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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO
10

11 SAUL GRANILLO and JENNIFER FITE,
individually and on behalf of all others
12 similarly situated,

13 Plaintiffs,

14 vs.

15 CONDE NAST ENTERTAINMENT LLC,
a Delaware limited liability company;
16 and DOES 1-50, inclusive,

17 Defendants.
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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

CASE NO. 37-2019-00051411-CU-BT-CTL

CLASS ACTION

COMPLAINT FOR:

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

(2) VIOLATION OF THE CALIFORNIA
CONSUMERS LEGAL REMEDIES ACT;

(3) VIOLATION OF THE CALIFORNIA
UNFAIR COMPETITION LAW;

(4) UNJUST ENRICHMENT.

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. This class action complaint alleges that defendant Conde Nast Entertainment LLC
3 (“Conde Nast”) violates California law in connection with a magazine subscription program. In
4 particular, Conde Nast enrolls consumers in automatic renewal or continuous service subscriptions
5 without providing the “clear and conspicuous” disclosures mandated by California law, and posts
6 charges to consumers’ credit or debit cards for purported automatic renewal or continuous service
7 subscriptions without first obtaining the consumers’ affirmative consent to an agreement containing
8 the requisite clear and conspicuous disclosures. This conduct violates the California Automatic
9 Renewal Law (Bus. & Prof. Code, § 17600 et seq.) (“ARL”), the Consumers Legal Remedies Act
10 (Civ. Code, § 1750 et seq.) (“CLRA”), and the Unfair Competition Law (Bus. & Prof. Code, § 17200
11 et seq.) (“UCL”).

12 **THE PARTIES**

13 2. Plaintiff Saul Granillo (“Granillo”) is an individual residing in San Diego County,
14 California.

15 3. Plaintiff Jennifer Fite (“Fite”) is an individual residing in San Diego County,
16 California. Granillo and Fite are collectively referred to herein as “Plaintiffs.”

17 4. Plaintiffs are informed and believe and thereon allege that defendant Conde Nast is
18 a Delaware limited liability company that does business in San Diego County, including the
19 marketing of magazine subscriptions.

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

27 6. Venue is proper in this judicial district because the complained of conduct occurred
28 in this judicial district.

1 **BACKGROUND**

2 7. Conde Nast is one of the world’s largest magazine publishers. In the United States,
3 Conde Nast’s publications include *Vogue*, *Bon Appetit*, *Vanity Fair*, *Conde Nast Traveler*, *The New*
4 *Yorker*, *Allure*, *GQ* and *Architectural Digest*.

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

12 9. During the 1990s, some marketers came to view the traditional model as a constraint
13 on sales and profits and advocated instead adoption of a “negative option” model. In a “negative
14 option,” the seller “interpret[s] a customer’s failure to take an affirmative action, either to reject an
15 offer or cancel an agreement, as assent to be charged for goods or services.”¹ One variety of the
16 negative option model is an arrangement in which a magazine subscription will be “automatically
17 renewed” and thus continue indefinitely unless and until the consumer takes affirmative steps to
18 cancel. It has been reported that by 2003, the Federal Trade Commission (FTC) was receiving
19 500,000 complaints annually about deceptive magazine sales. (See Ex. 1 at p. 1 [*“Negative Option:*
20 *When No Means Yes,*” Consumer Affairs (Nov. 2005)].)

21 10. Defendants have implemented a negative option model in which they automatically
22 renew subscriptions, and they do so in a way that violates California law.

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27 ¹ (See *Negative Options* (January 2009) Federal Trade Commission
28 <<https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf>> [as of September 26, 2019].)

1 **THE CALIFORNIA AUTOMATIC RENEWAL LAW**

2 11. In 2009, the California Legislature passed Senate Bill 340, which took effect on
3 December 1, 2010 as Article 9 of Chapter 1 of the False Advertising Law. (Bus. & Prof. Code,
4 § 17600 *et seq.* (the California Automatic Renewal Law or “ARL”).) (Unless otherwise stated, all
5 statutory references are to the Business & Professions Code). SB 340 was introduced because:

6 It has become increasingly common for consumers to complain about unwanted
7 charges on their credit cards for products or services that the consumer did not
8 explicitly request or know they were agreeing to. Consumers report they believed
9 they were making a one-time purchase of a product, only to receive continued
10 shipments of the product and charges on their credit card. These unforeseen charges
11 are often the result of agreements enumerated in the “fine print” on an order or
12 advertisement that the consumer responded to.

13 (See Exhibit 2 at p. 7.)

