or attorney trust fund check and shall be made payable to the "Santa
17 Clara County District Attorney's Office". The first payment shall be delivered via hand
18 delivery or overnight mail to Deputy District Attorney Jennifer Deng, no later than there
19 (3) business days after the date this Stipulated Final Judgment is entered.

20 B. Defendant shall pay to the Santa Clara County Court Clerk Four Hundred and Thirty Five
21 Dollars (\$435.00) payable to the "Clerk of the Superior Court" for court filing fees.

22 12. In the event any payment to be made herein is not received by the Office of the District
23 Attorney within ten (10) days of the due dates, the District Attorney may declare the entire balance
24 immediately due and payable in full and the balance shall bear interest at the rate of ten percent (10%)
25 per annum until paid in full. If Defendants have not completed all payments by January 30, 2020, an
26 additional One Hundred Thousand (\$100,000) civil penalty will be assessed.

27 13. To secure payment of the awards in paragraphs 11.A. above, AdoreMe shall deposit
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1 \$400,000 in an Orrick, Herrington & Sutcliffe L.L.P. Client Escrow Account (hereinafter "Orrick
2 Account") upon the filing of the judgment. The Orrick Account funds are solely to be used to pay
3 the Santa Clara County District Attorney's Office pursuant to this judgment. The Defendant shall
4 not withdraw funds from the Orrick Account. The Defendant agrees Orrick, Herrington & Sutcliffe
5 L.L.P., will release funds from the Orrick Account for payments pursuant to this judgment. Should
6 there be a missed payment, Defendant agrees Orrick, Herrington & Sutcliffe L.L.P. shall, upon the
7 District Attorney's request, release the entire balance immediately to the District Attorney. Any
8 accrued interest from the Orrick Account will be paid to the District Attorney in the last payment.

9 14. All Payments made pursuant to this judgment shall be delivered to the following
10 address:

11
12 Jennifer Deng, Deputy District Attorney
13 Santa Clara County District Attorney's Office
14 Consumer Protection Unit
15 70 West Hedding Street, West Wing
16 San Jose, California 95110

17 COMPLIANCE

18 15. For the purpose of securing compliance with the terms of this Stipulated Final
19 Judgment, Defendant shall, to the extent it continues to market Automatic Renewal Plans, or service
20 agreements to California persons and enroll new California members, are hereby ordered and
21 mandated to do all of the following:

- 22 A. Defendant shall create, maintain and make available to any representative of the People
23 for inspection and copying, within fifteen (15) days of any written request to do so, any
24 documents showing compliance with the terms of this Final Judgment;
- 25 B. Within thirty (30) days of the date of the entry of this Stipulated Final Judgment,
26 Defendant shall provide a copy of this Final Judgment to each of its current principals,
27 officers, directors and managers, having primary authority over sales, advertising or
28 policy responsibility with respect to the subject matter of this Final Judgment and shall

1 obtain from each such person a legible signed written acknowledgment indicating that he
2 or she has received a copy of this Final Judgment, read it, understood its terms, and
3 agreed to fully abide by all of its terms. Defendant shall provide written verification of
4 such acknowledgments to the People within fifteen (15) days of any written request to do
5 so;

6 C. For a period of five (5) years after entry of this Stipulated Final Judgment, Defendant
7 shall provide a copy of this Final Judgment to each of its future principals, officers,
8 directors and managers having primary authority over sales, advertising or policy
9 responsibility with respect to the subject matter of this judgment within ten (10) days
10 after the person commences his or her responsibilities. Defendant shall obtain from each
11 such person a legible signed written acknowledgment indicating that he or she received a
12 copy of this Stipulated Final Judgment, read it, understood its terms, and agreed to fully
13 abide by all of its terms. Defendant shall maintain and upon request make available,
14 within fifteen (15) days of receipt of a written request, to representatives of the People for
15 inspection and copying, all such legible signed written acknowledgments.

16 **JURISDICTION RETAINED**

17 16. Jurisdiction is retained for the purposes of enabling any party to this Final Judgment to
18 apply to the Court at any time for such order or directions as may be necessary or appropriate for the
19 construction of or carrying out of this Final Judgment, for the modification or termination of any of
20 the injunctive provisions thereof, for the enforcement of compliance therewith, or for the punishment
21 of violations there under.

