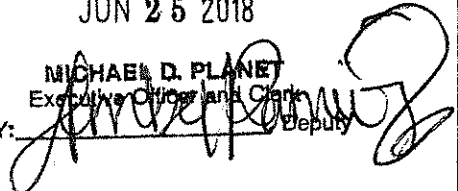


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VENTURA
SUPERIOR COURT
FILED

JUN 25 2018

BY: 
MICHAEL D. PLANET
Executive Officer and Clerk
Deputy
AMBER RAMIREZ

Attorneys for Plaintiffs, CONNIE LOPEZ DBA BUILDING BLOCKS PRESCHOOL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

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14 CONNIE LOPEZ, dba BUILDING BLOCKS) CASE NO. 56-2018-00514106-CU-BT-VTA
15 PRESCHOOL, and all others similarly)
16 situated,) CLASS ACTION COMPLAINT
17)
18 Plaintiffs,) 1. VIOLATION OF CALIFORNIA'S
19 vs.) AUTOMATIC RENEWAL LAW (Cal.
20) Bus. & Prof. Code §§ 17600-17604)
21 YP, HOLDINGS, LLC; YP, LLC; DEX) 2. VIOLATION OF CALIFORNIA'S
22 MEDIA, DAMIEN HALLIBURTON, and) UNFAIR COMPETITION LAW (Bus.
23 DOES 1-10 inclusive,) & Prof Code §§ 17200-17204)
24) 3. INJUNCTIVE RELIEF AND
25 Defendants.) RESTITUTION (Business & Prof. Code
26) § 17535)
27) 4. COMMON COUNT FOR MONEY
28) HAD AND RECEIVED
29) 5. NEGLIGENT
30) MISREPRESENTATION
31)
32) DEMAND FOR JURY TRIAL
33)
34)
35)

COMES NOW PLAINTIFF, Connie Lopez dba Building Blocks Pre School, on behalf of herself and all others similarly situated, complains and alleges as follows:

3-AR

OVERVIEW OF CLAIMS

1
2 1. This is a class action pursuant to California Code of Civil Procedure § 382, seeking
3 restitution, injunctive and/or other equitable relief and reasonable attorneys’ fees and costs available
4 under California Business and Professions Code (“Cal. Bus. & Prof. Code”) §§ 17602, 17603,
5 17604, 17535, and 17200 *et seq.*, and California Civil Code § 1750, on behalf of Plaintiff and all
6 other similarly situated individuals (whether businesses or biological human beings) who entered
7 into an advertising contract with YP, LLC, or any other of the Defendants.
8

9 2. During the Class Period, Defendants made an automatic renewal or continuous
10 service offer to consumers in and throughout California and (1) at the time of making the automatic
11 renewal or continuous service offer, failed to present the automatic renewal offer terms, or
12 continuous service terms, in a clear and conspicuous manner and in visual proximity to the request
13 for consent to the offer before the subscription or purchasing agreement was fulfilled in violation of
14 Cal. Bus. & Prof Code § 17608(a)(1); (2) charged Plaintiff (who paid an amount under a reservation
15 of rights) and Class Members’ credit cards, debit cards, third party account (hereinafter “payment
16 method”), or demanded payment, without first obtaining Plaintiff and Class Members’ affirmative
17 consent to the agreement containing the automatic renewal offer terms or continuous service offer
18 terms in violation of Cal. Bus. Prof. Code § 17602(a)(2); and (3) failed to provide an
19 acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation
20 policy, and information regarding how to cancel in a manner that is capable of being retained by the
21 consumer in violation of Cal. Bus. Prof. Code §17602(a)(3). As a result, all services provided to
22 Plaintiff and Class Members under the automatic renewal or continuous service agreement is
23 deemed to be an unconditional gift pursuant to Cal. Bus. Code §17603.
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1 3. As a result of the above, Plaintiff, on behalf of himself and Class Members, seeks
2 restitution, declaratory relief, injunctive relief and reasonable attorneys' fees and costs pursuant to
3 Cal. Bus. Prof. Code §§ 17603, 17203, 17204, and 17535 and California Civil Code § 1780.

4 4. The "Class Period" is designated as the period from four years prior to the filing of
5 this complaint through the date of verdict. Defendants' violations of California Business &
6 Professions Code, and unfair competition laws, as described more fully below, have been ongoing
7 since at least four years prior to the filing of this Complaint through the present.

8 **JURISDICTION AND VENUE**

9
10 5. This Court has jurisdiction over the claims for injunctive relief, declaratory relief
11 and restitution arising from Defendant's unlawful business practices, under California's Business &
12 Professions Code §§ 17603, 17203, 17204, and 17535.

13 6. This Court has jurisdiction over the claims for violation of the Consumer Legal
14 Remedies Act under California Civil Code § 1780.

15 7. Defendant YP, LLC is a Georgia limited liability company, with offices throughout
16 the United States.

17 8. Defendant YP Holdings, LLC is the parent company of YP, LLC and headquartered
18 in Georgia.

19 9. Defendant Dex Media, Inc. is the parent of YP Holdings, LLC and headquartered in
20 Texas.

21 10. Defendant Damien Halliburton, is a California resident and an employee of YP, LLC
22 in California and each and every action he took, as alleged herein, transpired in California.

23 **PARTIES**

24 11. Plaintiff Connie Lopez resides in this county, and operated Building Blocks
25 Preschool in Ventura County, California. At all relevant times, Plaintiff made each decision with
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1 respect to Defendants in this county. Without Plaintiff consent, Defendants renewed the contract
2 and when Plaintiff advised she never consented to such renewal Defendants ignored her, billed her
3 and threatened collections on her. Reserving her rights and without waiving them, Plaintiff made a
4 payment to Defendants.

5 12. Defendant YP, LLC is a Georgia limited liability company.

6 13. Defendant YP Holdings is the American parent company for YP LLC.

7 14. Dex Media, Inc. is a privately held company headquartered in Texas. Dex Media
8 purchased YP Holdings, LLC in 2017.

9 15. Defendant Damien Halliburton, at all relevant times was an employee of YP, LLC in
10 California, and was Plaintiff's point of contact. The misrepresentations, and withholding of relevant
11 information attributed to Damien Halliburton transpired in and from California.

12 16. All of Plaintiff's claims stated herein are asserted against Defendant YP, LLC and its
13 predecessors, successors, and/or assigns that do, or have done business with the Class Members in
14 California during the Class Period.

15 17. Plaintiff is ignorant of the true names, capacities, relationships and extent of
16 participation in the conduct alleged herein of the Defendants sued herein as DOES 1 through 10,
17 but is informed and believe and thereon allege that said Defendants are legally responsible for the
18 wrongful conduct alleged herein and therefore sue these Defendants by such fictitious names.
19 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
20

21 18. Plaintiff is informed and believes and based upon such information and belief alleges
22 that each Defendant acted in all respects pertinent to this action as the agent of the other
23 Defendants, and/or carried out a joint scheme, business plan or policy in all respects pertinent
24 hereto, and/or the acts of each Defendant are legally attributable to the other Defendants.
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1 19. Plaintiff refers to YP, LLC and Damien Halliburton, and DOES 1-10 collectively as
2 "The Defendants" or "Defendants".

3 **FACTUAL BACKGROUND**

4 **California Business & Profession Code §§17600-17606**

5 20. On December 1, 2010, §§ 17600-17606 of Article 9, of Chapter 1 of Part 3, of
6 Division 7 of the Cal. Bus. Prof. Code came into effect. The stated intent of the Legislature of this
7 Article was to end the practice of ongoing charging of consumers' payment methods without the
8 consumers' explicit consent for ongoing shipments of a product or ongoing deliveries of service;
9 See,§17600 of the Cal. Bus. Prof. Code.
10

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

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

18 (2) Charge the consumer's credit or debit card or the
19 consumer's with a third party for an automatic renewal or
20 continuous service without first obtaining the consumer's
21 affirmative consent to the agreement containing the automatic
22 renewal offer terms or continuous service offer terms.

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

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

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1 23. Cal. Bus. Prof. Code 17601(b) defines the term “Automatic renewal offer terms” as
2 “the following clear and conspicuous disclosures: (1) That the subscription or purchasing agreement
3 will continue until the consumer cancels; (2) The description of the cancellation policy that applies
4 to the offer; (3) The recurring charges that will be charged to the consumer's credit or debit card or
5 payment account with a third party as part of the automatic renewal plan or arrangement, and that
6 the amount of the charge may change, if that is the case, and the amount to which the charge will
7 change, if know; (4) The length of the automatic renewal term or that the service is continuous,
8 unless the length of the term is chosen by the consumer; (5) The minimum purchase obligation, if
9 any.”
10

11 24. Pursuant to §17601(c). “clear and conspicuous” or “clearly and conspicuously”
12 means “in larger type than the surrounding text, or in contrasting type, font, or color to the
13 surrounding text of the same size, or set off from the surrounding text of the same size by symbols
14 or other marks, in a manner that clearly calls attention to the language.”
15

16 25. §17603 of the Cal. Bus. Prof Code provides: “In any case in which a business sends
17 any goods, wares, merchandise, or products to a consumer, under a continuous service agreement or
18 automatic renewal of a purchase, without first obtaining the consumer's affirmative consent as
19 described in Section 17602, the goods, wares, merchandise, or products shall for all purposes be
20 deemed an unconditional gift to the consumer, who may use or dispose of the same in any manner
21 he or she sees fit without any obligation whatsoever on the consumer's part to the business,
22 including, but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares,
23 merchandise, or products to the business.”
24

25 **The Business of YP, LLC; YP Holdings, LLC; and Dex Media, Inc.**

26 26. YP, LLC, YP Holdings, LLC, and Dex Media, Inc. operate and throughout the
27 Class Period operated what they call:
28

1 [A] media company dedicated to connecting local
2 businesses with a ready-to-buy audience. With more than 60
3 million US visitors each month, YP is the original source people
4 use to find and connect with local businesses, from the popular YP
5 app, to yellowpages.com and The Real Yellow Pages.