14 12. The Assembly Committee on Judiciary provided the following background for the
15 legislation:

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

23 (See Exhibit 3 at p. 11.)

24 13. The ARL seeks to ensure that, before there can be a legally-binding automatic
25 renewal or continuous service arrangement, there must first be adequate disclosure of certain terms
26 and conditions and affirmative consent by the consumer. Among other things, Bus. & Prof. Code
27 § 17602(a) makes it unlawful for any business making an automatic renewal offer or a continuous
28 service offer to a consumer in California to do any of the following:

29 a. Fail to present the automatic renewal or continuous service offer terms in a
30 clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and in
31 visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request
32 for consent to the offer. (§ 17602(a)(1).) For this purpose, the term “clear and conspicuous” means
33 “in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text
34 of the same size, or set off from the surrounding text of the same size by symbols or other marks, in

1 a manner that clearly calls attention to the language.” (§ 17601(c).) For an audio disclosure, “clear
2 and conspicuous” means “in a volume and cadence sufficient to be readily audible and
3 understandable.” (*Ibid.*)

4 b. Charge the consumer’s credit or debit card or the consumer’s account with a
5 third party for an automatic renewal or continuous service without first obtaining the consumer’s
6 affirmative consent to the agreement containing the automatic renewal or continuous service offer
7 terms. (§ 17602(a)(2).)

8 c. Fail to provide an acknowledgment that includes the automatic renewal or
9 continuous service offer terms, cancellation policy, and information regarding how to cancel in a
10 manner that is capable of being retained by the consumer. (§ 17602(a)(3).) The acknowledgment
11 must include a toll-free telephone number, electronic mail address, or other mechanism for
12 cancellation. (§ 17602(b).)

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

21 **FACTS GIVING RISE TO PLAINTIFFS’ CLAIMS**

22 **Saul Granillo’s Transaction with Defendants**

23 15. In or about July 2017, Granillo responded to an online offer to receive six issues of
24 *Vogue* magazine for \$6.00. Granillo entered his debit card details in order to complete the online
25 purchase, and Defendants posted a \$6.00 charge to Granillo’s debit card.

26 16. In or about November 2017, Defendants posted a charge to Granillo’s debit card in
27 the amount of \$21.99. That charge was posted without Granillo’s authorization.
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1 17. Granillo is informed and believes that thereon alleges that, upon submission of the
2 order for six issues of *Vogue*, Defendants enrolled him into a program under which Defendants
3 would automatically renew the subscription for subsequent periods. When Granillo submitted the
4 order for six issues of *Vogue*, he was unaware that Defendants were going to enroll him into an
5 automatic renewal subscription program, and he did not consent to be enrolled into such a program.
6 Documents evidencing the offer to which Granillo responded are in the exclusive possession,
7 custody, and control of Defendants. Granillo will seek production of such documents during the
8 course of discovery in this action, which Granillo believes will support the allegations herein.

9 18. If Granillo had known that Defendants were going to enroll him in an automatic
10 renewal or continuous service program, he would not have responded to the offer for *Vogue* and
11 would not have paid any money to Defendants.

12 **Jennifer Fite's Transaction with Defendants**

13 19. In or about August 2017, Fite provided Defendants with her credit card details to pay
14 for a one-year subscription to *Vanity Fair* magazine at a cost of \$5.00.

15 20. In or about September 2018, Defendants posted a charge to Fite's credit card in the
16 amount of \$12.00. That charge was posted without Fite's authorization.

17 21. Fite is informed and believes that thereon alleges that, upon submission of the order
18 for one year of *Vanity Fair*, Defendants enrolled her into a program under which Defendants would
19 automatically renew the subscription for subsequent periods. When Fite submitted the order for one
20 year of *Vanity Fair*, she was unaware that Defendants were going to enroll her into an automatic
21 renewal subscription program, and she did not consent to be enrolled into such a program.
22 Documents evidencing the offer to which Fite responded are in the exclusive possession, custody,
23 and control of Defendants. Fite will seek production of such documents during the course of
24 discovery in this action, which Fite believes will support the allegations herein.

25 22. If Fite had known that Defendants were going to enroll her in an automatic renewal
26 or continuous service program, she would not have submitted the order for *Vanity Fair* and would
27 not have paid any money to Defendants.

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DEFENDANTS’ DECEPTION OF OTHER CONSUMERS

23. Notwithstanding legislative and regulatory efforts, including enactment of the California ARL, “automatically renewed” magazine subscriptions continue to be a perennial source of consumer complaints.