22 **EFFECT AND ENTRY**

23 17. The Final Judgment shall take effect immediately upon entry hereof
24

25 Dated:

26 _____
27 Judge of the Superior Court
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Adore Me Donation List

Salvation Army*	702 W. Taylor St. San Jose, CA 95126	Will distribute all over California	\$100,000
Next Door Solutions*	234 E. Gish Road, Ste 200 San Jose, CA 95112	Santa Clara County	\$20,000
Bill Wilson Center*	3490 The Alameda Santa Clara, CA 95050	Santa Clara County	\$10,000
LifeMoves*	546 W. Julian St, San Jose	Santa Clara County, San Mateo County	\$20,000
Community Solutions*	9015 Murray Ave #100 Gilroy, CA 95020	Santa Clara and San Benito County	\$10,000
YWCA Silicon Valley*	375 South Third Street San Jose, CA 95112	Silicon Valley	\$25,000
YWCA Sonoma County	1421 Guerneville Road, Suite 200 Santa Rosa, CA 95404	Sonoma County	\$15,000
YWCA San Diego	Attention: Darlene Morino 1012 C St. San Diego, CA 92101-5522	San Diego County	\$20,000
YWCA Los Angeles	Attention: Cynthia Heard 1020 S. Olive St. 7 th Floor Los Angeles, CA 90015-1602	Los Angeles County	\$30,000

*AdoreMe may ship these donations to the Santa Clara County District Attorney's Office bundled according to the amounts listed, with the recipient organization name attached. The Santa Clara County District Attorney's Office will then distribute these donations.

1 JEFFREY F. ROSEN, District Attorney
2 (State Bar #163589)
3 Jennifer Deng, Deputy District Attorney
4 (State Bar # 206285)
5 70 West Hedding Street, West Wing
6 San Jose, California 95110
7 Telephone: (408) 792-2875

8 *Attorneys for Plaintiff*

(ENDORSED)
FILED
AUG 20 2018
Clerk of the Court
Superior Court of CA County of Santa Clara
BY R. Jimenez DEPUTY

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
v.
ADOREME, INC., a Delaware Corporation,
Defendant.

CASE NO. **18CV332846**
FINAL JUDGMENT PURSUANT TO
STIPULATION

Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, appears through its attorneys Jeffrey F. Rosen, District Attorney, County of Santa Clara, by Jennifer Deng, Deputy District Attorney; and Defendant AdoreMe, Inc., a Delaware Corporation, (hereinafter "DEFENDANT") appear through its attorney, Orrick, Herrington & Sutcliffe L.L.P., by Mark Mermelstein.

It appears to the Court that Plaintiff and Defendant (hereinafter referred to as the "PARTIES") hereto have stipulated and consented to the entry of this Final Judgment Pursuant to Stipulation ("Final Judgment") without taking of proof, without trial or adjudication of any factual or legal issue herein, and without this Final Judgment constituting evidence or an admission or denial by the Defendant regarding any issue of fact or law alleged in the complaint, and the Court having considered the matter and pleadings, and good cause appearing therefore;

1 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

2 1. The Final Judgment has been reviewed by this Court and is found to have been entered
3 into in good faith, and to be, in all respects, just, reasonable, equitable and adequate to protect the
4 public from the occurrence in the future of the conduct alleged in the Complaint.

5 2. Unless otherwise stated, all obligations imposed upon Defendant by the terms of this
6 Final Judgment is ordered pursuant to Sections 17200 et seq., and 17500 et seq., of the California
7 Business & Professions Code, including Sections 17203, 17206, and 17535.

8 3. The Parties waive the right to appeal this Final Judgment both as to form and content.

9 **JURISDICTION**

10 4. This civil enforcement action is brought on behalf of the People of the State of
11 California in the public interest under the laws of the State of California. Defendant has offered for
12 sale and/or sold products throughout the State of California, including Santa Clara County. All
13 Parties agree that the Santa Clara County Superior Court (“Court”) has jurisdiction of the subject
14 matter hereof and of the parties hereto.