6 For local businesses, YP integrated solutions are designed
7 to help build their presence and expand their reach through a
8 variety of print and digital products. YP has a team of marketing
9 experts in local markets across the U.S. with relationships spanning
10 nearly half a million advertisers.¹

11 27. Through the efforts of individuals, like Defendant Damien Halliburton, Defendants
12 YP, LLC, YP Holdings, LLC, and Dex Media, Inc. sell advertising subscriptions to small business
13 owners throughout the United States.

14 **Legal Agreement Between Consumers and YP, LLC (and Parent Companies) as Provided by**
15 **Damien Halliburton to Plaintiff**

16 28. YP, LLC provides, to its customers, the advertising contract, and the “Terms and
17 Conditions” (attached as Exhibit A is the letter, with the contract, provided by Damien Halliburton
18 to Plaintiff), and the “Advertiser General Terms and Conditions (attached as Exhibit B).

19 29. Throughout these documents, various methods are used to draw the reader’s
20 attention to important language contained therein, including using bold font, and/or all capital
21 letters, such as when it bolded the term. For example, in Exhibit A the “IMPORTANT - READ
22 CAREFULLY BEFORE SIGNING” provides a lengthy section about the authority to sign:

23 **IMPORTANT - READ CAREFULLY BEFORE SIGNING:**
24 **THE AGREEMENT BETWEEN ADVERTISER AND**
25 **PUBLISHER REGARDING THE SERVICES DESCRIBED IN**
26 **THIS ORDER CONSISTS OF THE FOLLOWING, ALL OF**
27 **WHICH ARE INCORPORATED BY REFERENCE: (A) THIS**
28 **ORDER: (B) THE ADVERTISER GENERAL TERMS AND**
CONDITIONS LOCATED AT YP.COM/ABOUT/LEGAL
(“LOCAL GENERAL TERMS”) OR, AS APPLICABLE. THE
ADVERTISER GENERAL TERMS AND CONDITIONS-

¹ Source, <http://corporate.yp.com/company-overview/>

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NATIONAL. LOCATED AT YP.COM/ABOUT/LEGAL ("NATIONAL GENERAL TERMS"; EACH AS APPLICABLE, THE "GENERAL TERMS"); (C) THE SERVICES TERMS, LOCATED AT YP.COM/ABOUT/LEGAL ("YP SERVICES TERMS"); (D) THE TERMS OF SERVICE AND USE, LOCATED AT YP.COM/ABOUT/LEGAL; AND (E) ANY OTHER TERMS REFERENCED IN THE GENERAL TERMS. ALL AS IN EFFECT ON THE DATE OF THIS ORDER. IN ADDITION TO BEING LOCATED AT YP.COM/ABOUT/LEGAL. OUR CUSTOMER SERVICE DEPARTMENT CAN PROVIDE YOU THE FOREGOING DOCUMENTS UPON REQUEST. THE AGREEMENT INCLUDES IMPORTANT LEGAL TERMS, WITHOUT LIMITATION: PERFORMANCE DISCLAIMERS, DIRECTORY DISTRIBUTION DISCLAIMERS, ADVERTISER'S WARRANTIES AS TO ADVERTISER'S INTELLECTUAL PROPERTY RIGHTS, ADVERTISER INDEMNITY OBLIGATIONS, FORUM AND VENUE LIMITATIONS, AND LIMITATIONS ON PUBLISHER'S LIABILITY. IF AN ORDER INCLUDES SERVICES PURSUANT TO WHICH PUBLISHER MAY, IN ITS SOLE DISCRETION, PLACE ADVERTISING ON ADVERTISER'S BEHALF IN VARIOUS MEDIA OR CHANNELS OF DISTRIBUTION (E.G., MC2), THEN ADVERTISER AGREES AND UNDERSTANDS THE TERMS APPLICABLE TO ALL SUCH MEDIA OR CHANNELS OF DISTRIBUTION IN WHICH ADVERTISING IS PLACED BY PUBLISHER. IN ADDITION TO THOSE TERMS SPECIFIC TO THE PRODUCT ITSELF, SHALL APPLY. ADVERTISER HAS REVIEWED IN DETAIL, EITHER ELECTRONICALLY OR IN PRINT, AND HEREBY APPROVES ALL OF THE MATERIALS ASSOCIATED WITH OR INCORPORATED BY REFERENCE INTO THIS AGREEMENT. ADVERTISER PROMISES TO PAY THE TOTAL INITIAL AMOUNT DUE UNDER THIS AGREEMENT AND TO PAY THE REMAINING CHARGES AGREED TO HEREIN, PLUS ALL APPLICABLE TAXES, LATE PAYMENT CHARGES AND COLLECTION ACTIVITY FEES AS BILLED UNTIL PAID IN FULL, INCLUDING MONTHLY CHARGES FOR ANY PRINT DIRECTORY EXTENSION. IF NOT PAID IN FULL UPFRONT, ADVERTISER'S ACCOUNT SHALL BE SUBJECT TO CREDIT APPROVAL AND \$25 MINIMUM MONTHLY BILLING. IF ADVERTISER DOES NOT ACCEPT ALL OF THE TERMS OF THE AGREEMENT, ADVERTISER MAY CANCEL THIS ORDER AND TERMINATE THE AGREEMENT BY WRITTEN NOTICE TO PUBLISHER, WITH IN TEN DAYS OF THE DATE OF THIS ORDER AS PROVIDED IN THE GENERAL TERMS. IF NOT

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CANCELLED WITHIN THE 10-DAY CANCELLATION PERIOD, ADVERTISER WILL BE DEEMED TO HAVE AGREED TO ALL OF THE TERMS OF THE AGREEMENT. WITH RESPECT TO PD ADVERTISING PRODUCTS AND SERVICES, THIS AGREEMENT IS AN AGREEMENT BETWEEN ADVERTISER AND PRINT MEDIA LLC AND ITS SUBSIDIARIES. WITH RESPECT TO INTERNET ADVERTISING PRODUCTS AND SERVICES, THIS AGREEMENT IS AN AGREEMENT BETWEEN ADVERTISER AND YP LLC AND ITS SUBSIDIARIES. SEE THE GENERAL TERMS FOR MORE INFORMATION. REFERENCES HEREIN TO "PUBLISHER" SHALL BE DEEMED TO MEAN INDIVIDUALLY AND/OR COLLECTIVELY, AS THE CONTEXT REQUIRES. PRINT MEDIA LLC AND ITS SUBSIDIARIES AND YP LLC AND ITS SUBSIDIARIES. BY YOUR SIGNATURE BELOW, YOU WARRANT THAT YOU HAVE RECEIVED A COPY AND HAVE READ THIS AGREEMENT, INCLUDING ALL OF ITS PARTS, THAT YOU HAVE FULL AUTHORITY TO SIGN FOR AND BIND ADVERTISER AND THAT YOU AGREE TO ALL THE TERMS OF THIS AGREEMENT.

30. Additionally, as can be seen in Exhibit B, Defendant uses visual cues to highlight particular sections of the agreement, for example:

UNLESS OTHERWISE AGREED TO IN WRITING, PUBLISHER MAKES NO WARRANTY REGARDING THE APPLICABILITY OF ANY REQUIREMENTS, STANDARDS AND/OR PRACTICES OF A LEGAL, REGULATORY, SELF-REGULATORY, AND/OR ETHICAL NATURE (COLLECTIVELY "REGULATIONS") TO ANY ADVERTISING OR WITH RESPECT TO ANY COMPLIANCE THEREWITH. EACH ADVERTISER IS SOLELY RESPONSIBLE FOR ENSURING ITS OWN COMPLIANCE WITH REGULATIONS APPLICABLE TO IT AND/OR ITS ADVERTISING

**Failure to Provide Clear and Conspicuous Disclosures
as Required by Law**

31. Within the contracting documents Defendants failed to state in clear and conspicuous language, i.e. in larger type than the surrounding text, or in contrasting type, font, or

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

- 3
- 4 (1) The subscription or purchasing agreement will continue until the consumer cancels.
- 5 (2) Describes the cancellation policy that applies to the offer.
- 6 (3) The recurring charges that will be charged to the consumer's credit or debit card or payment account with a third party as part
- 7 of the automatic renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and the
- 8 amount to which the charge will change, if known.
- 9 (4) The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the
- 10 consumer.
- 11 (5) There is a minimum purchase obligation, of any.

