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Clerk of the Superior Court
By Vanessa Bahena, Deputy Clerk

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10

11 DANE TOVEY,
12 individually and on behalf of all others
similarly situated,

13 Plaintiff,

14 vs.

15 TRUSTED MEDIA BRANDS, INC.,
16 a Delaware corporation;
and DOES 1-50, inclusive,

17 Defendants.

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CASE NO. 37-2019-00038992-CU-BT-CTL

CLASS ACTION

COMPLAINT FOR:

(1) VIOLATION OF THE CALIFORNIA
AUTOMATIC RENEWAL LAW
[Cal. Bus. & Prof. Code § 17600 *et seq.*]

(2) VIOLATION OF THE CALIFORNIA
CONSUMERS LEGAL REMEDIES ACT
[Cal. Civ. Code § 1750 *et seq.*]

(3) UNFAIR COMPETITION
[Cal. Bus. & Prof. Code § 17200 *et seq.*]; and

DEMAND FOR JURY TRIAL

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PRELIMINARY ALLEGATIONS

1. This action alleges that Trusted Media Brands, Inc. violates California law by enrolling consumers in automatic-renewal magazine subscriptions and posting charges to consumers’ credit cards, debit cards, or third-party payment accounts without providing the “clear and conspicuous” disclosures required by the California Automatic Renewal Law, Cal. Bus. & Prof. Code § 17600 *et seq.* (“ARL”). The same course of conduct also violates the Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* (“CLRA”), and the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (“UCL”).

THE PARTIES

2. Plaintiff Dane Tovey (“Plaintiff”) is an individual residing in San Diego County, California.

3. Plaintiff is informed and believes and thereon alleges that defendant Trusted Media Brands, Inc. (“TMB”) is a Delaware corporation that does business in San Diego County, including the marketing of magazine subscriptions.

4. Plaintiff does not know the names of the defendants sued as DOES 1 through 50 but will amend this complaint when that information becomes known. Plaintiff alleges on information and belief that each of the DOE defendants is affiliated with the named defendant in some respect and is in some manner responsible for the wrongdoing alleged herein, either as a direct participant, or as the principal, agent, successor, alter ego, or co-conspirator of or with one or more of the other defendants. For ease of reference, Plaintiff will refer to the named defendant and the DOE defendants collectively as “Defendants.”

5. Venue is proper in San Diego County because the complained of conduct occurred in San Diego County.

BACKGROUND

6. TMB publishes several magazines, including *Reader’s Digest*, *Taste of Home*, *Family Handyman*, *Birds & Blooms* and *Reminisce*. TMB makes the magazine content available through print and/or online subscriptions.

1 explicitly request or know they were agreeing to. Consumers report they believed
2 they were making a one-time purchase of a product, only to receive continued
3 shipments of the product and charges on their credit card. These unforeseen charges
are often the result of agreements enumerated in the “fine print” on an order or
advertisement that the consumer responded to.

4 (See Exhibit 2 at p. 7.)

5 11. The Assembly Committee on Judiciary provided the following background for the
6 legislation:

7 This non-controversial bill, which received a unanimous vote on the Senate floor,
8 seeks to protect consumers from unwittingly consenting to “automatic renewals” of
9 subscription orders or other “continuous service” offers. According to the author and
10 supporters, consumers are often charged for renewal purchases without their consent
or knowledge. For example, consumers sometimes find that a magazine subscription
renewal appears on a credit card statement even though they never agreed to a
renewal.

11 (See Exhibit 3 at p. 11.)

12 12. The ARL seeks to ensure that, before there can be a legally-binding automatic
13 renewal or continuous service arrangement, there must first be adequate disclosure of certain terms
14 and conditions and affirmative consent by the consumer. Among other things, Cal. Bus. & Prof.
15 Code § 17602(a) makes it unlawful for any business making an automatic renewal offer or a
16 continuous service offer to a consumer in California to do any of the following:

17 a. Fail to present the automatic renewal offer terms or continuous service offer
18 terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled
19 and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the
20 request for consent to the offer. (§ 17602(a)(1).) For this purpose, the term “clear and conspicuous”
21 means “in larger type than the surrounding text, or in contrasting type, font, or color to the
22 surrounding text of the same size, or set off from the surrounding text of the same size by symbols
23 or other marks, in a manner that clearly calls attention to the language.” (§ 17601(c).) For an audio
24 disclosure, “clear and conspicuous” means “in a volume and cadence sufficient to be readily audible
25 and understandable.” (*Ibid.*)

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

1 service offer terms. (§ 17602(a)(2).)