15 **APPLICABILITY**

16 5. This Stipulated Final Judgment is applicable to Defendant and to its agents,
17 employees, representatives, officers, directors, managers, successors and assigns acting within the
18 course and scope of their agency or employment and in concert with Defendant, with actual or
19 constructive notice of this judgment. The Stipulated Final Judgment also applies to Defendant to
20 the extent it is controlling marketing, selling or distributing products through licensees, franchisees
21 or distributors, or in connection with a licensing agreement or product distribution agreement.

22 6. Nothing in this Stipulated Final Judgment shall excuse the Defendant from meeting
23 the requirements of any current or future requirements which now exist or may be imposed
24 hereinafter by law including, changes in applicable and legally binding legislation, regulations,
25 ordinances and/or permits.

26 **DEFINITIONS**

27 7. For purposes of this Final Judgment the following definitions shall apply:

1 A. **"Automatic Renewal Plan"** means a plan or arrangement in which a paid subscription
2 or purchasing agreement is automatically renewed at the end of a definite term for a
3 subsequent term. It also includes "free trial" offers that convert to automatic payment
4 unless cancelled by the consumer.

5 B. **"Automatic Renewal Offer Terms"** mean the following Clear and Conspicuous
6 disclosures:

- 7 i. That the subscription or purchasing agreement will continue until the consumer
8 cancels;
- 9 ii. The description of the cancellation policy that applies to the offer;
- 10 iii. The recurring charges that will be charged to the consumer's credit or debit card
11 or payment account with a third party as part of the Automatic Renewal Plan or
12 arrangement, and that the amount of the charge may change, if that is the case,
13 and the amount to which the charge will change, if known;
- 14 iv. The length of the automatic renewal term or that the service is continuous, unless
15 the length of the term is chosen by the consumer; and
- 16 v. The minimum purchase obligation, if any.

17 C. **"Clear and Conspicuous"** means:

- 18 i. In larger type than the surrounding text, or in contrasting type, font, or color to the
19 surrounding text of the same size, or set off from the surrounding text of the same
20 size by symbols or other marks, in a manner that clearly calls attention to the
21 language.
- 22 ii. In the case of an audio communication, in a volume and cadence sufficient to be
23 readily audible and understandable (or in text that is consistent with subparagraph
24 7Ci. above) and in temporal proximity, to the request for consent to the offer.
- 25 iii. In the case of video communication, (e.g., television or streaming video), in a
26 volume and cadence sufficient to be readily audible and understandable (or in text
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1 that is in clearly readable font size and color for a sufficient duration for an
2 ordinary consumer to read and comprehend the disclosure that is consistent with
3 subparagraph 7.C.i. above) and in temporal proximity to the consent to the offer.

- 4 iv. In communications made through interactive media such as the Internet, online
5 services and software:
 - 6 a. The disclosure shall be "Unavoidable," meaning that a disclosure must be
7 presented in such a manner that consumers viewing an advertisement will
8 be exposed to the disclosure in the course of communication without
9 having to take affirmative actions, such as scrolling down a page, clicking
10 on a link to other pages, activating a pop-up window, or entering a search
11 term to view the disclosure;
 - 12 b. The disclosure shall be presented in a form consistent with Subsection
13 7.C.i., 7.C.ii, and 7.C.iii of this definition in addition to any audio or video
14 presentation of it; and
 - 15 c. The disclosure shall be "in close proximity" which shall mean on the same
16 webpage, online service page, or other electronic display, and proximate to
17 the triggering representation, and shall not be accessed or displayed
18 through hyperlinks, pop-ups, interstitials, or other means;
- 19 v. In all instances, the disclosure shall be presented prior to the subscription or
20 purchasing agreement fulfillment and in visual proximity to the fulfillment of said
21 subscription or purchasing agreement, and displayed in an understandable
22 language and syntax, and with nothing contrary to, inconsistent with, or in
23 mitigation of the disclosures used in any communication with the consumer.
- 24 vi. In all instances, the consumer's affirmative consent to the agreement containing
25 the "Automatic Renewal Offer Terms" must be obtained prior to charging the
26 consumer's credit or debit card or the consumer's account with a third party for an
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Automatic Renewal Plan.