12 32. Defendant fails to present the automatic renewal offer terms or continuous service
13 offer terms in a clear and conspicuous manner before the subscription or purchasing agreement was
14 fulfilled and in visual proximity to the request for consent to the offer in violation of Cal. Bus. Prof.
15 Code §17602(a)(1)

16 33. During the Class Period Defendant made, and continues to make, and operate as if
17 they had entered into a contract that provides automatic renewal between Plaintiff and the
18 Defendants. Moreover, when confronted with the conflicts, Defendant does not deny that there is an
19 automatic renewal element to the contractual relationship between the Class Members (including
20 Plaintiff) and Defendants.

21 34. As a result of the above (including the automatic renewal and continuous service
22 disclosure failures referred to above), Defendant, in violation of Cal. Bus & Prof. Code § 17602
23 (a)(1), made an automatic renewal or continuous service offer to consumers, including Plaintiff and
24 Class Members, in California, yet failed to present the automatic renewal offer terms, or continuous
25 service offer terms, in a clear and conspicuous manner before the subscription or purchasing
26 agreement was fulfilled and in visual proximity, to the request for consent to the offer.
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Defendant Fails to Obtain Affirmative Consent to the Agreement Containing the Automatic Renewal Offer Terms in Violation of Cal. Bus. Prof. Code § 17602 (A)(2)

35. Furthermore, and in addition to the above, throughout the Class Period, Plaintiff and Class Members' payment method were, and are, charged the monthly or yearly subscription amount. Thereafter, Defendant charged, and continues to charge, Plaintiff and Class Members' payment method on a monthly or yearly basis, and as such, is an automatic renewal plan within the meaning Cal. Bus. & Prof. Code. § 17601 (1) Furthermore, the file storing services continues until cancelled, and therefore, is, and was, a continuous service plan or arrangement as defined by Cal. Bus. & Prof. Code § 17601 (e).

36. As a result of the above (including the automatic renewal offer and continuous service offer disclosure failures referred above), prior to charging Plaintiff and Class Members' payment method, Defendant completely failed, and continues to fail, to obtain Plaintiff and Class Members' affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

37. As a result of the above allegations, Defendant violated Cal. Bus. & Prof. Code § 17602 (a)(2), and as such, all goods, wares, merchandise, or products, sent to Plaintiff and Class Members under the automatic renewal or continuous service agreement is deemed to be an unconditional gift pursuant to Cal. Bus. & Prof. Code § 17603, and they may use or dispose of the same in any manner they see fit without any obligation whatsoever on the consumer's part to the business, including, but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares, merchandise, or products to the business.

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**Defendant Failed to Provide an Acknowledgement
as Required Per Cal. Bus. Prof. Code § 17602 (A)(3)**

38. Furthermore, and in addition to the above, after Plaintiff and Class Members entered into a contract with Defendants, Defendants sent, and continues to send, Plaintiff and Class Members demands for additional payments. However, those demands failed, and continues to fail, 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 Class Members, in violation of Cal. Bus. & Prof. Code § 17602 (a)(3). Moreover, Defendant failed to provide Plaintiff and Class Members with an acknowledgement regarding how to cancel the free trial and allow Plaintiff and Class Members to cancel before payment.

CLASS ACTION ALLEGATIONS

39. Plaintiff brings this action on behalf of herself and all others similarly situated, as a class action pursuant to Code of Civil Procedure § 382. The Class that Plaintiff seeks to represent is composed of and defined as all persons who entered into an "Advertising Contract" with Defendant and to whom Defendant continuously charges and renews their advertising agreement in California, (hereinafter "Class Members") since four years prior to the filing of this suit.

40. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representatives of the Class.

a. Numerosity: The potential members of the Class as defined are so numerous and so diversely located throughout California, that joinder of all the members of the Class is impracticable. The Class Members are dispersed throughout California. Joinder of all members of the proposed class is therefore not practicable.

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1 b. Commonality: There are questions of law and fact common to the Plaintiff
2 and the Class that predominate over any questions affecting only individual members
3 of the Class. These common questions of law and fact include, without limitation:

4 i. Whether Defendant charged Plaintiff and Class Members' payment method
5 for an automatic renewal or continuous service without first obtaining the Plaintiff
6 and Class Members' affirmative consent to the agreement containing the automatic
7 renewal offer terms or continuous service offer terms in violation of Cal. Bus. Code §
8 17602 (a)(2);

9 ii. Whether Defendant's Legal Policies contained the automatic renewal offer
10 terms and/or continuous service offer terms as defined by Cal. Bus. Prof Code §
11 17601;

12 iii. Whether Defendant failed to present the automatic renewal offer terms, or
13 continuous service offer terms, in a clear and conspicuous manner before the
14 subscription or purchasing agreement was fulfilled and in visual proximity, or in the
15 case of an offer conveyed by voice, in temporal proximity, to the request for consent
16 to the offer in violation of Cal. Bus. Code § 17602 (a)(1);

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

21 v. Whether Cal. Bus. § Prof. Code § 17603 provides for restitution for money
22 paid by Class Members in circumstances where the goods and services provided by
23 Defendant is deemed an unconditional gift;

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- vi. Whether Plaintiff and Class Members are entitled to restitution under Cal. Bus. & Prof. Code. § 17200-17203;
 - vii. Whether Plaintiff and Class Members are entitled to declaratory relief, injunctive relief and/or restitution under Cal. Bus. & Prof. Code. § 17535;
 - viii. Whether Plaintiff and Class Members are entitled to injunctive relief, attorneys fees' and costs under California Civil Code § 1780; AND
 - ix. The proper formula(s) for calculating restitution owed to Class Members.
- c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both Plaintiff and Class Members were deprived of property rightly belonging to them, arising out of, and caused by. Defendant's common course of conduct in violation of law as alleged herein, in similar ways.

FIRST CAUSE OF ACTION
- Violation of the Automatic Renewal Law -
Cal. Bus. & Prof. Code § 17600, et seq.
(By Plaintiff against All Defendants, Class Action Claim)

41. Plaintiff hereby alleges and incorporates by reference as though set forth fully herein, the allegations contained in each preceding paragraphs above.

42. As alleged more fully below, Defendants have violated the requirements of the Automatic Renewal Law ("ARL"), including in particular, the requirements of §§ 17602(a)(1) - (3), 17602(b), and 17602(c).

A. Clear/Conspicuous and Visual Proximity Violations:

43. In offering its advertising services, during the class period, Defendants have made an automatic renewal or continuous service offer to consumers in California, including to the Representative Plaintiff and putative Class Members. In so doing, however, Defendant has failed to state the automatic renewal or continuous service offer in "clear and conspicuous manner" in

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1 compliance with law in, inter alia, the following respects: (a) failing to clearly and conspicuously
2 state that the recurring service will continue until the consumer cancels; (b) failing to clearly and
3 conspicuously describe the cancellation policy that applies to the offer; (c) failing to clearly and
4 conspicuously state that the recurring charges will be charged to the consumer's payment method as
5 part of the automatic renewal plan or arrangement, and that the amount of the charge may change, if
6 that is the case, and the amount to which the charge will change, if known; (d) failing to clearly and
7 conspicuously state that the service is continuous; and (e) failing to clearly and conspicuously state
8 that there is a minimum purchase obligation, if any.
9

10 44. In addition to the above failures, Defendant has failed and continues to fail, to state
11 the automatic renewal or continuous service offer the sales process. Specifically, when offering
12 advertising services, and enticing subscribers to use their services, like Plaintiff and Class Members
13 were so enticed, Defendant failed to state the automatic renewal or continuous service offer "in
14 visual proximity" to the request for consent to the offer.
15

16 45. As such, Defendant has violated Bus. & Prof. Code § 17602(a)(1), such that the
17 Representative Plaintiff and putative Class Members are entitled to the relief under Cal. Bus. &
18 Prof. Code § 17603, including, inter alia, restitution of the monies paid to Defendant for such
19 automatic renewals and retention of the goods and or services purchased through such
20 Subscriptions as an "unconditional gift."
21

22 46. WHEREFORE, based on the above violations of their lawful rights, the
23 Representative Plaintiff and putative Class Members seek relief as requested herein.

24 **B. Failure to Obtain Affirmative Consent:**

25 47. In addition to the above failures, throughout the Class Period, Defendant failed to
26 obtain the affirmative consent of the Representative Plaintiff and Class Members to the agreement
27 containing the automatic renewal and/or continuous service offer terms. This has included, inter
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1 alia, failing to obtain their affirmative consent to the term that their payment method would be
2 automatically and perpetually charged on a recurring basis, unless cancelling through an arcane and
3 almost impossible process. There is no mechanism at any point during the sales process by which
4 consumers could provide their explicit consent to Defendants’ automatic renewal and/or continuous
5 service terms prior to entering the information for their payment methods and prior to the charge
6 thereto. For instance, there is no box that Defendants’ customers are required to check or other form
7 of acknowledgement by which Defendants’ customers affirmed that they explicitly agreed to
8 recurring charges to their respective payment methods for advertising services affirmatively
9 cancelled their contract.
10

11 48. Defendant has therefore charged, and has continued to charge, the payment method
12 of the Representative Plaintiff and Class Members without first obtaining their affirmative consent
13 to the terms of the service in violation of Bus. & Prof. Code § 176012(a)(2).
14

15 49. As a result of these failures, the Representative Plaintiff and putative Class Members
16 are entitled to the relief under Cal. Bus. & Prof. Code § 17603, including, inter alia, restitution of
17 the monies paid to Defendant for such Subscriptions and retention of the goods purchased through
18 such Subscriptions as an “unconditional gift.”
19

20 50. WHEREFORE, based on the above violations of their lawful rights, the
21 Representative Plaintiff and putative Class Members seek relief as requested herein.