24. Customer reviews of Conde Nast posted on the Better Business Bureau (“BBB”) website (and other consumer websites) illustrate that Defendants’ scheme is effective and has affected many consumers. Consumer complaints include being automatically renewed for magazines without consent. For example:

Billing/Collection Issues (July 11, 2019) Conde Nast billed me an introductory rate for Architectural Digest subscription, then never stated the amount for a renewal, or when the renewal would occur. I was then billed \$34.99 without any advance notice, or ability to cancel. I am requesting a full refund of \$34.99.

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

Billing/Collection Issues (September 22, 2016). I got a renewal notice on the **** and did not renew. The presence of the notice assured me that I had no auto renew to worry about, falsely. I didn't have the money so I was glad to see the renewal notice and delete it. Charges hit the same day I got the notice in an email and those charges overdue my account. Now customer service credited my account the charges good enough but not the overdraft. It is a bad business practice to automatically renew things on people. Really bad because they are doing it by the thousands and taking peoples money, causing harm to some, like me. They misled me to believe I was in control of renewal to boot! It was deceptive.

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

CLASS ACTION ALLEGATIONS

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

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

1 27. Common Questions of Fact or Law. There are questions of fact or law that are
2 common to the members of the Class, which predominate over individual issues. Common
3 questions regarding the Class include, without limitation: (1) Whether Defendants present the terms
4 of the subscription in a manner that is “clear and conspicuous” within the meaning of California law
5 and in “visual proximity” to a request for consent to the offer (or in the case of an offer conveyed
6 by voice, in temporal proximity to a request for consent to the offer); (2) Defendants’ policies,
7 practices and procedures for obtaining affirmative consent from customers before charging a credit
8 card, debit card, or third-party payment account; (3) whether Defendants provide consumers with
9 an acknowledgment that includes “clear and conspicuous” disclosure of all automatic renewal offer
10 terms, the cancellation policy, and information regarding how to cancel; (4) Defendants’ record-
11 keeping practices; and (5) the appropriate remedies for Defendants’ conduct.

12 28. Numerosity. The Class is so numerous that joinder of all Class members would be
13 impracticable. Plaintiffs are informed and believe and thereon allege that the Class consists of at
14 least 100 members.

15 29. Typicality and Adequacy. Plaintiffs’ claims are typical of the claims of the Class
16 members. Plaintiffs allege on information and belief that Defendants enrolled Plaintiffs and Class
17 members in automatic renewal or continuous service programs without disclosing all terms required
18 by law, and without presenting such terms in the requisite “clear and conspicuous” manner; charged
19 Class members’ credit cards, debit cards, or third-party accounts without first obtaining Class
20 members’ affirmative consent to an agreement containing clear and conspicuous disclosure of all
21 automatic renewal offer terms in the manner required by California law; and failed to provide the
22 requisite acknowledgment with the required disclosures and information. Plaintiffs have no
23 interests that are adverse to those of the other Class members. Plaintiffs will fairly and adequately
24 protect the interests of the Class members.

25 30. Superiority. A class action is superior to other methods for resolving this
26 controversy. Because the amount of restitution to which each Class member may be entitled is low
27 in comparison to the expense and burden of individual litigation, it would be impracticable for Class
28 members to redress the wrongs done to them without a class action forum. Furthermore, on

1 information and belief, Class members do not know that their legal rights have been violated. Class
2 certification would also conserve judicial resources and avoid the possibility of inconsistent
3 judgments.

4 31. Risk of Inconsistent or Varying Adjudications. Prosecuting separate actions by
5 individual Class members would create a risk of inconsistent or varying adjudications with respect
6 to individual Class members that would establish incompatible standards of conduct for Defendants.
7 As a practical matter, adjudication with respect to individual Class members would be also
8 dispositive of the interests of others not parties to the individual adjudications or would substantially
9 impair or impede their ability to protect their interests.

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

13 **FIRST CAUSE OF ACTION**

14 False Advertising - Violation of the Automatic Renewal Law

15 (Bus. & Prof. Code, § 17600 et seq. and § 17535)

16 33. Plaintiffs incorporate the previous allegations as though fully set forth herein.

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

1 of price reductions; representing that a transaction confers or involves rights, remedies, or
2 obligations that it does not have or involve, or that are prohibited by law; and by representing that
3 the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit
4 is contingent on an event to occur subsequent to the consummation of the transaction.

