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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 INEZ VASQUEZ-COSSIO, individually
and on behalf of all others similarly
12 situated,

13 Plaintiff,

14 v.

15 BOXY CHARM, INC., a Florida
corporation; and DOES 1 – 10, inclusive,
16

17 Defendants.
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Case No. 5:19-cv-869

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)**
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1 Plaintiff Inez Vasquez-Cossio (“Plaintiff”), on behalf of herself and all others
2 similarly 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 boxes of cosmetics and related products)
8 from Boxy Charm, Inc. (“Defendant”). The class of others similarly situated to
9 Plaintiff is referred to herein as “Class Members.” The claims for damages, restitution,
10 injunctive and/or other equitable relief, and reasonable attorneys’ fees and costs arise
11 under 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 failed to provide an acknowledgment that
17 includes the automatic renewal or continuous service offer terms, cancellation policy,
18 and information regarding how to cancel in a manner that is capable of being retained
19 by the consumer in violation of Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b).
20 As a result, all goods, wares, merchandise, or products sent to Plaintiff and Class
21 Members under the automatic renewal of continuous service agreements are deemed to
22 be an unconditional gift pursuant to Cal. Bus. & Prof. Code § 17603.

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

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JURISDICTION AND VENUE

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

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

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

PARTIES

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

17 8. Plaintiff is informed and believes, and upon such information and belief
18 alleges, that Defendant Boxy Charm, Inc. is a Florida corporation with its principal
19 place of business located in Pembroke Pines, Florida. Defendant operates in California
20 and has done business in California at all times during the Class Period. Also during
21 the Class Period, Defendant made, and continues to make, automatic renewal or
22 continuous service offers to consumers in California. Defendant operates a website
23 which markets boxes of cosmetics and products.

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

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

10 **FACTUAL BACKGROUND**

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

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

17 12. Cal. Bus. & Prof. Code § 17602(a) makes it unlawful for any business
18 making an automatic renewal or continuous service offer to a consumer in this state to
19 do, among other things, the following:

20 Fail to provide an acknowledgment that includes the automatic
21 renewal or continuous service offer terms, cancellation policy, and
22 information regarding how to cancel in a manner that is capable of
23 being retained by the consumer. If the offer includes a free trial, the
24 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.

25 13. Cal. Bus. & Prof. Code § 17601(a) defines the term “Automatic renewal”
26 as a “plan or arrangement in which a paid subscription or purchasing agreement is
27 automatically renewed at the end of a definite term for a subsequent term.”
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1 14. Cal. Bus. & Prof. Code § 17601(b) defines the term “Automatic renewal
2 offer terms” as “the following clear and conspicuous disclosures: (1) That the
3 subscription or purchasing agreement will continue until the consumer cancels. (2) The
4 description of the cancelation policy that applies to the offer. (3) The recurring charges
5 that will be charged to the consumer’s credit or debit card or payment account with a
6 third party as part of the automatic renewal plan or arrangement, and that the amount of
7 the charge may change, if that is the case, and the amount to which the charge will
8 change, if known. (4) The length of the automatic renewal term or that the service is
9 continuous, unless the length of the term is chosen by the consumer. (5) The minimum
10 purchase obligation, if any.”

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

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

25 **Defendant’s Business**

26 17. Defendant offers, at its website, found at www.boxycharm.com, various
27 subscriptions for **boxes of cosmetics** and related **products**. Defendant’s product and
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1 services plan constitutes an automatic renewal and/or continuous service plan or
2 arrangement for the purposes of Cal. Bus. & Prof. Code § 17601.

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

5 18. After Plaintiff and Class Members subscribed to one of Defendant's
6 subscription plans, during the Class Period Defendant sent to Plaintiff and Class
7 Members email follow-ups to their purchases, but has failed, and continues to fail, to
8 provide an acknowledgement that includes the automatic renewal or continuous service
9 offer terms, cancellation policy, and information on how to cancel in a manner that is
10 capable of being retained by Plaintiff and Class Members in violation of Cal. Bus. &
11 Prof. Code §§ 17602(a)(3) and 17602(b).