2 c. Fail to provide an acknowledgment that includes the automatic renewal or
3 continuous service offer terms, cancellation policy, and information regarding how to cancel in a
4 manner that is capable of being retained by the consumer. (§ 17602(a)(3).) If the offer includes a
5 free trial, the business must disclose in the acknowledgment how to cancel and allow the consumer
6 to cancel before the consumer pays for the goods or services. The acknowledgment must include a
7 toll-free telephone number, electronic mail address, or other mechanism for cancellation.
8 (§ 17602(b).)

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

17 **FACTS GIVING RISE TO PLAINTIFF’S CLAIM**

18 14. In or about October 2017, while Plaintiff was located in San Diego County, Plaintiff
19 submitted a request for a one-year subscription for *Reader’s Digest*. In connection with that
20 subscription, Plaintiff paid the amount of \$10.00, which was charged to his credit card.

21 15. Documents evidencing the specific advertising and offer materials that Defendants
22 presented to Plaintiff are in the exclusive possession, custody, and control of Defendants. Plaintiff
23 will seek production of such documents during the course of discovery, which Plaintiff believes will
24 support the allegations herein.

25 16. Unbeknownst to Plaintiff and without his consent, Defendants enrolled Plaintiff in a
26 program under which his subscription would automatically renew. Thereafter, in or about August
27 2018, without Plaintiff’s authorization, Defendants posted a charge to Plaintiff’s credit card in the
28 amount of \$14.98.

1 plans” (Oct. 6, 2014), available at <http://www.creditcards.com/credit-card-news/negative-option->
2 [buy-now-pay-forever-1581.php](http://www.creditcards.com/credit-card-news/negative-option-buy-now-pay-forever-1581.php) (last accessed June 7, 2019)].)

3 **CLASS ACTION ALLEGATIONS**

4 21. Plaintiff brings this lawsuit as class action under Code of Civil Procedure section 382
5 on behalf of the following Class: “All individuals in California who, within the applicable
6 limitations period, were enrolled by Defendants in an automatic renewal or continuous service
7 program. Excluded from the Class are all employees of Defendants, all employees of Plaintiff’s
8 counsel, and the judicial officers to whom this case is assigned.”

9 22. Ascertainability. The members of the Class may be ascertained by reviewing records
10 in the possession of Defendants and/or third parties, including without limitation Defendants’
11 marketing, promotion, customer, and billing records.

12 23. Common Questions of Fact or Law. There are questions of fact or law that are
13 common to the members of the Class, which predominate over individual issues. Common
14 questions regarding the Class include, without limitation: (1) Whether, in connection with automatic
15 renewal or continuous service offers to California residents, Defendants present all automatic
16 renewal offer terms and, if so, whether such terms are presented in a manner that is “clear and
17 conspicuous” within the meaning of California law; (2) Defendants’ policies, practices and
18 procedures for obtaining affirmative consent from customers before charging a credit card, debit
19 card, or third-party payment account; (3) whether Defendants provide consumers with an
20 acknowledgment that informs them of the automatic renewal offer, the cancellation policy, and
21 information regarding how to cancel, in a manner that is capable of being retained by the consumer;
22 (4) Defendants’ record-keeping practices; (5) the appropriate remedies for Defendants’ conduct; and
23 (6) the appropriate terms of an injunction.

24 24. Numerosity. The Class is so numerous that joinder of all Class members would be
25 impracticable. Plaintiff is informed and believes and thereon alleges that the Class consists of at
26 least 100 members.

27 25. Typicality and Adequacy. Plaintiff’s claims are typical of the claims of the Class
28 members. Plaintiff alleges on information and belief that Defendants enrolled Class members in

1 continuous service without first obtaining the consumer’s affirmative consent to an agreement
2 containing clear and conspicuous disclosure of all automatic renewal offer terms, as those terms are
3 defined in § 17601(b) and (c); and

4 c. Requires Defendants to provide each California consumer who enters into a
5 subscription that includes automatic renewal or continuous service with an acknowledgement that
6 meets the requirements of § 17602(a)(3).

7 34. Plaintiff reserves the right to seek other prohibitory or mandatory aspects of
8 injunctive relief, whether on behalf of the Class and/or for the benefit of the general public of the
9 State of California.

10 **SECOND CAUSE OF ACTION**

11 Violation of the Consumers Legal Remedies Act

12 (Civ. Code § 1750 *et seq.*)

13 35. Plaintiff incorporates the allegations of paragraphs 1-27 as though set forth herein.

