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

BRIANNA RIVERA, individually and on behalf of all others similarly situated,

Plaintiff,

v.

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

Defendants.

Case No. 2:19-cv-1217

CLASS ACTION COMPLAINT FOR:

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

1 Plaintiff Brianna Rivera (“Plaintiff”), on behalf of herself and all others similarly
2 situated, complains and alleges as follows:

3 **INTRODUCTION & OVERVIEW OF CLAIMS**

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

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

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

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

8 **JURISDICTION AND VENUE**

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

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

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

20 **PARTIES**

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

24 8. Plaintiff is informed and believes, and upon such information and belief
25 alleges, that Defendant BrainFM, Inc. is a Delaware corporation with its principal place
26 of business located in Chicago, Illinois. Defendant operates in California and has done
27 business in California at all times during the Class Period. Also during the Class
28 Period, Defendant made, and continues to make, automatic renewal or continuous

1 service offers to consumers in California. Defendant operates a website which markets
2 ready-made meals and related products.

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

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

15 **FACTUAL BACKGROUND**

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

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

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

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

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

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

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

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

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

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

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

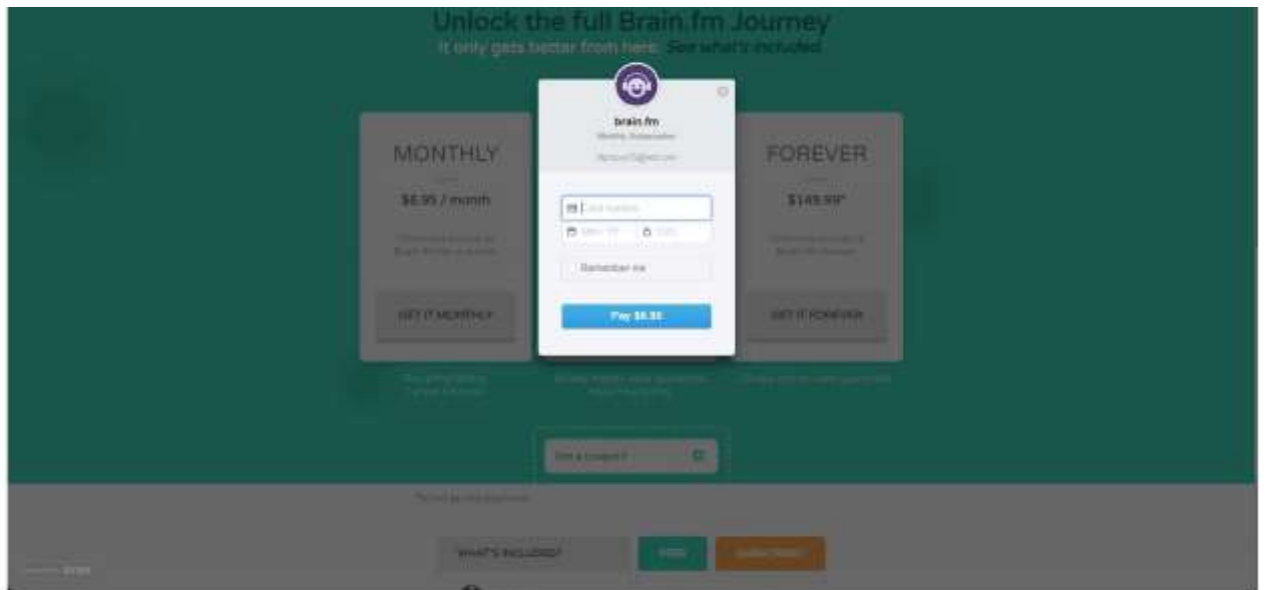
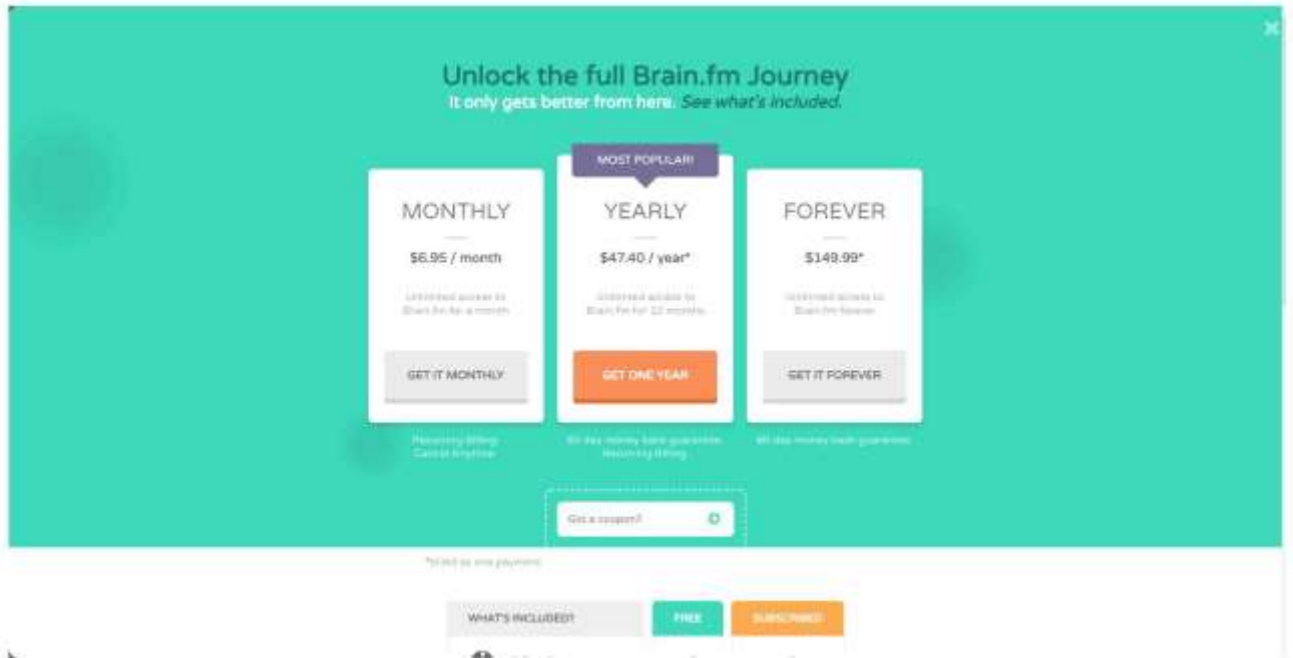
15 **Defendant’s Business**