- D. **“Forfeited Store Credit”** means monies paid by California Consumers for unused store credit that Defendant forfeited and have not been refunded to those customers or been subject to a chargeback in relation to those customers.
- E. **“Payment Vacation”** means an AdoreMe feature which requires the customer to affirmatively elect to avoid recurring charges for up to two months according to the Automatic Renewal Plan.
- F. **“Person”** means a natural person, organization, or other legal entity, including a corporation, limited liability company, partnership, proprietorship, association, cooperative government or governmental subdivision or agency, or any other group or combination acting as an entity. The terms "customer", "consumer" and "person" as used herein are interchangeable.
- G. **“Skip”** means an AdoreMe feature which requires the customer to affirmatively elect to avoid a recurring charge according to the Automatic Renewal Plan.
- H. **“California Consumer”** shall mean any Person who sought or acquired, by purchase, any goods from AdoreMe and said person had a billing address located in the State of California.
- J. **“Undeliverable email”** means an email that bounces back, meaning it cannot be delivered for some reason, such as, the intended email box is full, the email address is no longer valid, the email server is temporary or permanently unavailable, the email is blocked, or for any other reason (other than an automatic reply).
- K. **“Defendant”** means AdoreMe, Inc., d/b/a Adore Me and Adoreme.com, Corp., and its successors and assigns, collectively, or in any combination.

INJUNCTION

8. Pursuant to Business and Professions Code sections 17203 and 17535, Defendant, its directors, officers, agents, employees, representatives, successors and assigns acting within the course and scope of their agency or employment are hereby permanently enjoined and restrained from directly

1 or indirectly doing any of the following acts or practices:

2 General

- 3 A. Making any false or misleading representations intended to promote sales on its website,
4 advertising, or any other form of marketing.
- 5 B. Making false or misleading representations of any cost to the consumer to purchase,
6 receive, use, or return the initial good or service.
- 7 C. Making false or misleading representations that the consumer will not be charged for
8 any good or service.
- 9 D. Making false or misleading representations that a consumer can use store credit at any
10 time to purchase any good or service.
- 11 E. Making false or misleading representations that a good or service is offered on a “free,”
12 “trial,” “discounted” basis, or words of similar import, denoting or implying the absence
13 of an obligation on the part of the recipient of the offer to affirmatively act in order to
14 avoid charges, including where a charge will be assessed pursuant to the offer unless the
15 consumer takes affirmative steps to prevent or stop such a charge.
- 16 F. Making false or misleading representations that a consumer can obtain a good or service
17 for a processing, service, shipping, handling, or administrative fee with no further
18 obligation.

19 Automatic Renewal Disclosures

- 20 G. Failing to disclose, in a “**Clear and Conspicuous**” manner, all “**Automatic Renewal**
21 **Offer Terms**” before obtaining the consumer’s billing information.

22 Automatic Renewal: Affirmative Consent

- 23 H. Charging any consumer in an Internet-based sale of a good or service sold through an
24 “**Automatic Renewal Plan**” without:
- 25 a. Providing text that “**Clearly and Conspicuously**” discloses the “**Automatic**
26 **Renewal Offer Terms**” before obtaining the consumer’s billing information;

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- b. Presenting the “**Automatic Renewal Offer Terms**” in a “**Clear and Conspicuous**” manner before the subscription or purchasing agreement for a Membership Program is fulfilled and in visual proximity to the consent for the offer as set forth in California Business and Professions Code §17602(a)(1);
 - c. Obtaining a consumer’s affirmative consent to the agreement containing the “**Automatic Renewal Offer Terms**” before charging the consumer's credit or debit card or the consumer's account with a third party as set forth in California Business and Professions Code §17602(a)(2);
 - d. Providing a simple mechanism for a consumer to stop recurring charges from being placed on the consumer’s credit card, debit card, bank account, or other financial account.
- I. In an offer conveyed on the telephone or in person, failing to present the “**Automatic Renewal Offer Terms**” in a “**Clear and Conspicuous**” manner before the subscription or purchasing agreement for a Membership Program is fulfilled and in temporal proximity, to the request for consent to the offer as set forth in California Business and Professions Code §17602(a)(1);
- J. For all written offers with an “**Automatic Renewal Plan**” (including over the Internet or other web-based applications or services), a consumer’s express informed consent shall be obtained, prior to Defendant obtaining any Billing Information from consumers, through a checkbox, signature, or other substantially similar method, that consumers must affirmatively select or sign to accept the “**Automatic Renewal Offer.**” Immediately adjacent to such check box, signature or substantially similar method, Defendant shall disclose all such costs associated with the “**Automatic Renewal Plan**” that the consumer is agreeing to pay such costs, the length of any trial period that consumers must cancel within to avoid being charged, and that the consumer must cancel to avoid being charged. This disclosure shall contain no additional information and shall