14 36. Plaintiff and Class members are “consumers” within the meaning of Civil Code
15 § 1761(d) in that Plaintiff and Class members sought or acquired Defendants’ goods and/or services
16 for personal, family, or household purposes.

17 37. Defendants’ magazine offers and the magazines pertaining thereto are “goods”
18 and/or “services” within the meaning of Civil Code § 1761(a) and (b).

19 38. The purchases by Plaintiff and Class members are “transactions” within the meaning
20 of Civil Code § 1761(e).

21 39. Defendants have violated Civil Code §§ 1770(a)(5) and (a)(9) by representing that
22 Defendants’ goods and services have certain characteristics or quantities that they do not have and
23 advertising goods and services with the intent not to sell them as advertised.

24 40. Unless enjoined and restrained by this Court, Defendants will continue to commit
25 the violations alleged herein. Pursuant to Civil Code § 1780(a)(2), on behalf of the Class, and also
26 for the benefit of the general public of the State of California, Plaintiff seeks an injunction
27 prohibiting Defendants from continuing their unlawful practices as alleged herein.

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THIRD CAUSE OF ACTION

Violation of the California Unfair Competition Law)

(Bus. & Prof. Code § 17200 *et seq.*)

41. Plaintiff incorporates the allegations of paragraphs 1-40 as though set forth herein.

42. The Unfair Competition Law defines unfair competition as including any unlawful, unfair, or fraudulent business act or practice; any unfair, deceptive, untrue, or misleading advertising; and any act of false advertising under section 17500. (Bus. & Prof. Code § 17200.)

43. In the course of conducting business in California within the applicable limitations period, Defendants committed unlawful, unfair, and fraudulent business practices, and engaged in unfair, deceptive, untrue, or misleading advertising, by, inter alia and without limitation, (a) failing to present statutorily-mandated “automatic renewal offer terms,” and failing to present such terms in a “clear and conspicuous” manner, in violation of § 17602(a)(1); (b) charging the consumer’s credit card, debit card, or third-party payment account for an automatic renewal without first obtaining the consumer’s affirmative consent to an agreement containing clear and conspicuous disclosure of all required automatic renewal offer terms, in violation of § 17602(a)(2); (c) failing to provide an acknowledgment that includes clear and conspicuous disclosure of all required automatic renewal offer terms, the cancellation policy, and information regarding a cancellation mechanism that is cost-effective, timely, and easy-to-use, and failing to provide such an acknowledgment in a manner capable of being retained by the consumer, in violation of § 17602(a)(3); (d) representing that Defendants’ goods or services have certain characteristics that they do not have, in violation of Civil Code § 1770(a)(5); and (e) advertising goods and services with the intent not to sell them as advertised, in violation of Civil Code § 1770(a)(9). Plaintiff reserves the right to identify other acts or omissions that constitute unlawful, unfair or fraudulent business acts or practices, unfair, deceptive, untrue or misleading advertising, and/or other prohibited acts.

44. Defendants’ acts and omissions as alleged herein violate obligations imposed by statute, are substantially injurious to consumers, offend public policy, and are immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct.

1 State of California, to prevent Defendants’ use or employment of practices that constitute unfair
2 competition.

3 **PRAYER**

4 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

5 On the First Cause of Action (Violation of the ARL):

- 6 1. For restitution;
- 7 2. For a public injunction for the benefit of the People of the State of California;

8 On the Second Cause of Action (Violation of the CLRA):

- 9 3. For a public injunction for the benefit of the People of the State of California;
- 10 4. For reasonable attorneys’ fees, pursuant to Civil Code section 1780(e);

11 On the Third Cause of Action (Unfair Competition):

- 12 5. For restitution;
- 13 6. For a public injunction for the benefit of the People of the State of California;

14 On All Causes of Action:

- 15 7. For reasonable attorneys’ fees, pursuant to Code of Civil Procedure § 1021.5;
- 16 8. For costs of suit;
- 17 9. For pre-judgment interest; and
- 18 10. For such other relief as the Court may deem just and proper.

19 Dated: July 26, 2019

DOSTART HANNINK & COVENEY LLP



ZACH P. DOSTART
Attorneys for Plaintiff

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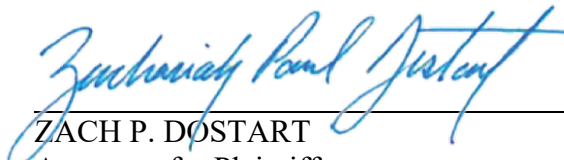
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable.

Dated: July 26, 2019

DOSTART HANNINK & COVENEY LLP



ZACH P. DOSTART
Attorneys for Plaintiff

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