12
13 From: BOXYCHARM Support <noreply@boxycharm.com>
14 Date: April 25, 2017 at 8:41:30 PM PDT
15 To: [REDACTED]
16 Subject: Here's your Boxycharm order, inez
17 Reply-To: noreply@boxycharm.com

18 **Hi inez**

19 **Welcome to the BOXYCHARM family, we're thrilled to have you!**

20 You are currently on the waitlist...oh no! Rest assured, the BOXYCHARM team is working hard to get
21 you off this list as soon as possible. So hold tight...!

22 Now that you are part of our community, here is a bit of what you can expect AFTER you are off the
23 waitlist:

24 Once we have more boxes to fill your order, you will automatically be removed from the waitlist, and
25 your credit card will automatically be charged for the subscription term selected. You will also receive
26 by email an order receipt notifying you that the wait is over and that a box will be on its way soon!
27 Your first box will be for the month in which you receive your order receipt. For example, if you are
28 waitlisted in January, and receive your order receipt in March, your first box will be a March box.

Your subscription will automatically renew and your credit card will be charged between the 1st & 3rd
of each month.

Shipping will start on the 10th of each month.

1 **From:** BOXYCHARM Support <noreply@boxycharm.com>
2 **Date:** April 25, 2017 at 8:41:33 PM PDT
3 **To:** [REDACTED]
4 **Subject:** Welcome to Boxycharm!
5 **Reply-To:** noreply@boxycharm.com



6
7 **Hi inez!**

8 **Welcome to the Boxycharm family, we're thrilled to have you!**

9
10 **Now that you are part of our community, here is a bit of what you can expect**

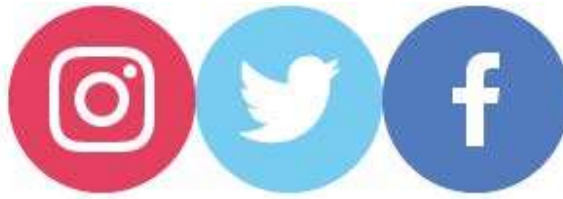
11 **Your renewal cycle is between the 1st & the 3rd of every month**



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22 **Shipping starts on the 10th of every month**



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28 **Follow us on social media to keep up with all the latest from Boxycharm!**



Did you know you can earn charms by referring friends?

Don't wait & start earning charms today by sharing your link: [REDACTED]

To learn more about our referral program click [here](#)

Need to update or change your account information? Just log into [your account](#) at any time or contact us for any other questions you may have.

- The Boxycharm Team



CLASS ACTION ALLEGATIONS

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

“All persons within California that, within the applicable statute of limitations period up to and including April 25, 2017 (the “Class Period”), purchased any product or service in response to an offer constituting an “Automatic Renewal” as defined by § 17601(a) of the Business and Professions Code, from Boxy Charm, Inc., its predecessors, or its affiliates, via the website www.boxycharm.com.”

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

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

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

23. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all 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 provide an
6 acknowledgement that included the automatic renewal or continuous
7 service offer terms, cancellation policy, and information on how to
8 cancel in a manner that is capable of being retained by Plaintiff and
9 Class Members, in violation of Cal. Bus. & Prof. Code §
10 17602(a)(3);
- 11 ii. Whether during the Class Period Defendant failed to provide an
12 acknowledgment that describes a cost-effective, timely, and easy-to-
13 use mechanism for cancellation in violation of Cal. Bus. & Prof.
14 Code § 17602(b);
- 15 iii. Whether Plaintiff and the Class Members are entitled to restitution
16 of money paid in circumstances where the goods and services
17 provided by Defendant are deemed an unconditional gift in
18 accordance with Cal. Bus. & Prof. Code § 17603;
- 19 iv. Whether Plaintiff and Class Members are entitled to restitution in
20 accordance with Cal. Bus. & Prof. Code §§ 17200, 17203;
- 21 v. Whether Plaintiff and Class Members are entitled to injunctive relief
22 under Cal. Bus. & Prof. Code § 17203;
- 23 vi. Whether Plaintiff and Class Members are entitled to attorneys' fees
24 and costs under California Code of Civil Procedure § 1021.5; and
- 25 vii. The proper formula(s) for calculating the restitution owed to Class
26 Members.