16 18. Defendant offers, at its website, found at brain.fm, various subscriptions
17 for **music streaming** and related **products**. Defendant’s product and services plan
18 constitutes an automatic renewal and/or continuous service plan or arrangement for the
19 purposes of Cal. Bus. & Prof. Code § 17601.

20 **Defendant Failed to Present the Automatic Renewal Offer Terms or Continuous** 21 **Service Offer Terms in a Clear and Conspicuous Manner Before the Subscription** 22 **or Purchasing Agreement was Fulfilled and in Visual Proximity to the Request for** 23 **Consent to the Offer in Violation of Cal. Bus. & Prof. Code § 17602(a)(1), (2).**

24 19. During the Class Period, Defendant made an automatic renewal offer for
25 its subscriptions plans to Consumers in the United States, including Plaintiff and Class
26 Members. Although the page where a prospective subscriber finalizes a purchase does
27 mention cancellation, it does not set forth in full your cancellation policy in visual
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1 proximity to where a subscriber makes the purchase in a “clear and conspicuous
2 manner” as required by Section 17602(a)(1).



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20. As a result, during the class period, prior to charging Plaintiff and Class Members, Defendant failed to obtain Plaintiff’s and Class Members’ affirmative consent to the automatic

1 renewal offer terms or continuous service offer terms as required by Cal. Bus. & Prof. Code §
2 17602(a)(1), (2).

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

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

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

20 From: "Brain.fm" <no-reply@brain.fm>
21 Date: May 25, 2018 2:33 PM
22 Subject: You're in! Access Brain.fm here
23 To: <riverabrianna822@gmail.com>
24 Cc:

25 Welcome to Brain.fm! Couple quick notes:

- 26 (1) Your payment has been received. Thanks for being a customer!
27 (2) Access your account here: <https://www.brain.fm/app>.

28 You will be seeing regular updates and releases to Brain.fm (more sessions, better adaptation
algorithms, progress section, etc)
Behind the scenes, we are leading hands-on neuroscience research and working hard to improve every
aspect of Brain.fm.

Everything we add to Brain.fm will be guided by one goal: more effective results for you.

Cheers!
- The Brain.fm team

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **FIRST CAUSE OF ACTION**

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

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

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

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

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

27 (l) Fail to present the automatic renewal offer terms or continuous
28 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.

36. Plaintiff and Class Members purchased Defendant’s online **music streaming** and related **products** for personal, family or household purposes. Defendant failed to present the automatic renewal offer terms, or continuous service offer terms, in a clear and conspicuous manner and in visual proximity the request for consent to the offer before the subscription or purchasing agreement was fulfilled.

