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

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FENELLA ARNOLD and
KELLY NAKAI,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

HEARST MAGAZINE MEDIA, INC., a
Delaware corporation;
CDS GLOBAL, INC., an Iowa corporation;
and DOES 1-50, inclusive,

Defendants.

CASE NO. 37-2019-00047733-CU-BT-CTL
CLASS ACTION
COMPLAINT FOR:

(1) FALSE ADVERTISING – VIOLATION
OF THE CALIFORNIA AUTOMATIC
RENEWAL LAW;

(2) VIOLATION OF CAL. CIV. CODE
§ 1716;

(3) VIOLATION OF THE CALIFORNIA
CONSUMER LEGAL REMEDIES ACT;

(4) VIOLATION OF THE CALIFORNIA
UNFAIR COMPETITION LAW; and

(5) UNJUST ENRICHMENT.

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

1 **INTRODUCTION**

2 1. This class action complaint alleges that defendants Hearst Magazine Media, Inc.
3 (“Hearst”) and CDS Global, Inc. (“CDS”) violate California law in connection with magazine
4 marketing and subscription programs. Among other things, Hearst and CDS work together to enroll
5 consumers in automatic-renewal or continuous service subscriptions without providing the “clear
6 and conspicuous” disclosures mandated by California law; post charges to consumers’ credit or
7 debit cards for purported automatic renewal or continuous service subscriptions without first
8 obtaining the consumers’ affirmative consent to an agreement containing the requisite clear and
9 conspicuous disclosures; and solicit payment of money for goods that consumers did not order by
10 sending “invoices” for amounts that are not actually owed. This course of conduct violates the
11 California Automatic Renewal Law (Bus. & Prof. Code, § 17600 et seq.) (“ARL”), California’s
12 statutory prohibition on soliciting payment for unordered goods or services by means of false
13 invoices (Civ. Code, § 1716), the Consumers Legal Remedies Act (Civ. Code, § 1750 et seq.)
14 (“CLRA”), and the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) (“UCL”).

15 **THE PARTIES**

16 2. Plaintiff Fenella Arnold (“Arnold”) is an individual residing in San Diego County,
17 California.

18 3. Plaintiff Kelly Nakai (“Nakai”) is an individual residing in San Diego County,
19 California.

20 4. Arnold and Nakai are collectively referred to herein as “Plaintiffs.”

21 5. Plaintiffs are informed and believe and thereon allege that defendant Hearst
22 Magazine Media, Inc. is a Delaware corporation that does business in San Diego County, including
23 the marketing of magazine subscriptions.

24 6. Plaintiffs are informed and believe and thereon allege that defendant CDS Global,
25 Inc. is an Iowa corporation that does business in San Diego County, including the marketing and
26 processing of magazine subscriptions.

27 7. Plaintiffs do not know the names of the defendants sued as DOES 1 through 50 but
28 will amend this complaint when that information becomes known. Plaintiffs allege on information

1 and belief that each of the DOE defendants is affiliated with one or more of the named defendants
2 in some respect and is in some manner responsible for the wrongdoing alleged herein, either as a
3 direct participant, or as the principal, agent, successor, alter ego, or co-conspirator of or with one or
4 more of the other defendants. For ease of reference, Plaintiffs will refer to the named defendants
5 and the DOE defendants collectively as “Defendants.”

6 8. Venue is proper in this judicial district because the complained of conduct occurred
7 in this judicial district.

8 **BACKGROUND**

9 9. Hearst is one of the largest magazine publishers in the world. In the United States,
10 Hearst publishes approximately two dozen magazine titles, including *Food Network*, *Cosmopolitan*,
11 *Good Housekeeping*, *Woman’s Day*, *Country Living*, *HGTV Magazine*, and *Car & Driver*.

12 10. CDS is the largest magazine fulfillment house in the United States. As a fulfillment
13 house, CDS works with magazine publishers to provide services that may include assisting with
14 subscriptions, billing, collection, and/or other account services. Based in Des Moines, Iowa, CDS
15 is a wholly-owned subsidiary of Hearst, and provides fulfillment services for Hearst as well as for
16 other magazine publishers.

17 11. Traditionally, magazine publishers sold subscriptions on the basis of a schedule that
18 reflects a fixed price for a definite term (such as one, two, or three years). Under that arrangement,
19 the consumer selects the desired price/term combination and submits payment. Later, when the end
20 of the term is approaching, the consumer is notified that the subscription will soon come to an end
21 and is provided with a renewal offer. If the consumer wishes to renew, he or she selects the desired
22 price/term combination for the renewal period and submits the corresponding payment.
23 Alternatively, if the consumer does not renew, the subscription comes to an end.