5 43. On behalf of themselves, all Class members, and the general public of the State of
6 California, Plaintiffs seek an injunction prohibiting Defendants from continuing their unlawful
7 practices in violation of the Consumers Legal Remedies Act, as described above.

8 **THIRD CAUSE OF ACTION**

9 Violation of the California Unfair Competition Law

10 (Bus. & Prof. Code, § 17200 et seq.)

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

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

14 46. In the course of conducting business within the applicable limitations period,
15 Defendants committed “unlawful,” “unfair,” and/or “fraudulent” business practices by, *inter alia*
16 and without limitation: (a) failing to present all automatic renewal or continuous service offers terms
17 in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in
18 visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to a request
19 for consent to the offer, in violation of § 17602(a)(1); (b) charging the consumer’s credit card, debit
20 card, or third-party payment account for an automatic renewal or continuous service without first
21 obtaining the consumer’s affirmative consent to an agreement containing clear and conspicuous
22 disclosure of all automatic renewal or continuous service offer terms, in violation of § 17602(a)(2);
23 (c) failing to provide an acknowledgment that includes clear and conspicuous disclosure of all
24 automatic renewal or continuous service offer terms, the cancellation policy, and information
25 regarding how to cancel, in violation of § 17602(a)(3); (d) representing that Defendants’ goods and
26 services have certain characteristics that they do not, in violation of Civil Code § 1770(a)(5);
27 (e) advertising goods or services with the intent not to sell them as advertised, in violation of Civil
28 Code § 1770(a)(9); (f) making false and misleading statements of fact concerning the reasons for,

1 existence of and amounts of price reductions, in violation of Civil Code § 1770(a)(13);
2 (g) representing that a transaction confers or involves rights, remedies, or obligations that it does
3 not have or involve, or that are prohibited by law; and (h) representing that the consumer will receive
4 a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event
5 to occur subsequent to the consummation of the transaction, in violation of Civil Code
6 § 1770(a)(17). Plaintiffs reserve the right to allege other violations of law that constitute unlawful
7 or unfair business acts or practices.

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

12 48. There were reasonably available alternatives to further Defendants' legitimate
13 business interests, other than the conduct described herein.

14 49. Defendants' acts, omissions, nondisclosures, and misleading statements as alleged
15 herein were and are false, misleading, and/or likely to deceive the consuming public.

16 50. Plaintiffs have suffered injury in fact and lost money as a result of Defendants' acts
17 of unfair competition.

18 51. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs and the Class members are entitled
19 to an order: (1) requiring Defendants to make restitution to Plaintiffs and Class members;
20 (2) enjoining Defendants from making automatic renewal or continuous service offers in the State
21 of California that do not comply in all respects with the California law; and (3) enjoining Defendants
22 from charging California consumers' credit cards, debit cards, and/or third party payment accounts
23 until such time as Defendants obtain the consumer's affirmative consent to an agreement that
24 contains clear and conspicuous disclosure of all automatic renewal or continuous service offer terms.

25 52. Plaintiffs reserve the right to seek other prohibitory or mandatory aspects of
26 injunctive relief, whether on behalf of the Class and/or for the benefit of the general public of the
27 State of California, to prevent Defendants' use or employment of practices that constitute unfair
28 competition.

1 **FOURTH CAUSE OF ACTION**

2 Unjust Enrichment

3 53. Plaintiffs incorporate the previous allegations as though fully set forth herein.

4 54. Defendants have received money from Plaintiffs and Class members in connection
5 with Defendants' conduct in violation of California law. Defendants would be unjustly enriched if
6 they were permitted to retain those funds, and Defendants should be ordered to restore said funds to
7 Plaintiffs and the Class members.

8 55. Plaintiffs allege this unjust enrichment claim in the alternative to relief provided
9 under any legal claim alleged herein.

10 **PRAYER**

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

12 On the First Cause of Action (False Advertising - Violation of the ARL):

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

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

- 16 4. For a public injunction for the benefit of the People of the State of California;
17 5. For reasonable attorneys' fees, pursuant to Civil Code § 1780(e);

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

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

21 On the Fourth Cause of Action (Unjust Enrichment):

- 22 8. For restitution;

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On all Causes of Action:

- 9. For reasonable attorneys' fees pursuant to Cal. Code Civ. Proc. § 1021.5;
- 10. For costs of suit;
- 11. For pre-judgment interest; and
- 12. For such other relief that the Court deems just and proper.

DATED: September 27, 2019

DOSTART HANNINK & COVENEY LLP

ZACH P. DOSTART
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all claims and causes of action so triable.

Dated: September 27, 2019

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