22 **C. Retainable Cancellation Policy and Cancellation Mechanism:**

23 51. In addition to the above failures, throughout the Class Period, Defendant has failed,
24 and continues to fail, to provide the Representative Plaintiff and Class Members with a retainable
25 “acknowledgement” that includes the automatic renewal or continuous service offer terms,
26 cancellation policy, and information on how to cancel, in violation of Cal. Bus. & Prof. Code §
27 17602(a)(3). Upon concluding the sales process for purchasing one of Defendants’ advertising
28

1 services, Defendants failed to provide information, such as a downloadable or printable document
2 or other retainable format, which sets forth the terms of the automatic renewal or continuous service
3 offers, the cancellation policies applicable to the advertising services provided by Defendants, or
4 any information on how to cancel the services contract.

5
6 52. Defendants have therefore violated the requirements of Bus. & Prof. Code §
7 176012(a)(3), such that the Representative Plaintiff and putative Class Members are entitled to the
8 relief under Cal. Bus. & Prof. Code § 17603, including, inter alia, restitution of the monies paid to
9 Defendant for such Subscriptions and retention of the goods purchased through such Subscriptions
10 as an “unconditional gift.”

11 53. WHEREFORE, based on the above violations of their lawful rights, the
12 Representative Plaintiff and putative Class Members seek relief as requested herein.

13
14 **SECOND CAUSE OF ACTION**
15 **-Violation of the Unfair Competition Law -**
16 **Bus. & Prof. Code § 17200, et seq.**
17 **(By Plaintiff against All Defendants, Class Action Claim)**

18 54. Plaintiff hereby alleges and incorporates by reference as though set forth fully
19 herein, the allegations contained in each preceding paragraphs above.

20 55. Defendant engages in business practices, offers its products and services, and
21 advertises its products and services to consumers within the State of California. In so doing,
22 Defendant has a duty to comply with applicable laws protecting against, inter alia, unlawful and
23 unfair business practices and acts, as prohibited by Bus. & Prof. Code § 17200, et seq., also known
24 as the Unfair Competition Law (hereinafter “UCL”).

25 56. Section § 17204 of the UCL allows “a person who has suffered injury in fact and has
26 lost money or property” to prosecute a civil action for violation of the UCL individually and on
27
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1 behalf of a class of similarly situated individuals affected by the unlawful or unfair business
2 practices or acts.

3 57. Defendant has engaged in numerous acts and/or a pattern and practice of unlawful
4 and unfair business practices within the State of California, in violation of the UCL. These illegal
5 business practices and acts include failing to provide consumers, such as the Representative
6 Plaintiff and Class Members, with notices and disclosures in compliance with the Automatic
7 Renewal Law, Bus. & Prof. Code § 17600 et seq. corresponding to Defendant's sale of advertising
8 services. In particular, as set forth more fully herein above, Defendant failed and continues to fail to
9 comply with the requirements of § 17602(a)(1) through (3).
10

11 58. For at least the last four years, Defendant has committed unlawful and unfair
12 business acts and practices, as defined by the UCL, based on its violations of the Automatic
13 Renewal Law.
14

15 59. The Representative Plaintiff and putative Class Members have standing to pursue
16 this claim because they have suffered injury in fact by, among other things, having lost money
17 which they paid for Defendant's service, which do not comply with applicable laws.

18 60. As a result of its conduct, Defendant has been unjustly enriched and should be
19 disgorged of profits realized from its unlawful business practices. Plaintiffs and other members of
20 the general public have no other adequate remedy of law in that, absent equitable relief from the
21 Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the
22 public interest, thus engendering a multiplicity of judicial proceedings.
23

24 61. WHEREFORE, based on the above violations of their lawful rights, the
25 Representative Plaintiff and Class Members seek relief as requested herein.
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THIRD CAUSE OF ACTION
- Injunctive Relief -
Cal. Bus. & Prof. Code § 17535
(By Plaintiff against All Defendants, Class Action Claim)

62. Plaintiff hereby alleges and incorporates by reference as though set forth fully herein, the allegations contained in each preceding paragraphs above.

63. Bus. & Prof. Code § 17535 allows “any person who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the UCL. An individual aggrieved as such may bring an action on behalf himself or herself and others similarly situated who are affected by the unlawful and/or unfair business practice.

64. For at least the last four years, Defendant has committed unlawful and/or unfair business acts and practices within the meaning of the UCL based on its violations of the Automatic Renewal Law, Bus. & Prof. Code § 17601 et seq., as set forth above.

65. As a direct and proximate result of Defendant's unlawful and/or unfair business acts and practices, described herein, Defendant has received and continues to hold unlawfully obtained money belonging to the Representative Plaintiff and Class Members in the form of payments made by them for Defendant's service. Defendant has profited from its unlawful and unfair acts and practices in the amounts of those payments and interest accrued thereon.

66. Representative Plaintiff and similarly situated Class Members are entitled to injunctive relief and/or restitution pursuant to Cal. Bus. & Prof. Code § 17535 and interest thereon for all monies paid by Class Members under the agreements for the last four years preceding the filing of this legal action through the date of such restitution, at rates specified by law. Defendant should be required to disgorge all profits and gains it has reaped and should be ordered to restore those profits and gains to Representative Plaintiff and Class Members, from whom they were unlawfully taken.

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1 67. Representative Plaintiff and similarly situated Class Members are entitled to enforce
2 all applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202.

3 68. Representative Plaintiff has assumed the responsibility of enforcement of the laws
4 for the benefit of consumers by suing on behalf herself and other similarly situated Class Members.
5 Representative Plaintiff's success in this action will enforce important rights affecting the public
6 interest. Therefore, an award of reasonable attorneys' fees to Representative Plaintiff is appropriate
7 pursuant to California Code of Civil Procedure § 1021.5.
8

9 69. WHEREFORE, based on the above violations of their lawful rights, the
10 Representative Plaintiff and Class Members seek relief as requested herein.
11

12 **FOURTH CAUSE OF ACTION**
13 **-Common Count: Money Had and Received-**
14 **(By Plaintiff against All Defendants)**

15 70. Plaintiff hereby alleges and incorporates by reference as though set forth fully
16 herein, the allegations contained in each preceding paragraphs above.

17 71. Defendants received money from Plaintiff and Class Members.

18 72. The monies belong to Plaintiff and Class Members.

19 73. Defendants have not returned the money.

20 74. Plaintiff, on behalf of himself and similarly situated Class Members, requests relief
21 as described below.

22 **FIFTH CAUSE OF ACTION**
23 **-Negligent Misrepresentation-**
24 **(By Plaintiff against Defendant Damien Halliburton, Not Alleged as a Class Claim)**

25 75. Plaintiff hereby alleges and incorporates by reference as though set forth fully
26 herein, the allegations contained in each preceding paragraphs above

27 76. Defendant Damien Halliburton represented that the terms of the advertising contract
28 were complete and fully contained in Exhibits A and B.

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77. Defendant Damien Halliburton’s representation was untrue, because the automatic renewal program alleged above was not contained in the contract provided by Damien Halliburton.

78. Whether Damien Halliburton believed that his representation was truthful and accurate about the complete nature of the contract between Plaintiff and Defendants, he had no basis to believe such a representation was true, when he made the representation.

79. Plaintiff only discovered the falsity of this representation in 2017, when she was automatically billed and “sent to collections” because she refused to pay.

80. At all times, Damien Halliburton intended for Plaintiff to believe that the terms of contractual relationship for advertising entered into by Plaintiff were fully contained in the documents attached here as Exhibits A and B.

81. Plaintiff relied on the terms contained in Exhibits A and B when she attempted to cancel her contract with Defendants.

82. Had Plaintiff known of the automatic renewal program Defendants required of her, she would have likely not entered into the contract, or complied with its policies when she decided to cancel her contract.

83. As a result of Damien Halliburton’s misrepresentations, Plaintiff has been forced to pay for an additional year of service.

PRAYER

WHEREFORE, Plaintiff requests the following relief:

1. That the court certify this matter as a class action;
2. That Plaintiff be designated as the class representative;
3. That Counsel for Plaintiff be designated as class counsel;
4. That Defendants be found to have violated California Bus. & Prof. Code § 17602 (a)(2) by improperly charging Plaintiff and the putative class payments through an automatic

1 renewal program or process without first obtaining the affirmative consent of Plaintiff and the
2 putative class;

3 5. That Defendants be found to have engaged in unfair business practices for the
4 conduct described herein;

5 6. That Plaintiff and the putative class receive full restitution of the amount of the
6 monies improperly paid to Defendants, in an amount to be proven at trial;

7 7. That Defendants pay all damages owed;

8 8. That Defendant pay reasonable costs, attorneys' fees, and pre-judgment interest;

9 9. That Defendants be enjoined from continuing with their automatic renewal program
10 in California;

11 10. That Plaintiff be awarded general damages against Defendant Damien Halliburton.
12

13 Date: June 21, 2018

14 Respectfully Submitted,

15 McCATHERN LLP

16 By: 

17 EVAN SELIK
18 Attorneys for Plaintiffs, CONNIE LOPEZ
19 DBA BUILDING BLOCKS PRESCHOOL
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial for all claims so triable.