24 12. During the 1990s, some marketers came to view the traditional model as constraint
25 on sales and profits, and advocated instead adoption of a “negative option” model. In a “negative
26 option,” the seller “interpret[s] a customer’s failure to take an affirmative action, either to reject an
27 offer or cancel an agreement, as assent to be charged for goods or services.” See “*Negative*
28 *Options*,” Federal Trade Commission, January 2009 (available at

1 <https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade->
2 [commission-workshop-analyzing-negative-option-marketing-report-](https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf)
3 [staff/p064202negativeoptionreport.pdf](https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf) (last accessed September 9, 2019). Defendants have
4 implemented a negative option model that does not comply with California law.

5 13. One aspect of Defendants' negative option model is to solicit orders for magazine
6 subscriptions that purport to be for a fixed period of time (e.g., one year, or two years), whereas
7 upon receipt of an order, Defendants enroll the consumer in a program under which the magazine
8 subscription will be "automatically renewed" for subsequent periods, with corresponding charges
9 posted to the consumer's credit card, debit card, or other payment account. Defendants enroll
10 consumers in such "automatic renewal" subscriptions without making the clear and conspicuous
11 disclosures required by California law.

12 14. Another aspect of Defendants' negative option model is to offer consumers a
13 "FREE" magazine issue, which offer is usually made in conjunction with a promotion that
14 simultaneously entices consumers to enter a sweepstakes sponsored by Defendants. When a
15 consumer enters a sweepstakes with a request for the (supposedly) "FREE" issue, Defendants
16 thereafter send the consumer an "invoice" stating that payment is due for a year-long subscription
17 to the magazine when, in fact, the recipient did not previously request a subscription and no money
18 is actually due. California law prohibits such false invoices.

19 **SUMMARY OF APPLICABLE LAW**

20 **The California Automatic Renewal Law**

21 15. In 2009, the California Legislature passed Senate Bill 340, which took effect on
22 December 1, 2010 as Article 9 of Chapter 1 of the False Advertising Law. (Bus. & Prof. Code,
23 § 17600 *et seq.* (the California Automatic Renewal Law or "ARL").) SB 340 was introduced
24 because:

25 It has become increasingly common for consumers to complain about unwanted
26 charges on their credit cards for products or services that the consumer did not
27 explicitly request or know they were agreeing to. Consumers report they believed
28 they were making a one-time purchase of a product, only to receive continued
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.

1 See Exhibit 1.

2 16. The Assembly Committee on Judiciary provided the following background for the
3 legislation:

4 This non-controversial bill, which received a unanimous vote on the Senate floor,
5 seeks to protect consumers from unwittingly consenting to “automatic renewals” of
6 subscription orders or other “continuous service” offers. According to the author and
7 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.

8 See Exhibit 2.

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

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

23 (2) Charge the consumer’s credit or debit card, or the consumer’s account with a
24 third party, for an automatic renewal or continuous service without first obtaining the consumer’s
25 affirmative consent to the agreement containing the automatic renewal offer terms or continuous
26 service offer terms, including the terms of an automatic renewal offer or continuous service offer
27 that is made at a promotional or discounted price for a limited period of time.

28

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

6 18. Bus. & Prof. Code § 17602(b) requires that the acknowledgment specified in
7 § 17602(a)(3) include “a toll-free telephone number, electronic mail address, a postal address if the
8 seller directly bills the consumer, or it shall provide another cost-effective, timely, and easy-to-use
9 mechanism for cancellation that shall be described in the acknowledgment.”

10 19. If a business sends any goods to a consumer under a purported automatic renewal or
11 continuous service arrangement without first obtaining the consumer’s affirmative consent to an
12 agreement containing the “clear and conspicuous” disclosures as specified in the ARL, the goods
13 are deemed to be an unconditional gift to the consumer, who may use or dispose of them without
14 any obligation whatsoever. (Bus. & Prof. Code, § 17603.) In addition, violation of the ARL gives
15 rise to restitution and injunctive relief under the general remedies provision of the False Advertising
16 Law, Bus. & Prof. Code § 17535. (Bus. & Prof. Code, § 17604, subd. (a).)