1 be “**Clear and Conspicuous**” in relation to any other information provided on the page
2 relating to costs, risks, or obligations associated with any “**Automatic Renewal Offer,**”
3 including any terms referring to “free”, “trial”, and “processing fee”.

4 K. For all oral offers including a “**Automatic Renewal Plan,**” Defendant shall, in addition
5 to disclosing the “**Automatic Renewal Offer Terms,**” disclose a description of the
6 good or service, the name of the seller or provider of the good or service, the length of
7 any trial period, the deadline (by date or frequency) by which the consumer must act in
8 order to stop all recurring charges, and the mechanism to stop any recurring charges.
9 Prior to obtaining any Billing Information from a consumer, the defendant must either
10 (a) comply with the requirements for written offers set forth above, in connection with
11 requiring the consumer to join the Automatic Renewal Plan online, or (b) obtain
12 affirmative and unambiguous oral confirmation that the consumer:

- 13 1. Consents to authorizing payment for any goods or services;
- 14 2. Understands that the transaction includes a “**Automatic Renewal Plan;**” and
- 15 3. Understands the specific affirmative steps the consumer must take to prevent
16 further charges.

17 L. In the event that Defendant enrolls a consumer in an Automatic Renewal Plan through
18 oral communications only (e.g., telephone call), then Defendant shall maintain for three
19 (3) years from the date of each such transaction, a voice recording of the entire
20 transaction, including the prescribed statements set out in Subsection 7.B. of the Section
21 entitled “Definitions” and the cancellation process described in paragraph M. below.
22 Each recording must be retrievable by date and by the consumer’s name, telephone
23 number, or Billing Information and must be provided upon request to the consumer, the
24 consumer’s bank, or any law enforcement entity.

25 Automatic Renewal: Acknowledgement

26 M. Failing to provide an acknowledgment that includes the “**Automatic Renewal Offer**
27
28

1 **Terms,**” the cancellation policy and how a consumer can cancel the membership prior
2 to incurring any charge, set forth in a “**Clear and Conspicuous**” manner, and in a
3 manner that is capable of being retained by the consumer as set forth in California
4 Business and Professions Code §17602(a)(3);

5 1. If the order which includes an “**Automatic Renewal Plan**” is placed on the
6 Internet or through any other web-based services or application, the acknowledgment
7 shall be sent as soon as practicable by email to the email address provided at the time
8 of purchase. The acknowledgment shall prominently state in the subject line of the
9 email “Order Confirmation”.

10 2. If the order which includes the “**Automatic Renewal Offer**” is placed over the
11 telephone or some other written form other than the Internet or other web-based
12 services or application, and no consumer email address is provided, the Defendant
13 shall provide the written acknowledgment either by USPS first class mail or in
14 written form with the product if such notice will be timely in allowing the Consumer
15 a reasonable opportunity to cancel the free trial prior to being charged.

16 Automatic Renewal: Cancellation

17 N. Failing to provide a simple mechanism for consumers to (1) avoid being charged, or
18 charged an increased amount, for the good or service; and (2) immediately stop any
19 recurring charges. Such mechanism must not be difficult, costly, confusing, or time-
20 consuming; and it must be at least as simple as the mechanism the consumer used to
21 initiate the recurring charges. In addition:

22 1. For consumers who entered into the “**Automatic Renewal Plan**” agreement to
23 purchase a good service over the Internet or through other web-based applications
24 or services, Defendant must provide a mechanism, accessible over the Internet or
25 through such other web-based application or service that consumers can easily use
26 to cancel the product or service and to immediately stop all further charges.
27