Date: June 21, 2018

Respectfully Submitted,

McCATHERN LLP

By:



EVAN SELK
Attorneys for Plaintiffs, CONNIE LOPEZ
DBA BUILDING BLOCKS PRESCHOOL

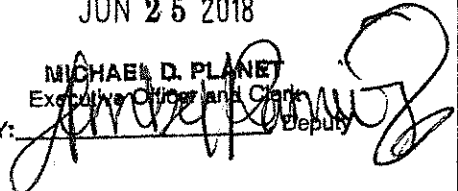
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VENTURA
SUPERIOR COURT
FILED

JUN 25 2018

BY: 
MICHAEL D. PLANET
Executive Officer and Clerk
Deputy
AMBER RAMIREZ

Attorneys for Plaintiffs, CONNIE LOPEZ DBA BUILDING BLOCKS PRESCHOOL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

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14 CONNIE LOPEZ, dba BUILDING BLOCKS) CASE NO. 56-2018-00514106-CU-BT-VTA
15 PRESCHOOL, and all others similarly)
16 situated,) CLASS ACTION COMPLAINT
17)
18 Plaintiffs,) 1. VIOLATION OF CALIFORNIA'S
19 vs.) AUTOMATIC RENEWAL LAW (Cal.
20) Bus. & Prof. Code §§ 17600-17604)
21 YP, HOLDINGS, LLC; YP, LLC; DEX) 2. VIOLATION OF CALIFORNIA'S
22 MEDIA, DAMIEN HALLIBURTON, and) UNFAIR COMPETITION LAW (Bus.
23 DOES 1-10 inclusive,) & Prof Code §§ 17200-17204)
24) 3. INJUNCTIVE RELIEF AND
25 Defendants.) RESTITUTION (Business & Prof. Code
26) § 17535)
27) 4. COMMON COUNT FOR MONEY
28) HAD AND RECEIVED
29) 5. NEGLIGENT
30) MISREPRESENTATION
31)
32) DEMAND FOR JURY TRIAL
33)
34)
35)

COMES NOW PLAINTIFF, Connie Lopez dba Building Blocks Pre School, on behalf of herself and all others similarly situated, complains and alleges as follows:

3-AR

OVERVIEW OF CLAIMS

1
2 1. This is a class action pursuant to California Code of Civil Procedure § 382, seeking
3 restitution, injunctive and/or other equitable relief and reasonable attorneys’ fees and costs available
4 under California Business and Professions Code (“Cal. Bus. & Prof. Code”) §§ 17602, 17603,
5 17604, 17535, and 17200 *et seq.*, and California Civil Code § 1750, on behalf of Plaintiff and all
6 other similarly situated individuals (whether businesses or biological human beings) who entered
7 into an advertising contract with YP, LLC, or any other of the Defendants.
8

9 2. During the Class Period, Defendants made an automatic renewal or continuous
10 service offer to consumers in and throughout California and (1) at the time of making the automatic
11 renewal or continuous service offer, failed to present the automatic renewal offer terms, or
12 continuous service terms, in a clear and conspicuous manner and in visual proximity to the request
13 for consent to the offer before the subscription or purchasing agreement was fulfilled in violation of
14 Cal. Bus. & Prof Code § 17608(a)(1); (2) charged Plaintiff (who paid an amount under a reservation
15 of rights) and Class Members’ credit cards, debit cards, third party account (hereinafter “payment
16 method”), or demanded payment, without first obtaining Plaintiff and Class Members’ affirmative
17 consent to the agreement containing the automatic renewal offer terms or continuous service offer
18 terms in violation of Cal. Bus. Prof. Code § 17602(a)(2); and (3) failed to provide an
19 acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation
20 policy, and information regarding how to cancel in a manner that is capable of being retained by the
21 consumer in violation of Cal. Bus. Prof. Code §17602(a)(3). As a result, all services provided to
22 Plaintiff and Class Members under the automatic renewal or continuous service agreement is
23 deemed to be an unconditional gift pursuant to Cal. Bus. Code §17603.
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1 3. As a result of the above, Plaintiff, on behalf of himself and Class Members, seeks
2 restitution, declaratory relief, injunctive relief and reasonable attorneys' fees and costs pursuant to
3 Cal. Bus. Prof. Code §§ 17603, 17203, 17204, and 17535 and California Civil Code § 1780.

4 4. The "Class Period" is designated as the period from four years prior to the filing of
5 this complaint through the date of verdict. Defendants' violations of California Business &
6 Professions Code, and unfair competition laws, as described more fully below, have been ongoing
7 since at least four years prior to the filing of this Complaint through the present.

9 **JURISDICTION AND VENUE**

10 5. This Court has jurisdiction over the claims for injunctive relief, declaratory relief
11 and restitution arising from Defendant's unlawful business practices, under California's Business &
12 Professions Code §§ 17603, 17203, 17204, and 17535.

13 6. This Court has jurisdiction over the claims for violation of the Consumer Legal
14 Remedies Act under California Civil Code § 1780.

15 7. Defendant YP, LLC is a Georgia limited liability company, with offices throughout
16 the United States.

17 8. Defendant YP Holdings, LLC is the parent company of YP, LLC and headquartered
18 in Georgia.

19 9. Defendant Dex Media, Inc. is the parent of YP Holdings, LLC and headquartered in
20 Texas.

21 10. Defendant Damien Halliburton, is a California resident and an employee of YP, LLC
22 in California and each and every action he took, as alleged herein, transpired in California.

23 **PARTIES**

24 11. Plaintiff Connie Lopez resides in this county, and operated Building Blocks
25 Preschool in Ventura County, California. At all relevant times, Plaintiff made each decision with
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1 respect to Defendants in this county. Without Plaintiff consent, Defendants renewed the contract
2 and when Plaintiff advised she never consented to such renewal Defendants ignored her, billed her
3 and threatened collections on her. Reserving her rights and without waiving them, Plaintiff made a
4 payment to Defendants.

5 12. Defendant YP, LLC is a Georgia limited liability company.

6 13. Defendant YP Holdings is the American parent company for YP LLC.

7 14. Dex Media, Inc. is a privately held company headquartered in Texas. Dex Media
8 purchased YP Holdings, LLC in 2017.

9 15. Defendant Damien Halliburton, at all relevant times was an employee of YP, LLC in
10 California, and was Plaintiff's point of contact. The misrepresentations, and withholding of relevant
11 information attributed to Damien Halliburton transpired in and from California.

12 16. All of Plaintiff's claims stated herein are asserted against Defendant YP, LLC and its
13 predecessors, successors, and/or assigns that do, or have done business with the Class Members in
14 California during the Class Period.

15 17. Plaintiff is ignorant of the true names, capacities, relationships and extent of
16 participation in the conduct alleged herein of the Defendants sued herein as DOES 1 through 10,
17 but is informed and believe and thereon allege that said Defendants are legally responsible for the
18 wrongful conduct alleged herein and therefore sue these Defendants by such fictitious names.
19 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
20

21 18. Plaintiff is informed and believes and based upon such information and belief alleges
22 that each Defendant acted in all respects pertinent to this action as the agent of the other
23 Defendants, and/or carried out a joint scheme, business plan or policy in all respects pertinent
24 hereto, and/or the acts of each Defendant are legally attributable to the other Defendants.
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19. Plaintiff refers to YP, LLC and Damien Halliburton, and DOES 1-10 collectively as “The Defendants” or “Defendants”.

FACTUAL BACKGROUND

California Business & Profession Code §§17600-17606

20. On December 1, 2010, §§ 17600-17606 of Article 9, of Chapter 1 of Part 3, of Division 7 of the Cal. Bus. Prof. Code came into effect. The stated intent of the Legislature of this Article was to end the practice of ongoing charging of consumers' payment methods without the consumers' explicit consent for ongoing shipments of a product or ongoing deliveries of service; See,§17600 of the Cal. Bus. Prof. Code.

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

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

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

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

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

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1 23. Cal. Bus. Prof. Code 17601(b) defines the term “Automatic renewal offer terms” as
2 “the following clear and conspicuous disclosures: (1) That the subscription or purchasing agreement
3 will continue until the consumer cancels; (2) The description of the cancellation policy that applies
4 to the offer; (3) The recurring charges that will be charged to the consumer's credit or debit card or
5 payment account with a third party as part of the automatic renewal plan or arrangement, and that
6 the amount of the charge may change, if that is the case, and the amount to which the charge will
7 change, if know; (4) The length of the automatic renewal term or that the service is continuous,
8 unless the length of the term is chosen by the consumer; (5) The minimum purchase obligation, if
9 any.”

11 24. Pursuant to §17601(c). “clear and conspicuous” or “clearly and conspicuously”
12 means “in larger type than the surrounding text, or in contrasting type, font, or color to the
13 surrounding text of the same size, or set off from the surrounding text of the same size by symbols
14 or other marks, in a manner that clearly calls attention to the language.”

16 25. §17603 of the Cal. Bus. Prof Code provides: “In any case in which a business sends
17 any goods, wares, merchandise, or products to a consumer, under a continuous service agreement or
18 automatic renewal of a purchase, without first obtaining the consumer's affirmative consent as
19 described in Section 17602, the goods, wares, merchandise, or products shall for all purposes be
20 deemed an unconditional gift to the consumer, who may use or dispose of the same in any manner
21 he or she sees fit without any obligation whatsoever on the consumer's part to the business,
22 including, but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares,
23 merchandise, or products to the business.”