17 **Civil Code § 1716**

18 20. Civil Code § 1716 sets forth California’s statutory prohibition of false invoices.
19 Section 1716 prohibits the practice of soliciting payment of money by means of a written statement
20 or invoice for goods that were not ordered or services that were not performed. Specifically,
21 § 1716(a) makes it unlawful to “solicit payment of money by another by means of a written
22 statement or invoice, or any writing that reasonably could be considered a bill, invoice, or statement
23 of account due, but is in fact a solicitation for an order, unless the solicitation conforms to
24 subdivisions (b) to (f), inclusive.”

25 21. Civil Code § 1716(b) requires that any written statement that is in fact a solicitation
26 for an order must bear a conspicuous notice or disclaimer, one permissible version of which is:
27 “THIS IS NOT A BILL. THIS IS A SOLICITATION. YOU ARE UNDER NO OBLIGATION
28 TO PAY THE AMOUNT STATED ABOVE UNLESS YOU ACCEPT THIS OFFER.”

1 22. Any person damaged by noncompliance with § 1716 is entitled to damages in an
2 amount equal to three times the sum solicited. (Civ. Code, § 1716, subd. (g).)

3 **FACTS GIVING RISE TO THIS ACTION**

4 **Fenella Arnold’s Transaction With Defendants**

5 23. In or about June 2017, in response to one of Defendants’ advertisements, Arnold
6 submitted an order for a two-year subscription to *HGTV Magazine*. On July 3, 2017, Defendants
7 charged \$22.00 to Arnold’s credit card for that two-year subscription. Arnold does not have a copy
8 of the specific advertisement to which she responded, and will seek production from Defendants
9 through discovery. When Arnold submitted the order for that two-year subscription, she was not
10 aware that Defendants were going to enroll her in a program under which the subscription would
11 automatically renew for subsequent periods, and she did not consent to be enrolled in such program.

12 24. On June 28, 2019, without Arnold’s authorization or consent, Defendants posted a
13 charge of \$34.97 to Arnold’s credit card, purportedly for renewal of *HGTV Magazine*.

14 25. If Arnold had known that Defendants were going to enroll her in an automatically
15 renewing magazine subscription program, Arnold would not have submitted the order for *HGTV*
16 *Magazine* and would not have paid any money to Defendants for that magazine.

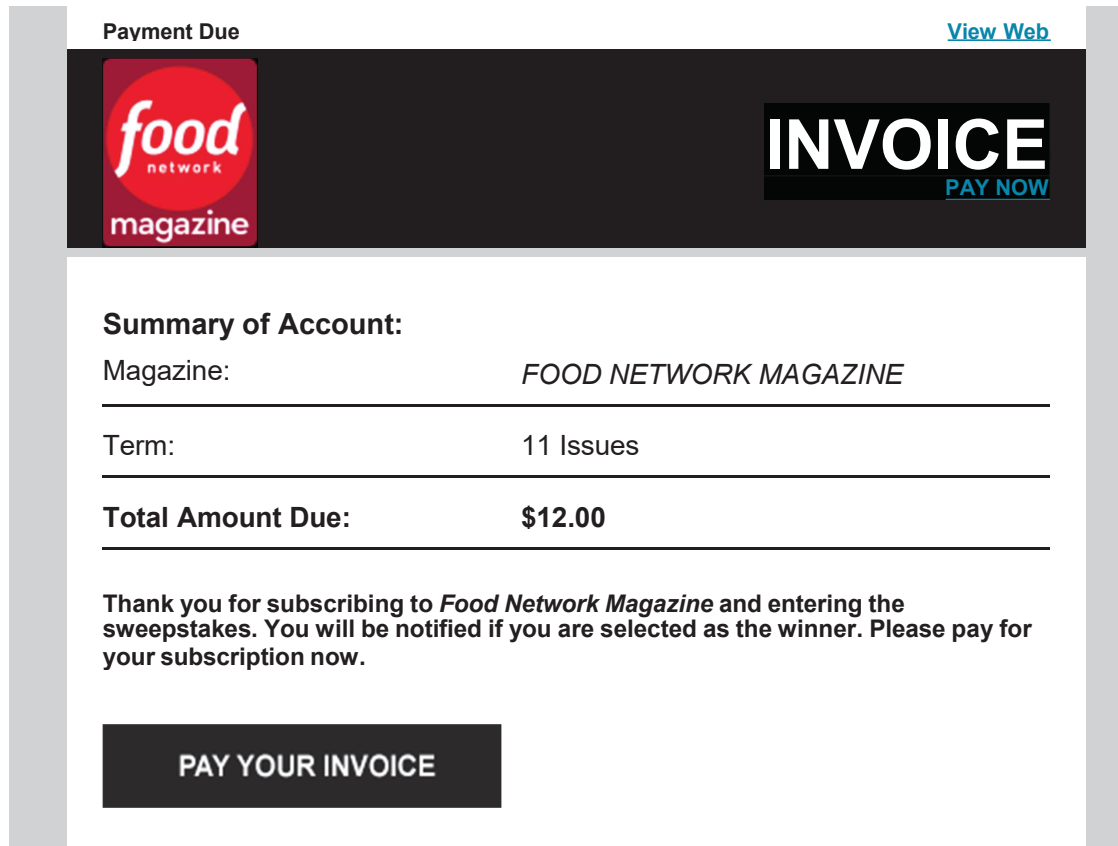
17 **Kelly Nakai’s Transaction With Defendants**