27 24. [Fed. R. Civ. P. 23(a)(3)] Plaintiff's claims are typical of the claims of the
28 members of the Class. Plaintiff and all members of the Class have sustained injury and

1 are facing irreparable harm arising out of Defendant's common course of conduct as
2 complained of herein. The losses of each member of the Class were caused directly by
3 Defendant's wrongful conduct as alleged herein.

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

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

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

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

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

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PROVIDE ACKNOWLEDGMENT WITH**
6 **AUTOMATIC RENEWAL TERMS AND INFORMATION REGARDING**
7 **CANCELLATION POLICY**

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

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

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

12 31. Cal. Bus. & Prof. Code§ 17602(a)(3) provides:

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

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

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

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

26 33. Plaintiff and Class Members purchased Defendant’s online subscriptions
27 for **boxes of cosmetics** and related **products** for personal, family or household
28 purposes. During the Class Period, Defendant failed to provide an acknowledgement

1 that includes the automatic renewal or continuous service offer terms, cancellation
2 policy, and information on how to cancel in a manner that is capable of being retained
3 by Plaintiff and Class Members.

4 34. As a result of Defendant’s violations of Cal. Bus. & Prof. Code §§
5 17602(a)(3) and 17602(b), Defendant is subject to all civil remedies under Cal. Bus. &
6 Prof. Code § 17604 that apply to a violation of Article 9, of Chapter 1 of Part 3, of
7 Division 7 of the Cal. Bus. & Prof. Code.

8 35. Plaintiff, on behalf of herself and Class Members, requests relief as
9 described below.

10 **SECOND CAUSE OF ACTION**

11 **VIOLATION OF THE UNFAIR COMPETITION LAW**

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

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

14 36. The foregoing paragraphs are alleged herein and are incorporated herein
15 by reference.

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

22 38. Since December 1, 2010, and continuing during the Class Period,
23 Defendant has committed unlawful and/or unfair business acts or practices as defined
24 by the UCL, by violating Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b). The
25 public policy which is a predicate to a UCL action under the unfair prong of the UCL is
26 tethered to a specific statutory provision. *See* Cal. Bus. & Prof. Code §§ 17600, 17602.
27 In addition, besides offending an established public policy, Defendant’s act or practice
28 is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

1 Further, the utility of Defendant's conduct is outweighed by the gravity of the harm to
2 Plaintiff and Class Members.

3 39 Plaintiff has standing to pursue this claim because she suffered injury in
4 fact and has lost money or property as a result of Defendant's actions as set forth
5 herein. During the Class Period Plaintiff purchased Defendant's online subscription for
6 **boxes of cosmetics** and related **products** for personal, family, or household purposes.

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

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

19 42. Plaintiff and similarly situated Class Members are entitled to enforce all
20 applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202, and to obtain
21 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203.

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

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

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff requests the following relief:

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

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

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

17 D. That the Court find and declare that Defendant has violated the UCL and
18 committed unfair and unlawful business practices by violating Cal. Bus. & Prof. Code §
19 17602;

20 E. That the Court award to Plaintiff and Class Members damages and full
21 restitution due to Defendant's UCL violations, pursuant to Cal. Bus. & Prof. Code §§
22 17200-17205 in the amount of their subscription agreement payments;

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

25 G. That Plaintiff and the Class be awarded reasonable attorneys' fees and
26 costs pursuant to California Code of Civil Procedure § 1021.5, and/or other applicable
27 law; and
28

1 H. That the Court award such other and further relief as this Court may deem
2 appropriate.

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4 Dated: May 8, 2019

PACIFIC TRIAL ATTORNEYS, APC

5 By: /s/ Scott J. Ferrell

6 Scott. J. Ferrell

7 Attorneys for Plaintiff
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