25 **The Business of YP, LLC; YP Holdings, LLC; and Dex Media, Inc.**

26 26. YP, LLC, YP Holdings, LLC, and Dex Media, Inc. operate and throughout the
27 Class Period operated what they call:
28

1 [A] media company dedicated to connecting local
2 businesses with a ready-to-buy audience. With more than 60
3 million US visitors each month, YP is the original source people
4 use to find and connect with local businesses, from the popular YP
5 app, to yellowpages.com and The Real Yellow Pages.

6 For local businesses, YP integrated solutions are designed
7 to help build their presence and expand their reach through a
8 variety of print and digital products. YP has a team of marketing
9 experts in local markets across the U.S. with relationships spanning
10 nearly half a million advertisers.¹

11 27. Through the efforts of individuals, like Defendant Damien Halliburton, Defendants
12 YP, LLC, YP Holdings, LLC, and Dex Media, Inc. sell advertising subscriptions to small business
13 owners throughout the United States.

14 **Legal Agreement Between Consumers and YP, LLC (and Parent Companies) as Provided by**
15 **Damien Halliburton to Plaintiff**

16 28. YP, LLC provides, to its customers, the advertising contract, and the “Terms and
17 Conditions” (attached as Exhibit A is the letter, with the contract, provided by Damien Halliburton
18 to Plaintiff), and the “Advertiser General Terms and Conditions (attached as Exhibit B).

19 29. Throughout these documents, various methods are used to draw the reader’s
20 attention to important language contained therein, including using bold font, and/or all capital
21 letters, such as when it bolded the term. For example, in Exhibit A the “IMPORTANT - READ
22 CAREFULLY BEFORE SIGNING” provides a lengthy section about the authority to sign:

23 **IMPORTANT - READ CAREFULLY BEFORE SIGNING:**
24 **THE AGREEMENT BETWEEN ADVERTISER AND**
25 **PUBLISHER REGARDING THE SERVICES DESCRIBED IN**
26 **THIS ORDER CONSISTS OF THE FOLLOWING, ALL OF**
27 **WHICH ARE INCORPORATED BY REFERENCE: (A) THIS**
28 **ORDER: (B) THE ADVERTISER GENERAL TERMS AND**
CONDITIONS LOCATED AT YP.COM/ABOUT/LEGAL
(“LOCAL GENERAL TERMS”) OR, AS APPLICABLE. THE
ADVERTISER GENERAL TERMS AND CONDITIONS-

¹ Source, <http://corporate.yip.com/company-overview/>

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NATIONAL. LOCATED AT YP.COM/ABOUT/LEGAL ("NATIONAL GENERAL TERMS"; EACH AS APPLICABLE, THE "GENERAL TERMS"); (C) THE SERVICES TERMS, LOCATED AT YP.COM/ABOUT/LEGAL ("YP SERVICES TERMS"); (D) THE TERMS OF SERVICE AND USE, LOCATED AT YP.COM/ABOUT/LEGAL; AND (E) ANY OTHER TERMS REFERENCED IN THE GENERAL TERMS. ALL AS IN EFFECT ON THE DATE OF THIS ORDER. IN ADDITION TO BEING LOCATED AT YP.COM/ABOUT/LEGAL. OUR CUSTOMER SERVICE DEPARTMENT CAN PROVIDE YOU THE FOREGOING DOCUMENTS UPON REQUEST. THE AGREEMENT INCLUDES IMPORTANT LEGAL TERMS, WITHOUT LIMITATION: PERFORMANCE DISCLAIMERS, DIRECTORY DISTRIBUTION DISCLAIMERS, ADVERTISER'S WARRANTIES AS TO ADVERTISER'S INTELLECTUAL PROPERTY RIGHTS, ADVERTISER INDEMNITY OBLIGATIONS, FORUM AND VENUE LIMITATIONS, AND LIMITATIONS ON PUBLISHER'S LIABILITY. IF AN ORDER INCLUDES SERVICES PURSUANT TO WHICH PUBLISHER MAY, IN ITS SOLE DISCRETION, PLACE ADVERTISING ON ADVERTISER'S BEHALF IN VARIOUS MEDIA OR CHANNELS OF DISTRIBUTION (E.G., MC2), THEN ADVERTISER AGREES AND UNDERSTANDS THE TERMS APPLICABLE TO ALL SUCH MEDIA OR CHANNELS OF DISTRIBUTION IN WHICH ADVERTISING IS PLACED BY PUBLISHER. IN ADDITION TO THOSE TERMS SPECIFIC TO THE PRODUCT ITSELF, SHALL APPLY. ADVERTISER HAS REVIEWED IN DETAIL, EITHER ELECTRONICALLY OR IN PRINT, AND HEREBY APPROVES ALL OF THE MATERIALS ASSOCIATED WITH OR INCORPORATED BY REFERENCE INTO THIS AGREEMENT. ADVERTISER PROMISES TO PAY THE TOTAL INITIAL AMOUNT DUE UNDER THIS AGREEMENT AND TO PAY THE REMAINING CHARGES AGREED TO HEREIN, PLUS ALL APPLICABLE TAXES, LATE PAYMENT CHARGES AND COLLECTION ACTIVITY FEES AS BILLED UNTIL PAID IN FULL, INCLUDING MONTHLY CHARGES FOR ANY PRINT DIRECTORY EXTENSION. IF NOT PAID IN FULL UPFRONT, ADVERTISER'S ACCOUNT SHALL BE SUBJECT TO CREDIT APPROVAL AND \$25 MINIMUM MONTHLY BILLING. IF ADVERTISER DOES NOT ACCEPT ALL OF THE TERMS OF THE AGREEMENT, ADVERTISER MAY CANCEL THIS ORDER AND TERMINATE THE AGREEMENT BY WRITTEN NOTICE TO PUBLISHER, WITH IN TEN DAYS OF THE DATE OF THIS ORDER AS PROVIDED IN THE GENERAL TERMS. IF NOT

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CANCELLED WITHIN THE 10-DAY CANCELLATION PERIOD, ADVERTISER WILL BE DEEMED TO HAVE AGREED TO ALL OF THE TERMS OF THE AGREEMENT. WITH RESPECT TO PD ADVERTISING PRODUCTS AND SERVICES, THIS AGREEMENT IS AN AGREEMENT BETWEEN ADVERTISER AND PRINT MEDIA LLC AND ITS SUBSIDIARIES. WITH RESPECT TO INTERNET ADVERTISING PRODUCTS AND SERVICES, THIS AGREEMENT IS AN AGREEMENT BETWEEN ADVERTISER AND YP LLC AND ITS SUBSIDIARIES. SEE THE GENERAL TERMS FOR MORE INFORMATION. REFERENCES HEREIN TO "PUBLISHER" SHALL BE DEEMED TO MEAN INDIVIDUALLY AND/OR COLLECTIVELY, AS THE CONTEXT REQUIRES. PRINT MEDIA LLC AND ITS SUBSIDIARIES AND YP LLC AND ITS SUBSIDIARIES. BY YOUR SIGNATURE BELOW, YOU WARRANT THAT YOU HAVE RECEIVED A COPY AND HAVE READ THIS AGREEMENT, INCLUDING ALL OF ITS PARTS, THAT YOU HAVE FULL AUTHORITY TO SIGN FOR AND BIND ADVERTISER AND THAT YOU AGREE TO ALL THE TERMS OF THIS AGREEMENT.

30. Additionally, as can be seen in Exhibit B, Defendant uses visual cues to highlight particular sections of the agreement, for example:

UNLESS OTHERWISE AGREED TO IN WRITING, PUBLISHER MAKES NO WARRANTY REGARDING THE APPLICABILITY OF ANY REQUIREMENTS, STANDARDS AND/OR PRACTICES OF A LEGAL, REGULATORY, SELF-REGULATORY, AND/OR ETHICAL NATURE (COLLECTIVELY "REGULATIONS") TO ANY ADVERTISING OR WITH RESPECT TO ANY COMPLIANCE THEREWITH. EACH ADVERTISER IS SOLELY RESPONSIBLE FOR ENSURING ITS OWN COMPLIANCE WITH REGULATIONS APPLICABLE TO IT AND/OR ITS ADVERTISING

**Failure to Provide Clear and Conspicuous Disclosures
as Required by Law**

31. Within the contracting documents Defendants failed to state in clear and conspicuous language, i.e. in larger type than the surrounding text, or in contrasting type, font, or

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

- 3
- 4 (1) The subscription or purchasing agreement will continue until the consumer cancels.
- 5 (2) Describes the cancellation policy that applies to the offer.
- 6 (3) The recurring charges that will be charged to the consumer's credit or debit card or payment account with a third party as part
- 7 of the automatic renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and the
- 8 amount to which the charge will change, if known.
- 9 (4) The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the
- 10 consumer.
- 11 (5) There is a minimum purchase obligation, of any.

12 32. Defendant fails to present the automatic renewal offer terms or continuous service
13 offer terms in a clear and conspicuous manner before the subscription or purchasing agreement was
14 fulfilled and in visual proximity to the request for consent to the offer in violation of Cal. Bus. Prof.
15 Code §17602(a)(1)

16 33. During the Class Period Defendant made, and continues to make, and operate as if
17 they had entered into a contract that provides automatic renewal between Plaintiff and the
18 Defendants. Moreover, when confronted with the conflicts, Defendant does not deny that there is an
19 automatic renewal element to the contractual relationship between the Class Members (including
20 Plaintiff) and Defendants.