18 26. On September 5, 2018, Nakai received an email from Defendants with a subject line
19 of “Last Chance—You could win a trip to a Wine and Food Festival in NYC.” The email contains
20 promotional material relating to a sweepstakes sponsored by Defendants, for which the prize winner
21 will receive tickets for the New York City Wine & Food Festival, round-trip airfare, and lodging.
22 A true and correct copy of that email is attached hereto as Exhibit 3. Recipients of the email can
23 initiate entry into the sweepstakes by clicking the “ENTER NOW” button.

24 27. Upon clicking the “ENTER NOW” button, Nakai was presented with a webpage
25 containing additional promotional material for the sweepstakes. A true and correct copy of a
26 printout of that webpage is attached hereto as Exhibit 4. A portion of that webpage contains fields
27 in which a consumer can enter his or her name, address, and email information to enter the
28 sweepstakes. Above those fields is a narrative statement, set forth in bold text, that the consumer

1 can “[f]ill in the fields below to get 1 FREE issue of Food Network Magazine and be
2 automatically entered for your chance to win.” Farther down the page is a large “SUBMIT”
3 button by which the consumer can submit the sweepstakes entry and the request for the “FREE”
4 issue. Nakai submitted a sweepstakes entry, which included a request for the “FREE” issue.

5 28. Thereafter, Nakai did receive an issue of *Food Network Magazine*. However, Nakai
6 also received emails from Defendants purporting to be an “INVOICE” for a subscription to *Food*
7 *Network Magazine*, stating that there is now a “Payment Due” of \$12.00. A true and correct copy
8 of that invoice is depicted below:



24 29. Nakai assumed she owed Defendants the money that was stated as the “Amount
25 Due,” and Nakai paid the “invoice” with her credit card, in the amount of \$12.00. In fact, Nakai
26 had never ordered a subscription to *Food Network Magazine*, and no money was actually due.

27 30. If Nakai had known that, upon receipt of her sweepstakes entry, Defendants were
28 going to enroll her in, and charge her for, a one-year subscription for *Food Network Magazine*, she

1 would not have submitted the sweepstakes entry.

2 31. If Nakai had known that Defendants had no basis to assert that she owed money, and
3 that in fact she did not owe any money to Defendants, she would not have paid the purported invoice.

4 32. Nakai is informed and believes and thereon alleges that the *Food Network Magazine*
5 subscription into which Defendants enrolled her is an automatic-renewal subscription. If Nakai had
6 known that Defendants were going to treat her submission of a sweepstakes entry as enrollment into
7 an automatic-renewal subscription, she would not have entered the sweepstakes, would not have
8 requested the magazine issue from Defendants, and would not have paid any money to Defendants
9 for that magazine.

10 **DEFENDANTS' DECEPTION OF OTHER CONSUMERS**

11 33. Plaintiffs are not the only consumers to be victimized by Defendants in connection
12 with magazine subscriptions. There are hundreds of consumer complaints about similar deceptive
13 conduct posted on a variety of websites, including but not limited to the Better Business Bureau
14 ("BBB"), Yelp, Complaints Board, and pissedconsumer.com.

15 34. Customer reviews of Hearst posted on the BBB website and other consumer websites
16 illustrate that Defendants' scheme is effective and has affected many consumers. Many complaints
17 involve consumers receiving invoices from Defendants when no payment is due, and/or being
18 automatically renewed for magazines without consent.