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

38. Plaintiff, on behalf of herself and Class Members, requests relief as described below.

SECOND CAUSE OF ACTION

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

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

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

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

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

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

(2) Charge the consumer’s credit or debit card or the consumer’s account 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.

1 41. Plaintiff and Class Members purchased Defendant's online **music**
2 **streaming** and related **products** for personal, family or household purposes.
3 Defendant charged, and continues to charge Plaintiff's and Class Members' Payment
4 Method for an automatic renewal or continuous service without first obtaining
5 Plaintiff's and Class Members affirmative consent to the Terms of Use containing the
6 automatic renewal offer terms or continuous service offer terms.

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

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

12 **THIRD CAUSE OF ACTION**

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

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

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

18 44. The foregoing paragraphs are alleged herein and are incorporated herein
19 by reference.

20 45. Cal. Bus. & Prof. Code § 17602(a)(3) provides:

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

24 (3) Fail to provide an acknowledgment that includes the
25 automatic renewal or continuous service offer terms,
26 cancellation policy, and information regarding how to cancel in
27 a manner that is capable of being retained by the consumer. If
28 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.

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

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

8 47. Plaintiff and Class Members purchased Defendant’s online **music**
9 **streaming** and related **products** for personal, family or household purposes.
10 Defendant failed to provide an acknowledgement that includes the automatic renewal or
11 continuous service offer terms, cancellation policy, and information on how to cancel in
12 a manner that is capable of being retained by Plaintiff and Class Members.

13 48. As a result of Defendant’s violations of Cal. Bus. & Prof. Code §§
14 17602(a)(3) and 17602(b), Defendant is subject to all civil remedies under Cal. Bus. &
15 Prof. Code § 17604 that apply to a violation of Article 9, of Chapter 1 of Part 3, of
16 Division 7 of the Cal. Bus. & Prof. Code.

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

19 **FOURTH CAUSE OF ACTION**

20 **VIOLATION OF THE UNFAIR COMPETITION LAW**

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

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

23 50. The foregoing paragraphs are alleged herein and are incorporated herein
24 by reference.

25 51. Cal. Bus. & Prof. Code § 17200, *et seq.* (the “UCL”) prohibits unfair
26 competition in the form of any unlawful or unfair business act or practice. Cal. Bus. &
27 Prof. Code § 17204 allows “a person who has suffered injury in fact and has lost money
28 or property” to prosecute a civil action for violation of the UCL. Such a person may

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

3 52. Since December 1, 2010, and continuing during the Class Period,
4 Defendant has committed unlawful and/or unfair business acts or practices as defined
5 by the UCL, by violating Cal. Bus. & Prof. Code §§ 17602(a)(1), 17602(a)(2),
6 17602(a)(3) and 17602(b). The public policy which is a predicate to a UCL action
7 under the unfair prong of the UCL is tethered to a specific statutory provision. *See* Cal.
8 Bus. & Prof. Code §§ 17600, 17602. In addition, besides offending an established
9 public policy, Defendant's act or practice is immoral, unethical, oppressive,
10 unscrupulous or substantially injurious to consumers. Further, the utility of
11 Defendant's conduct is outweighed by the gravity of the harm to Plaintiff and Class
12 Members.

13 53 Plaintiff has standing to pursue this claim because she suffered injury in
14 fact and has lost money or property as a result of Defendant's actions as set forth
15 herein. Plaintiff purchased Defendant's online **music streaming** and related **products**
16 for personal, family, or household purposes.

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

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

1 56. Plaintiff and similarly situated Class Members are entitled to enforce all
2 applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202, and to obtain
3 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203.

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

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

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff requests the following relief:

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

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

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

25 D. That the Court find and declare that Defendant has violated Cal. Bus. &
26 Prof. Code § 17602(a)(3) by failing to provide an acknowledgement that includes the
27 automatic renewal or continuous service offer terms, cancellation policy and
28

1 information on how to cancel in a manner that is capable of being retained by Plaintiff
2 and Class Members;

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

8 F. That the Court find and declare that Defendant has violated the UCL and
9 committed unfair and unlawful business practices by violating Cal. Bus. & Prof. Code §
10 17602;

11 G. That the Court award to Plaintiff and Class Members damages and full
12 restitution due to Defendant's UCL violations, pursuant to Cal. Bus. & Prof. Code §§
13 17200-17205 in the amount of their subscription agreement payments;

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

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

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

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22 Dated: February 19, 2019

PACIFIC TRIAL ATTORNEYS, APC

23 By: /s/ Scott J. Ferrell

24 Scott. J. Ferrell

25 Attorneys for Plaintiff
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