- 1 O. For consumers who entered into the “**Automatic Renewal Plan**” agreement to purchase
2 a good or service through an oral offer and acceptance, Defendant must maintain a
3 telephone number and a postal address that consumers can easily use to cancel the
4 product or service and to immediately stop all further charges, or to access the simple
5 online cancellation mechanism identified in this section. Defendant must assure that all
6 calls to this telephone number shall be answered during normal business hours and that
7 mail to the postal address is retrieved regularly.
- 8 P. In the case of a material change in the “**Automatic Renewal Offer Terms**,” failing to
9 provide the consumer with a “**Clear and Conspicuous**” notice of the material change
10 and information on how to cancel in a manner that is capable of being retained by the
11 consumer as set forth in California Business and Professions Code §17602 (c);
- 12 Q. Using the term “risk free” or “100% Satisfaction”, if the customer could incur any charges
13 as a result of the purchase including but not limited to shipping charges, return shipping
14 charges, return fees or restocking fees, in a misleading manner as set forth in California
15 Business and Professions Code §§17500, 17537(a) and the FTC Guide §251.1 (c)
16 regarding Section 5(c) of the FTC Act, 15 USCS § 45;
- 17 R. Engaging in an unfair business practice as set forth in California Business and Professions
18 Code §17200.
- 19 S. Violating the provisions of California Business and Professions Code §§17601 and 17602.
- 20 T. Violating the provisions of the Restore Online Shoppers Confidence Act, 15 U.S.C. §§
21 8401-8405.

22 RESTITUTION

23 9. Pursuant to Business & Professions Code §§ 17203 and 17535, Defendant is hereby ordered
24 to make restitution as follows:

- 25 A. The restitution shall be offered to the class of California Customers (“Class”), who are
26 persons who meet the following criteria (“Eligible Recipients”):
27

1 1. At the time the customer incurred charges by AdoreMe: the customer (1) had a
2 California billing address and entered into an Automatic Renewal Plan; (2) paid one
3 or more Automatic Renewal Plan charges or fees from inception of the company to
4 present; and

5 (3) lost or forfeited their store credit; or

6 (3) used their store credit with the following parameters: customer was enrolled in
7 the Automatic Renewal Plan at least 2 months prior to cancelling and accumulated
8 store credits; did not “Skip” or have a “Payment Vacation,” did not receive a
9 refund of store credits; the consumer’s last purchase using store credits occurred
10 within the same month of cancellation; the customer’s cancellation of their account
11 occurred prior to July 2016; and

12 (a) the consumer placed only two orders; or

13 (b) placed any number of orders and told AdoreMe that it did not understand
14 the Automatic Renewal Plan. (hereinafter “Used Store Credit”)

15 B. Following entry of this Stipulated Final Judgment, Defendant shall use all reasonable
16 efforts, including obtaining from third parties such as Defendant’s payment
17 processor(s), to create a list of the most current, complete and accurate names, email
18 addresses, and last-known billing addresses of all Eligible Recipients. The list of
19 Eligible Recipients shall be reduced to a searchable electronic form, including at a
20 minimum, a spreadsheet produced using Microsoft Excel or equivalent software.

21 C. Defendant shall appoint at least one management-level employee to oversee the process
22 of identifying Eligible Recipients. This employee shall prepare and sign a declaration
23 of compliance under penalty of perjury and based on personal knowledge. The
24 declaration of compliance shall describe in detail the steps taken to identify all Eligible
25 Recipients, including a description of the computer files, books and records that were
26 searched or queried, the manner in which they were searched and the individuals
27

1 involved in this process. The declaration shall also attest that the list of Eligible
2 Recipients is accurate and complete, to the best of the declarant's knowledge and belief,
3 whereupon the Defendant shall proceed as follows:

4 i. The Defendant shall send or cause to be sent a refund notice and provide a
5 refund to each Eligible Recipient for the full amount of their Forfeited Store Credit
6 or Used Store Credit.

7 ii. The Defendant will take all reasonable steps to ensure that email notices are
8 not diverted to the recipients' "junk" or "spam" email folder. If the email notice is
9 returned as undeliverable, or is otherwise not successfully delivered, Defendant
10 must mail or cause to be mailed the refund notice with the refund check for the full
11 amount of their Forfeited Store Credit or Used Store Credit.