19 **Brousc (March 30, 2019).** Less than 1 star for service. I have a paid subscription
20 to **** * Yet I keep receiving threatening notices to pay an overdue account
21 to renew my subscription. When I login into my acct, it says paid through November
22 2019. I have sent a paper letter, responded to email and sent a message through
online customer service and still I receive these threatening email messages
regularly.

23 A true and correct printout of that complaint is attached as Exhibit 5.

24 **Laura H (March 30, 2019).** I subscribed to 1 year of Town and Country magazine.
25 I did NOT renew it and keep receiving "invoices" stating my "account" is overdue
26 for another year subscription. They use bullying tactics to make people believe they
owe this "manufactured" invoice. Warning to the elderly or uninformed. DO NOT
27 PAY THESE INVOICES OR BE INTIMIDATED BY THEIR QUESTIONABLE
TACTICS!

28 A true and correct printout of that complaint is attached as Exhibit 6.

1 **Cathy H (January 18, 2019).** Scam!!! Entered their sweepstakes and than [sic]
2 received an E-mail with a subscription to *** Magazine and no way to unsubscribe.
3 Now they are sending a bill to me via mail!!! I never ordered there [sic] magazine!!!
4 sweepstakes is just a scam to get subscriptions and money from innocent people!

4 A true and correct printout of that complaint is attached as Exhibit 7.

5 **Advertising/Sales Issues (August 20, 2018).** Hearstmags and Good Housekeeping
6 and Oprah or O magazine, are all connected to the Hearst Corporation. Unsuspecting
7 people (like myself), enter a cloaked sweepstakes and the next thing you know you
8 start getting be e-mail and postage mail invoices saying you owe them money for
9 agreeing to buy one of these magazine subscriptions to Good Housekeeping and the
10 Oprah O magazines. Fraudulent entrapment advertising and it may be their way for
11 you to un-enter their sweepstakes also. Clever but unethical and fraudulent.

9 A true and correct printout of that complaint is attached as Exhibit 8.

10 **Billing/Collection Issues (January 8, 2018).** I hope Woman's Day is reading this
11 because I got a subscription that I don't want; probably got because I entered a
12 sweepstakes and inadvertently said "yes" somewhere in the process! (Very sneaky).
13 They don't have a phone # on the invoice, can't find it online. When you go to their
14 customer service page they want all kinds of information from you; you have to log
15 in, etc. etc. This takes way too much time to have to "undo" something which I didn't
16 want in the first place. Since I can't get in touch with a "human", I'm putting this on
17 Facebook, and complaining to BBB. Address on invoice: ** *** ***** ***** **
18 *****.

15 A true and correct printout of that complaint is attached as Exhibit 9.

16 **Advertising/Sales Issues (July 17, 2017).** I received an email from Veranda stating
17 that I have a chance to win outdoor furniture. I clicked on the link and it took me to
18 this page: ***** After reading the terms and
19 conditions, I entered my information. I then received an email stating that I
20 subscribed to House Beautiful for \$10 per month. I did not agree to a subscription.
21 No where in the terms or the above link mentioned a subscription. I called the
22 company and they noted my request to cancel but could not cancel it since the
23 subscription had not come through yet. This is a very unethical business practice.

21 A true and correct printout of that complaint is attached as Exhibit 10.

22 **Advertising/Sales Issues (May 8, 2017).** I filled out an online form for a "Garage
23 Make-Over" sweepstakes type of advertisement on Facebook. The next day I
24 received an email saying I owe Car & Driver \$10! First I tried finding a contact
25 avenue for Car and Driver...there is none unless you are a subscriber. I found a way
26 to contact the editor online for Car and Driver I told them in so uncertain terms that
27 I DO NOT want a subscription to Car and Driver I never wanted a subscription to
28 Car and Driver and to stop contacting me about a subscription to Car and Driver.
29 Now Car and driver is sending me mail demanding their \$10 for a subscription that
30 was gained by FALSE ADVERTISEMENT online. Please let Hearst
31 Communications know that I've communicated I DO NOT WANT A
32 SUBSCRIPTION TO CAR AND DRIVER!!

28 A true and correct printout of that complaint is attached as Exhibit 11.

1 **CLASS ACTION ALLEGATIONS**

2 35. Plaintiffs bring this lawsuit as a class action under Code of Civil Procedure § 382 on
3 behalf of two classes: (1) the “ARL Class” and (2) the “False Invoice Class.”