21 34. As a result of the above (including the automatic renewal and continuous service
22 disclosure failures referred to above), Defendant, in violation of Cal. Bus & Prof. Code § 17602
23 (a)(1), made an automatic renewal or continuous service offer to consumers, including Plaintiff and
24 Class Members, in California, yet failed to present the automatic renewal offer terms, or continuous
25 service offer terms, in a clear and conspicuous manner before the subscription or purchasing
26 agreement was fulfilled and in visual proximity, to the request for consent to the offer.
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Defendant Fails to Obtain Affirmative Consent to the Agreement Containing the Automatic Renewal Offer Terms in Violation of Cal. Bus. Prof. Code § 17602 (A)(2)

35. Furthermore, and in addition to the above, throughout the Class Period, Plaintiff and Class Members' payment method were, and are, charged the monthly or yearly subscription amount. Thereafter, Defendant charged, and continues to charge, Plaintiff and Class Members' payment method on a monthly or yearly basis, and as such, is an automatic renewal plan within the meaning Cal. Bus. & Prof. Code. § 17601 (1) Furthermore, the file storing services continues until cancelled, and therefore, is, and was, a continuous service plan or arrangement as defined by Cal. Bus. & Prof. Code § 17601 (e).

36. As a result of the above (including the automatic renewal offer and continuous service offer disclosure failures referred above), prior to charging Plaintiff and Class Members' payment method, Defendant completely failed, and continues to fail, to obtain Plaintiff and Class Members' affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

37. As a result of the above allegations, Defendant violated Cal. Bus. & Prof. Code § 17602 (a)(2), and as such, all goods, wares, merchandise, or products, sent to Plaintiff and Class Members under the automatic renewal or continuous service agreement is deemed to be an unconditional gift pursuant to Cal. Bus. & Prof. Code § 17603, and they may use or dispose of the same in any manner they see fit without any obligation whatsoever on the consumer's part to the business, including, but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares, merchandise, or products to the business.

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**Defendant Failed to Provide an Acknowledgement
as Required Per Cal. Bus. Prof. Code § 17602 (A)(3)**

38. Furthermore, and in addition to the above, after Plaintiff and Class Members entered into a contract with Defendants, Defendants sent, and continues to send, Plaintiff and Class Members demands for additional payments. However, those demands failed, and continues to fail, 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 Class Members, in violation of Cal. Bus. & Prof. Code § 17602 (a)(3). Moreover, Defendant failed to provide Plaintiff and Class Members with an acknowledgement regarding how to cancel the free trial and allow Plaintiff and Class Members to cancel before payment.

CLASS ACTION ALLEGATIONS

39. Plaintiff brings this action on behalf of herself and all others similarly situated, as a class action pursuant to Code of Civil Procedure § 382. The Class that Plaintiff seeks to represent is composed of and defined as all persons who entered into an "Advertising Contract" with Defendant and to whom Defendant continuously charges and renews their advertising agreement in California, (hereinafter "Class Members") since four years prior to the filing of this suit.

40. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representatives of the Class.

a. Numerosity: The potential members of the Class as defined are so numerous and so diversely located throughout California, that joinder of all the members of the Class is impracticable. The Class Members are dispersed throughout California. Joinder of all members of the proposed class is therefore not practicable.

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1 b. Commonality: There are questions of law and fact common to the Plaintiff
2 and the Class that predominate over any questions affecting only individual members
3 of the Class. These common questions of law and fact include, without limitation:

4 i. Whether Defendant charged Plaintiff and Class Members' payment method
5 for an automatic renewal or continuous service without first obtaining the Plaintiff
6 and Class Members' affirmative consent to the agreement containing the automatic
7 renewal offer terms or continuous service offer terms in violation of Cal. Bus. Code §
8 17602 (a)(2);

9 ii. Whether Defendant's Legal Policies contained the automatic renewal offer
10 terms and/or continuous service offer terms as defined by Cal. Bus. Prof Code §
11 17601;

12 iii. Whether Defendant failed to present the automatic renewal offer terms, or
13 continuous service offer terms, in a clear and conspicuous manner before the
14 subscription or purchasing agreement was fulfilled and in visual proximity, or in the
15 case of an offer conveyed by voice, in temporal proximity, to the request for consent
16 to the offer in violation of Cal. Bus. Code § 17602 (a)(1);

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

21 v. Whether Cal. Bus. § Prof. Code § 17603 provides for restitution for money
22 paid by Class Members in circumstances where the goods and services provided by
23 Defendant is deemed an unconditional gift;

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- vi. Whether Plaintiff and Class Members are entitled to restitution under Cal. Bus. & Prof. Code. § 17200-17203;
 - vii. Whether Plaintiff and Class Members are entitled to declaratory relief, injunctive relief and/or restitution under Cal. Bus. & Prof. Code. § 17535;
 - viii. Whether Plaintiff and Class Members are entitled to injunctive relief, attorneys fees' and costs under California Civil Code § 1780; AND
 - ix. The proper formula(s) for calculating restitution owed to Class Members.
- c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both Plaintiff and Class Members were deprived of property rightly belonging to them, arising out of, and caused by. Defendant's common course of conduct in violation of law as alleged herein, in similar ways.

FIRST CAUSE OF ACTION
- Violation of the Automatic Renewal Law -
Cal. Bus. & Prof. Code § 17600, et seq.
(By Plaintiff against All Defendants, Class Action Claim)

41. Plaintiff hereby alleges and incorporates by reference as though set forth fully herein, the allegations contained in each preceding paragraphs above.

42. As alleged more fully below, Defendants have violated the requirements of the Automatic Renewal Law ("ARL"), including in particular, the requirements of §§ 17602(a)(1) - (3), 17602(b), and 17602(c).

A. Clear/Conspicuous and Visual Proximity Violations:

43. In offering its advertising services, during the class period, Defendants have made an automatic renewal or continuous service offer to consumers in California, including to the Representative Plaintiff and putative Class Members. In so doing, however, Defendant has failed to state the automatic renewal or continuous service offer in "clear and conspicuous manner" in

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1 compliance with law in, inter alia, the following respects: (a) failing to clearly and conspicuously
2 state that the recurring service will continue until the consumer cancels; (b) failing to clearly and
3 conspicuously describe the cancellation policy that applies to the offer; (c) failing to clearly and
4 conspicuously state that the recurring charges will be charged to the consumer's payment method as
5 part of the automatic renewal plan or arrangement, and that the amount of the charge may change, if
6 that is the case, and the amount to which the charge will change, if known; (d) failing to clearly and
7 conspicuously state that the service is continuous; and (e) failing to clearly and conspicuously state
8 that there is a minimum purchase obligation, if any.

9
10 44. In addition to the above failures, Defendant has failed and continues to fail, to state
11 the automatic renewal or continuous service offer the sales process. Specifically, when offering
12 advertising services, and enticing subscribers to use their services, like Plaintiff and Class Members
13 were so enticed, Defendant failed to state the automatic renewal or continuous service offer "in
14 visual proximity" to the request for consent to the offer.

15
16 45. As such, Defendant has violated Bus. & Prof. Code § 17602(a)(1), such that the
17 Representative Plaintiff and putative Class Members are entitled to the relief under Cal. Bus. &
18 Prof. Code § 17603, including, inter alia, restitution of the monies paid to Defendant for such
19 automatic renewals and retention of the goods and or services purchased through such
20 Subscriptions as an "unconditional gift."

21
22 46. WHEREFORE, based on the above violations of their lawful rights, the
23 Representative Plaintiff and putative Class Members seek relief as requested herein.

24 **B. Failure to Obtain Affirmative Consent:**

25 47. In addition to the above failures, throughout the Class Period, Defendant failed to
26 obtain the affirmative consent of the Representative Plaintiff and Class Members to the agreement
27 containing the automatic renewal and/or continuous service offer terms. This has included, inter
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1 alia, failing to obtain their affirmative consent to the term that their payment method would be
2 automatically and perpetually charged on a recurring basis, unless cancelling through an arcane and
3 almost impossible process. There is no mechanism at any point during the sales process by which
4 consumers could provide their explicit consent to Defendants’ automatic renewal and/or continuous
5 service terms prior to entering the information for their payment methods and prior to the charge
6 thereto. For instance, there is no box that Defendants’ customers are required to check or other form
7 of acknowledgement by which Defendants’ customers affirmed that they explicitly agreed to
8 recurring charges to their respective payment methods for advertising services affirmatively
9 cancelled their contract.
10

11 48. Defendant has therefore charged, and has continued to charge, the payment method
12 of the Representative Plaintiff and Class Members without first obtaining their affirmative consent
13 to the terms of the service in violation of Bus. & Prof. Code § 176012(a)(2).
14

15 49. As a result of these failures, the Representative Plaintiff and putative Class Members
16 are entitled to the relief under Cal. Bus. & Prof. Code § 17603, including, inter alia, restitution of
17 the monies paid to Defendant for such Subscriptions and retention of the goods purchased through
18 such Subscriptions as an “unconditional gift.”
19

20 50. WHEREFORE, based on the above violations of their lawful rights, the
21 Representative Plaintiff and putative Class Members seek relief as requested herein.