12 iii. For mailed notices, the Defendant must send the notice by first class mail,
13 address correction service requested with forwarding and return postage guaranteed.
14 The Defendant will run the names and addresses through a national change of
15 address update service before sending.

16 iv. For refunds made by check, Defendant may use the escrow fund held by a
17 third-party escrow agent referenced in the FTC v. AdoreMe, Inc. Stipulated Order
18 for Permanent Injunction and Monetary Judgment in United States District Court
19 Southern District of New York Case #17-CV-9083(ALC) (hereinafter "Escrow
20 Fund").

21 v. For refunds Defendant makes through reverse charges made to Eligible
22 Recipient's credit cards, the Defendant may withdraw funds from the Escrow Fund
23 equal to amounts it has successfully refunded to Eligible Recipients through such
24 reverse charges.

25 vi. Defendant are responsible for all costs of administration of the restitution
26 program.
27

1 D. Defendant shall email the List of Eligible Recipients to Deputy District Attorney
2 Jennifer Deng at the email address listed above. The Defendant shall again notify the
3 District Attorney identified above by email of the successful completion of the notice
4 and the number of notices. Finally, the Defendant shall provide notice to the above
5 described District Attorney of the number of claims paid, the total amount paid in
6 restitution, and shall break down the payments to reflect the payments paid pursuant to
7 each form of notice. The Defendant shall pay a minimum of \$200,000 in restitution to
8 the Class. Defendant shall timely respond to all inquiries by the District Attorney on
9 the details and or progress of the restitution, including but not limited to, disclosure of
10 all circumstances of restitution to individual Class members.

11 E. If the above described District Attorney has any questions or concerns regarding the
12 implementation of the restitution steps described above, the PARTIES shall confer to
13 attempt to resolve the questions or concerns with counsel for the defendants. If the
14 deficiency is not cured or otherwise resolved, the PARTIES may seek direction from
15 the Court.

16 10. Within 120 days of the Effective Date, Defendant shall make additional cy pres
17 restitution by distributing merchandise to the following homeless and/or women's organizations in the
18 State of California with a retail value (ie, the price Defendant sells to consumers) of Two Hundred
19 Fifty Thousand Dollars (\$250,000.00) as follows:

21 A. Defendant shall distribute to each recipient organization, which are located in the State of
22 California, quantities which have the retail dollar values as set forth in Exhibit A.

23 B. Defendant shall provide to each recipient organization, merchandise including at least
24 some sleepwear, loungewear, hosiery and underwear, though the quantities of each type of
25 merchandise provided shall be left to Defendant's sole discretion.

26
27 C. Defendant shall bear \$5,000 shipping costs, associated with complying with the
28

1 requirements of this Paragraph. Additional shipping costs, not to exceed \$15,000, will
2 be prorated from the three largest donations. Defendant will bear any additional costs,
3 should it exceed the amounts mentioned in this Paragraph.

4 D. Within 180 days of the Effective Date, Defendant shall provide Deputy District
5 Attorney Jennifer Deng with a written report confirming Defendants' compliance with
6 this Paragraph.
7

8 **PENALTIES AND COSTS**

9 11. Defendant is hereby ordered, at the time of the filing of this Final Judgment, to pay
10 civil penalties, costs, and fees in accordance with the terms below:

11 A. Defendant shall pay civil penalties in the amount of Six Hundred Thousand Dollars
12 (\$600,000.00) to the District Attorney of Santa Clara County pursuant to Business and
13 Professions Code §§17206 and 17536, which shall be payable in accordance with the
14 following schedule: \$200,000 upon the filing of the judgment, \$200,000 on January 1,
15 2019, and \$200,000 on January 1, 2020. Civil penalties shall be in the form of cashier's
16 check, money order or attorney trust fund check and shall be made payable to the "Santa
17 Clara County District Attorney's Office". The first payment shall be delivered via hand
18 delivery or overnight mail to Deputy District Attorney Jennifer Deng, no later than three
19 (3) business days after the date this Stipulated Final Judgment is entered.