4 36. Plaintiffs Arnold and Nakai seek to represent the ARL Class, which is defined as
5 follows: “All individuals in California who, within the applicable limitations period, were enrolled
6 by Defendants in an automatic renewal program or a continuous service program and had a credit
7 card, debit card, and/or a third-party payment account charged by Defendants as part of such
8 program. Excluded from the ARL Class are all employees of Defendants, all employees of
9 Plaintiffs’ counsel, and the judicial officers to whom this case is assigned.”

10 37. Plaintiff Nakai seeks to represent the False Invoice Class, which is defined as
11 follows: “All individuals in California who, within the applicable limitations period, received an
12 invoice, bill, or account statement from Defendants for magazines that Defendants’ represented to
13 be “free” and/or for magazine subscriptions that had not been ordered. Excluded from the False
14 Invoice Class are all employees of Defendants, all employees of Plaintiffs’ counsel, and the judicial
15 officers to whom this case is assigned.”

16 38. Ascertainability. The members of each class may be ascertained by reviewing
17 records in the possession of Defendants and/or third parties, including without limitation
18 Defendants’ marketing and promotion records, customer records, and billing records.

19 39. Common Questions of Fact or Law. There are questions of fact or law that are
20 common to the members of each class, which predominate over individual issues. Common
21 questions regarding the ARL Class include, without limitation: (1) whether Defendants present all
22 statutorily-mandated automatic renewal or continuous service offer terms, within the meaning of
23 § 17601(b); (2) whether Defendants present automatic renewal or continuous service offer terms in
24 a manner that is “clear and conspicuous,” within the meaning of § 17601(c), and in “visual
25 proximity” to a request for consent to the offer (or in the case of an offer conveyed by voice, in
26 temporal proximity to a request for consent to the offer), as required by § 17602; (3) whether
27 Defendants obtain consumers’ affirmative consent to an agreement containing clear and
28 conspicuous disclosure of automatic renewal or continuous service offer terms before charging a

1 credit card, debit card, or third-party payment account; (4) whether Defendants provide consumers
2 with an acknowledgment that includes clear and conspicuous disclosure of all statutorily-mandated
3 automatic renewal or continuous service offer terms, the cancellation policy, and information
4 regarding how to cancel in a manner that is capable of being retained by the consumer;
5 (5) Defendants' record-keeping practices; (6) the appropriate remedies for Defendants' conduct; and
6 (7) the appropriate terms of an injunction. Common questions regarding the False Invoice Class
7 include, without limitation: (1) whether Defendants provide the required statutory disclaimer or
8 alternative notice on any solicitation disclosing to the consumer that the document is a solicitation
9 for an order of goods or services, or both, and not a bill, invoice, or statement of account due, and
10 that the consumer is under no obligation to make any payments unless the consumer accepts the
11 offer; (2) whether Defendants display a notice or disclaimer in a manner that complies with the
12 requirements specified in Civ. Code § 1716; (3) Defendants' record-keeping practices; and (4) the
13 appropriate remedies for Defendants' conduct.

14 40. Numerosity. Each class is so numerous that joinder of all class members would be
15 impracticable. Plaintiffs are informed and believe and thereon allege that each class consists of at
16 least 100 members.

17 41. Typicality and Adequacy. Plaintiffs' claims are typical of the claims of the members
18 of each class. Plaintiffs allege on information and belief that Defendants enrolled ARL Class
19 members in automatic renewal or continuous service offer programs without presenting the
20 applicable terms in the manner required by law, charged ARL Class members' credit cards, debit
21 cards, or third-party accounts without first obtaining the ARL Class members' affirmative consent
22 to an agreement containing clear and conspicuous disclosure of all automatic renewal offer terms,
23 and failed to provide the requisite acknowledgment in a manner capable of being retained by ARL
24 Class members. Plaintiffs have no interests that are adverse to those of the other ARL Class,
25 members. Plaintiffs will fairly and adequately protect the interests of the ARL Class members.
26 Plaintiff Nakai alleges on information and belief that Defendants sent the False Invoice Class
27 members invoices or other written statements for goods not ordered or services not performed.
28 Plaintiff Nakai has no interests that are adverse to those of the other False Invoice Class members.

1 Plaintiff Nakai will fairly and adequately protect the interests of the False Invoice Class members.

2 42. Superiority. A class action is superior to other methods for resolving this
3 controversy. Because the amount of restitution or damages to which each class member may be
4 entitled is low in comparison to the expense and burden of individual litigation, it would be
5 impracticable for class members to redress the wrongs done to them without a class action forum.
6 Furthermore, on information and belief, class members do not know that their legal rights have been
7 violated. Class certification would also conserve judicial resources and avoid the possibility of
8 inconsistent judgments.