22 **C. Retainable Cancellation Policy and Cancellation Mechanism:**

23 51. In addition to the above failures, throughout the Class Period, Defendant has failed,
24 and continues to fail, to provide the Representative Plaintiff and Class Members with a retainable
25 “acknowledgement” that includes the automatic renewal or continuous service offer terms,
26 cancellation policy, and information on how to cancel, in violation of Cal. Bus. & Prof. Code §
27 17602(a)(3). Upon concluding the sales process for purchasing one of Defendants’ advertising
28

1 services, Defendants failed to provide information, such as a downloadable or printable document
2 or other retainable format, which sets forth the terms of the automatic renewal or continuous service
3 offers, the cancellation policies applicable to the advertising services provided by Defendants, or
4 any information on how to cancel the services contract.

5
6 52. Defendants have therefore violated the requirements of Bus. & Prof. Code §
7 176012(a)(3), such that the Representative Plaintiff and putative Class Members are entitled to the
8 relief under Cal. Bus. & Prof. Code § 17603, including, inter alia, restitution of the monies paid to
9 Defendant for such Subscriptions and retention of the goods purchased through such Subscriptions
10 as an “unconditional gift.”

11 53. WHEREFORE, based on the above violations of their lawful rights, the
12 Representative Plaintiff and putative Class Members seek relief as requested herein.

13
14 **SECOND CAUSE OF ACTION**
15 **-Violation of the Unfair Competition Law -**
16 **Bus. & Prof. Code § 17200, et seq.**
17 **(By Plaintiff against All Defendants, Class Action Claim)**

18 54. Plaintiff hereby alleges and incorporates by reference as though set forth fully
19 herein, the allegations contained in each preceding paragraphs above.

20 55. Defendant engages in business practices, offers its products and services, and
21 advertises its products and services to consumers within the State of California. In so doing,
22 Defendant has a duty to comply with applicable laws protecting against, inter alia, unlawful and
23 unfair business practices and acts, as prohibited by Bus. & Prof. Code § 17200, et seq., also known
24 as the Unfair Competition Law (hereinafter “UCL”).

25 56. Section § 17204 of the UCL allows “a person who has suffered injury in fact and has
26 lost money or property” to prosecute a civil action for violation of the UCL individually and on
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1 behalf of a class of similarly situated individuals affected by the unlawful or unfair business
2 practices or acts.

3 57. Defendant has engaged in numerous acts and/or a pattern and practice of unlawful
4 and unfair business practices within the State of California, in violation of the UCL. These illegal
5 business practices and acts include failing to provide consumers, such as the Representative
6 Plaintiff and Class Members, with notices and disclosures in compliance with the Automatic
7 Renewal Law, Bus. & Prof. Code § 17600 et seq. corresponding to Defendant's sale of advertising
8 services. In particular, as set forth more fully herein above, Defendant failed and continues to fail to
9 comply with the requirements of § 17602(a)(1) through (3).
10

11 58. For at least the last four years, Defendant has committed unlawful and unfair
12 business acts and practices, as defined by the UCL, based on its violations of the Automatic
13 Renewal Law.
14

15 59. The Representative Plaintiff and putative Class Members have standing to pursue
16 this claim because they have suffered injury in fact by, among other things, having lost money
17 which they paid for Defendant's service, which do not comply with applicable laws.

18 60. As a result of its conduct, Defendant has been unjustly enriched and should be
19 disgorged of profits realized from its unlawful business practices. Plaintiffs and other members of
20 the general public have no other adequate remedy of law in that, absent equitable relief from the
21 Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the
22 public interest, thus engendering a multiplicity of judicial proceedings.
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24 61. WHEREFORE, based on the above violations of their lawful rights, the
25 Representative Plaintiff and Class Members seek relief as requested herein.
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THIRD CAUSE OF ACTION
- Injunctive Relief -
Cal. Bus. & Prof. Code § 17535
(By Plaintiff against All Defendants, Class Action Claim)

62. Plaintiff hereby alleges and incorporates by reference as though set forth fully herein, the allegations contained in each preceding paragraphs above.

63. Bus. & Prof. Code § 17535 allows “any person who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the UCL. An individual aggrieved as such may bring an action on behalf himself or herself and others similarly situated who are affected by the unlawful and/or unfair business practice.

64. For at least the last four years, Defendant has committed unlawful and/or unfair business acts and practices within the meaning of the UCL based on its violations of the Automatic Renewal Law, Bus. & Prof. Code § 17601 et seq., as set forth above.

65. As a direct and proximate result of Defendant's unlawful and/or unfair business acts and practices, described herein, Defendant has received and continues to hold unlawfully obtained money belonging to the Representative Plaintiff and Class Members in the form of payments made by them for Defendant's service. Defendant has profited from its unlawful and unfair acts and practices in the amounts of those payments and interest accrued thereon.

66. Representative Plaintiff and similarly situated Class Members are entitled to injunctive relief and/or restitution pursuant to Cal. Bus. & Prof. Code § 17535 and interest thereon for all monies paid by Class Members under the agreements for the last four years preceding the filing of this legal action through the date of such restitution, at rates specified by law. Defendant should be required to disgorge all profits and gains it has reaped and should be ordered to restore those profits and gains to Representative Plaintiff and Class Members, from whom they were unlawfully taken.

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1 67. Representative Plaintiff and similarly situated Class Members are entitled to enforce
2 all applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202.

3 68. Representative Plaintiff has assumed the responsibility of enforcement of the laws
4 for the benefit of consumers by suing on behalf herself and other similarly situated Class Members.
5 Representative Plaintiff's success in this action will enforce important rights affecting the public
6 interest. Therefore, an award of reasonable attorneys' fees to Representative Plaintiff is appropriate
7 pursuant to California Code of Civil Procedure § 1021.5.

8 69. WHEREFORE, based on the above violations of their lawful rights, the
9 Representative Plaintiff and Class Members seek relief as requested herein.
10

11
12 **FOURTH CAUSE OF ACTION**
13 **-Common Count: Money Had and Received-**
14 **(By Plaintiff against All Defendants)**

15 70. Plaintiff hereby alleges and incorporates by reference as though set forth fully
16 herein, the allegations contained in each preceding paragraphs above.

17 71. Defendants received money from Plaintiff and Class Members.

18 72. The monies belong to Plaintiff and Class Members.

19 73. Defendants have not returned the money.

20 74. Plaintiff, on behalf of himself and similarly situated Class Members, requests relief
21 as described below.

22 **FIFTH CAUSE OF ACTION**
23 **-Negligent Misrepresentation-**
24 **(By Plaintiff against Defendant Damien Halliburton, Not Alleged as a Class Claim)**

25 75. Plaintiff hereby alleges and incorporates by reference as though set forth fully
26 herein, the allegations contained in each preceding paragraphs above

27 76. Defendant Damien Halliburton represented that the terms of the advertising contract
28 were complete and fully contained in Exhibits A and B.

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77. Defendant Damien Halliburton’s representation was untrue, because the automatic renewal program alleged above was not contained in the contract provided by Damien Halliburton.

78. Whether Damien Halliburton believed that his representation was truthful and accurate about the complete nature of the contract between Plaintiff and Defendants, he had no basis to believe such a representation was true, when he made the representation.

79. Plaintiff only discovered the falsity of this representation in 2017, when she was automatically billed and “sent to collections” because she refused to pay.

80. At all times, Damien Halliburton intended for Plaintiff to believe that the terms of contractual relationship for advertising entered into by Plaintiff were fully contained in the documents attached here as Exhibits A and B.

81. Plaintiff relied on the terms contained in Exhibits A and B when she attempted to cancel her contract with Defendants.

82. Had Plaintiff known of the automatic renewal program Defendants required of her, she would have likely not entered into the contract, or complied with its policies when she decided to cancel her contract.

83. As a result of Damien Halliburton’s misrepresentations, Plaintiff has been forced to pay for an additional year of service.

PRAYER

WHEREFORE, Plaintiff requests the following relief:

1. That the court certify this matter as a class action;
2. That Plaintiff be designated as the class representative;
3. That Counsel for Plaintiff be designated as class counsel;
4. That Defendants be found to have violated California Bus. & Prof. Code § 17602 (a)(2) by improperly charging Plaintiff and the putative class payments through an automatic

1 renewal program or process without first obtaining the affirmative consent of Plaintiff and the
2 putative class;

3 5. That Defendants be found to have engaged in unfair business practices for the
4 conduct described herein;

5 6. That Plaintiff and the putative class receive full restitution of the amount of the
6 monies improperly paid to Defendants, in an amount to be proven at trial;

7 7. That Defendants pay all damages owed;

8 8. That Defendant pay reasonable costs, attorneys' fees, and pre-judgment interest;

9 9. That Defendants be enjoined from continuing with their automatic renewal program
10 in California;

11 10. That Plaintiff be awarded general damages against Defendant Damien Halliburton.
12

13 Date: June 21, 2018

14 Respectfully Submitted,

15 McCATHERN LLP

16 By: 

17 EVAN SELIK
18 Attorneys for Plaintiffs, CONNIE LOPEZ
19 DBA BUILDING BLOCKS PRESCHOOL
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial for all claims so triable.

Date: June 21, 2018

Respectfully Submitted,

McCATHERN LLP

By:



EVAN SELK
Attorneys for Plaintiffs, CONNIE LOPEZ
DBA BUILDING BLOCKS PRESCHOOL

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