20 B. Defendant shall pay to the Santa Clara County Court Clerk Four Hundred and Thirty Five
21 Dollars (\$435.00) payable to the "Clerk of the Superior Court" for court filing fees.

22 12. In the event any payment to be made herein is not received by the Office of the District
23 Attorney within ten (10) days of the due dates, the District Attorney may declare the entire balance
24 immediately due and payable in full and the balance shall bear interest at the rate of ten percent (10%)
25 per annum until paid in full. If Defendants have not completed all payments by January 30, 2020, an
26 additional One Hundred Thousand (\$100,000) civil penalty will be assessed.

27 13. To secure payment of the awards in paragraphs 11.A. above, AdoreMe shall deposit
28

1 \$400,000 in an Orrick, Herrington & Sutcliffe L.L.P. Client Escrow Account (hereinafter “Orrick
2 Account”) upon the filing of the judgment. The Orrick Account funds are solely to be used to pay
3 the Santa Clara County District Attorney’s Office pursuant to this judgment. The Defendant shall
4 not withdraw funds from the Orrick Account. The Defendant agrees Orrick, Herrington & Sutcliffe
5 L.L.P., will release funds from the Orrick Account for payments pursuant to this judgment. Should
6 there be a missed payment, Defendant agrees Orrick, Herrington & Sutcliffe L.L.P. shall, upon the
7 District Attorney’s request, release the entire balance immediately to the District Attorney. Any
8 accrued interest from the Orrick Account will be paid to the District Attorney in the last payment.

9 14. All Payments made pursuant to this judgment shall be delivered to the following
10 address:

11
12 Jennifer Deng, Deputy District Attorney
13 Santa Clara County District Attorney’s Office
14 Consumer Protection Unit
15 70 West Hedding Street, West Wing
16 San Jose, California 95110

17
18 **COMPLIANCE**

19 15. For the purpose of securing compliance with the terms of this Stipulated Final
20 Judgment, Defendant shall, to the extent it continues to market Automatic Renewal Plans, or service
21 agreements to California persons and enroll new California members, are hereby ordered and
22 mandated to do all of the following:

- 23 A. Defendant shall create, maintain and make available to any representative of the People
24 for inspection and copying, within fifteen (15) days of any written request to do so, any
25 documents showing compliance with the terms of this Final Judgment;
- 26 B. Within thirty (30) days of the date of the entry of this Stipulated Final Judgment,
27 Defendant shall provide a copy of this Final Judgment to each of its current principals,
28 officers, directors and managers, having primary authority over sales, advertising or
policy responsibility with respect to the subject matter of this Final Judgment and shall

1 obtain from each such person a legible signed written acknowledgment indicating that he
2 or she has received a copy of this Final Judgment, read it, understood its terms, and
3 agreed to fully abide by all of its terms. Defendant shall provide written verification of
4 such acknowledgments to the People within fifteen (15) days of any written request to do
5 so;

6 C. For a period of five (5) years after entry of this Stipulated Final Judgment, Defendant
7 shall provide a copy of this Final Judgment to each of its future principals, officers,
8 directors and managers having primary authority over sales, advertising or policy
9 responsibility with respect to the subject matter of this judgment within ten (10) days
10 after the person commences his or her responsibilities. Defendant shall obtain from each
11 such person a legible signed written acknowledgment indicating that he or she received a
12 copy of this Stipulated Final Judgment, read it, understood its terms, and agreed to fully
13 abide by all of its terms. Defendant shall maintain and upon request make available,
14 within fifteen (15) days of receipt of a written request, to representatives of the People for
15 inspection and copying, all such legible signed written acknowledgments.

16 **JURISDICTION RETAINED**

17 16. Jurisdiction is retained for the purposes of enabling any party to this Final Judgment to
18 apply to the Court at any time for such order or directions as may be necessary or appropriate for the
19 construction of or carrying out of this Final Judgment, for the modification or termination of any of
20 the injunctive provisions thereof, for the enforcement of compliance therewith, or for the punishment
21 of violations there under.

22 **EFFECT AND ENTRY**

23 17. The Final Judgment shall take effect immediately upon entry hereof
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25 Dated: **AUG 20 2018**

THEODORE ZAYNER

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Judge of the Superior Court