9 43. Defendants Have Acted on Grounds Generally Applicable to the Class. Defendants
10 have acted on grounds that are generally applicable to the members of each class, thereby making
11 appropriate final injunctive relief and/or declaratory relief with respect to each class as a whole.

12 **FIRST CAUSE OF ACTION**

13 False Advertising – Violation of the Automatic Renewal Law

14 (By All Plaintiffs Against All Defendants)

15 44. Plaintiffs incorporate the previous allegations as though set forth herein.

16 45. Plaintiffs are informed and believe and thereon allege that, during the applicable
17 statute of limitations period, Defendants have enrolled consumers, including Plaintiffs and ARL
18 Class members, in automatic renewal programs and/or continuous service programs and have
19 (a) failed to present the automatic renewal or continuous service offer in a clear and conspicuous
20 manner before the subscription or purchasing agreeing is fulfilled and in visual proximity, or in the
21 case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer;
22 (b) charged the consumer’s credit or debit card or the consumer’s third-party payment account for
23 an automatic renewal or continuous service without first obtaining the consumer’s affirmative
24 consent to the agreement containing the automatic renewal offer terms or continuous service offer
25 terms; and (c) failed to provide an acknowledgment that includes the automatic renewal or
26 continuous service offer terms, cancellation policy, and information regarding how to cancel in a
27 manner that is capable of being retained by the consumer.

28 46. As a result of Defendants’ conduct, pursuant to Bus. & Prof. Code §§ 17603 and

1 17535, all good received by Plaintiffs and ARL Class members are deemed to be an unconditional
2 gift, and Plaintiffs and ARL Class members are entitled to restitution of all amounts that Defendants
3 charged to Plaintiffs' and ARL Class members' credit cards, debit cards, or third-party payment
4 accounts during the four years preceding the filing of this Complaint and continuing until
5 Defendants' statutory violations cease.

6 47. Pursuant to Bus. & Prof. Code § 17535, Plaintiffs and the Class members are entitled
7 to an injunction enjoining Defendants from making automatic renewal or continuous service offers
8 to California consumers that do not comply with California law.

9 **SECOND CAUSE OF ACTION**

10 Violation of Civ. Code, § 1716

11 (By Nakai and the False Invoice Class Against All Defendants)

12 48. Plaintiff Nakai incorporates the allegations of paragraphs 1-43 as though set forth
13 herein.

14 49. Defendants sent to Nakai and members of the False Invoice Class documents
15 purporting to be an "invoice" for a magazine subscription when, in fact, no subscription had been
16 requested and no money was due.

17 50. The "invoices" that Defendants sent to Nakai and members of the False Invoice Class
18 did not bear a disclaimer or notice prescribed by Civil Code § 1716(b).

19 51. Nakai and members of the False Invoice Class have been damaged as a result of
20 Defendants' violation of Civil Code § 1716.

21 52. Pursuant to Civil Code § 1716(g), Nakai and members of the False Invoice Class are
22 entitled to damages in an amount equal to three times the sum solicited by Defendants.

23 **THIRD CAUSE OF ACTION**

24 Violation of the Consumers Legal Remedies Act

25 (By All Plaintiffs Against All Defendants)

26 53. Plaintiffs incorporate the previous allegations as though fully set forth herein.
27
28

1 54. Plaintiffs and the members of the ARL Class and the False Invoice Class are
2 “consumers” within the meaning of Civil Code § 1761(d) in that Plaintiffs and the goods and/or
3 services sought or acquired were for personal, family, or household purposes.

4 55. Defendants’ “FREE” magazine offers and/or other subscription offers pertain to
5 “goods” and/or “services” within the meaning of Civil Code § 1761(a) and (b).

6 56. The purchases and payments by Plaintiffs and class members are “transactions”
7 within the meaning of Civil Code § 1761(e).

8 57. Defendants have violated Civil Code § 1770, subdivisions (a)(5), (a)(9), (a)(13),
9 (a)(14), and (a)(17), by representing that Defendants’ goods and services have certain characteristics
10 that they do not have; advertising goods and services with the intent not to sell them as advertised;
11 making false and misleading statements of fact concerning the reasons for, existence of and amounts
12 of price reductions; representing that a transaction confers or involves rights, remedies, or
13 obligations that it does not have or involve, or that are prohibited by law; and by representing that
14 the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit
15 is contingent on an event to occur subsequent to the consummation of the transaction.

16 58. Plaintiffs, on behalf of themselves and all other class members, seek an injunction
17 prohibiting Defendants from continuing their unlawful practices in violation of the Consumers Legal
18 Remedies Act, as described above.

19 **FOURTH CAUSE OF ACTION**

20 Violation of the California Unfair Competition Law

21 (By All Plaintiffs Against All Defendants)

22 59. Plaintiffs incorporate the previous allegations as though fully set forth herein.

23 60. The California Unfair Competition Law (“UCL”), Bus. & Prof. Code § 17200 *et seq.*,
24 defines unfair competition as including “any unlawful, unfair or fraudulent business act or practice.”

25 61. In the course of conducting business within the applicable limitations period,
26 Defendants committed “unlawful,” “unfair,” and/or “fraudulent” business practices by, *inter alia*
27 and without limitation: (a) failing to present the terms of automatic renewal or continuous service
28 offers in a clear and conspicuous manner before a magazine selection, subscription, or purchasing

1 agreement is fulfilled and in visual proximity (or in the case of an offer conveyed by voice, in
2 temporal proximity), to a request for consent to the offer, in violation of Bus. & Prof. Code
3 § 17602(a)(1); (b) charging the consumer's credit card, debit card, or third-party payment account
4 for an automatic renewal or continuous service without first obtaining the consumer's affirmative
5 consent to an agreement containing clear and conspicuous disclosures of automatic renewal offer
6 terms or continuous service offer terms, in violation of Bus. & Prof. Code § 17602(a)(2); (c) failing
7 to provide an acknowledgment that includes clear and conspicuous disclosure of automatic renewal
8 or continuous service offer terms, cancellation policy, and information regarding how to cancel in a
9 manner that is capable of being retained by the consumer, in violation of Bus. & Prof. Code
10 § 17602(a)(3); (d) sending consumers invoices for goods not ordered, in violation of Civil Code
11 § 1716; (e) representing that Defendants' goods and services have certain characteristics that they
12 do not, in violation of Civil Code § 1770(a)(5); (f) advertising goods and services with the intent
13 not to sell them as advertised, in violation of Civil Code § 1770(a)(9); (g) making false and
14 misleading statements of fact concerning the reasons for, existence of and amounts of price
15 reductions, in violation of Civil Code § 1770(a)(13); (h) representing that a transaction confers or
16 involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by
17 law, in violation of Civil Code § 1770 (a)(14); and (i) representing that the consumer will receive a
18 rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to
19 occur subsequent to the consummation of the transaction, in violation of Civil Code § 1770(a)(17).
20 Plaintiffs reserve the right to allege other violations of law that constitute unlawful or unfair business
21 acts or practices.

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

26 63. There were reasonably available alternatives to further Defendants' legitimate
27 business interests, other than the conduct described herein.

28 64. Defendants' acts, omissions, nondisclosures, and misleading statements as alleged

1 herein were and are false, misleading, and/or likely to deceive the consuming public.

2 65. Plaintiffs have suffered injury in fact and lost money as a result of Defendants' acts
3 of unfair competition.

4 66. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs and the class members are entitled
5 to an order: (1) requiring Defendants to make restitution of all amounts received in connection with
6 the statutory violations alleged above; (2) enjoining Defendants from making automatic renewal or
7 continuous service offers in the State of California that do not comply with the ARL; and
8 (3) enjoining Defendants from sending invoices or other written statements for products not ordered,
9 without the disclaimer required by Civil Code § 1716.

10 **FIFTH CAUSE OF ACTION**

11 Unjust Enrichment

12 67. Plaintiffs incorporate the previous allegations as though fully set forth herein.

13 68. Defendants have received money from Plaintiffs and class members in connection
14 with Defendants' conduct in violation of California law. Defendants would be unjustly enriched if
15 they were permitted to retain those funds, and Defendants should be ordered to restore said funds to
16 Plaintiffs and the class members.

17 69. Plaintiffs allege this unjust enrichment claim in the alternative to relief provided
18 under any legal claim alleged herein.

19 **PRAYER**

20 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

21 On the First Cause of Action:

- 22 1. For restitution;
23 2. For an order that all goods sent to ARL Class members are unconditional gifts;
24 3. For a public injunction for the benefit of the People of the State of California;

25 On the Second Cause of Action:

- 26 4. For three times the sum solicited, pursuant to Civil Code § 1716(g);
27 5. For a public injunction for the benefit of the People of the State of California.

28

