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6 Attorneys for Plaintiff

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

10  
11 RICHARD SIELA, individually and on behalf  
of all others similarly situated,

12 Plaintiff,

13 vs.

14 SUPERIOR GLOBAL MARKETING INC.,  
15 an Oregon corporation, d/b/a PRIMITIVE  
SURVIVORS; and DOES 1-50, inclusive,

16 Defendant.

CASE NO. 37-2019-00040992-CU-BT-CTL

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

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

(2) FALSE ADVERTISING  
[Bus. & Prof. Code, § 17500 *et seq.*]

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

(4) UNFAIR COMPETITION  
[Bus. & Prof. Code, § 17200 *et seq.*]

(5) UNJUST ENRICHMENT

(6) VIOLATION OF THE ELECTRONIC  
FUNDS TRANSFER ACT  
[15 U.S.C. § 1639 *et seq.*]

DEMAND FOR JURY TRIAL

**PRELIMINARY ALLEGATIONS**

1  
2 1. Defendant Superior Global Marketing Inc. (“SGM”) violates California law by  
3 employing deceptive “free” or “risk-free” offers and by enrolling consumers in a continuous service  
4 subscription program without making the legally-required disclosures and without the consumers’  
5 affirmative consent to an agreement containing such disclosures.

6 2. When a consumer responds to one of SGM’s “free” or “risk-free” offers, SGM  
7 requires the consumer to provide his or her credit card or debit card billing information, purportedly  
8 to pay nominal shipping and handling fees (typically less than \$5.00). However, approximately two  
9 weeks after the order is submitted, SGM posts a charge to the consumer’s credit or debit card in the  
10 amount of the full retail price of the item. Moreover, when the order is submitted, SGM enrolls the  
11 consumer in what SGM calls the “Survivor’s Club.” Enrollment in the Survivor’s Club results in  
12 ongoing and recurring charges to the consumer’s credit or debit card.

13 3. Marketing schemes such as those utilized by SGM have been described as a “scam”  
14 by the Federal Trade Commission (“FTC”). See <https://www.consumer.ftc.gov/taxonomy/term/858>  
15 (last accessed October 2, 2019). The FTC has sought to educate consumers to be able to avoid such  
16 scams, but the agency continues to receive numerous consumer complaints. See *Strings attached*  
17 *to some “risk-free” trial offers*, available at [https://www.consumer.ftc.gov/blog/strings-attached-](https://www.consumer.ftc.gov/blog/strings-attached-some-risk-free-trial-offers)  
18 [some-risk-free-trial-offers](https://www.consumer.ftc.gov/blog/strings-attached-some-risk-free-trial-offers) (last accessed October 2, 2019); *Risk free trials were bait for rip offs*,  
19 available at <https://www.consumer.ftc.gov/blog/risk-free-trials-were-bait-rip-offs> (last accessed  
20 October 2, 2019).

21 4. This action alleges that in the course of carrying out its deceptive marketing and  
22 continuous service schemes, SGM violates the Automatic Renewal Law, Bus. & Prof. Code,  
23 § 17600 *et seq.*; the False Advertising Law, Bus. & Prof. Code, § 17500 *et seq.*; the Consumers  
24 Legal Remedies Act, Civ. Code, § 1750 *et seq.*; and the Unfair Competition Law, Bus. & Prof.  
25 Code, § 17200 *et seq.* This action also asserts a cause of action for violation of the Electronic Funds  
26 Transfer Act, 15 U.S.C. § 1693 *et seq.* This action seeks a public injunction and other equitable  
27 relief, including full restitution to affected California consumers.

28

1 **THE PARTIES**

2 5. Plaintiff Richard Siela (“Plaintiff”) is an individual residing in Ventura County,  
3 California.

4 6. Plaintiff is informed and believes and thereon alleges that Superior Global Marketing  
5 Inc. (“SGM”) is an Oregon corporation that does business under the fictitious business name of  
6 Primitive Survivors. SGM advertises and sells products at issue in this case to consumers in  
7 California, including San Diego County.

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

15 8. Venue is proper in this Court because SGM is not qualified to do business in  
16 California and has not filed a statement designating a county within California in which it maintains  
17 a principal local office. Accordingly, venue is proper in any county in California.

18 **BACKGROUND**

19 **The California Automatic Renewal Law**

20 9. In 2009, the California Legislature passed Senate Bill 340, which took effect on  
21 December 1, 2010 as Bus. & Prof. Code § 17600 *et seq.* (the California Automatic Renewal Law or  
22 “ARL”), which is part of the False Advertising Law (Bus. & Prof. Code, § 17500 *et seq.*) (Unless  
23 otherwise stated, all statutory references are to the Business and Professions Code.) SB 340 was  
24 introduced 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 at 4. SB 340 sought to deter unauthorized shipments and charges by codifying that  
2 such items are deemed to be an unconditional gift to the consumer:

3 [T]his bill ... [p]rovides that in any case in which a business sends any goods, wares,  
4 merchandise, or products to a consumer, under a continuous service or automatic  
5 renewal, without first obtaining the consumer's affirmative consent, in the manner  
6 required by this bill, then the goods, wares, merchandise, or products shall be deemed  
7 an unconditional gift to the consumer, and the business shall bear any shipping or  
8 other related costs.

9 See Exhibit 2 at 9.

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

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

19 See Exhibit 2 at 8.

20 11. On July 1, 2018, the ARL was strengthened by SB 313 with respect to offers that  
21 include a "free" gift or trial. The purpose of the July 2018 amendment was explained as follows:

22 This bill would, commencing on July 1, 2018, require a business that makes an  
23 automatic renewal offer or continuous service offer that includes a free gift or trial,  
24 to include in the offer a clear and conspicuous explanation of the price that will be  
25 charged after the trial ends or the manner in which the subscription or purchasing  
26 agreement pricing will change upon conclusion of the trial. The bill would prohibit  
27 a business from charging a consumer's credit or debit card, or the consumer's  
28 account with a 3rd party, for an automatic renewal or continuous service that is made  
at a promotional or discounted price for a limited period of time without first  
obtaining the consumer's consent to the agreement. The bill would also specify that  
if the automatic service offer or continuous service offer includes a free gift or trial,  
the business is required to disclose how to cancel, and allow the consumer to cancel,  
the automatic renewal or continuous service before the consumer pays for the goods  
or services.

See Exhibit 3 at 12.

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

1 California to do any of the following:

2 (1) Fail to present the automatic renewal offer terms or continuous service offer  
3 terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled  
4 and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the  
5 request for consent to the offer. (Bus. & Prof. Code, § 17602(a)(1).) For this purpose, “clear and  
6 conspicuous” means “in larger type than the surrounding text, or in contrasting type, font, or color  
7 to the surrounding text of the same size, or set off from the surrounding text of the same size by  
8 symbols or other marks, in a manner that clearly calls attention to the language.” (Bus. & Prof.  
9 Code, § 17601(c).) In the case of an audio disclosure, ‘clear and conspicuous’ means in a volume  
10 and cadence sufficient to be readily audible and understandable.” (*Ibid.*)

11 (2) Charge the consumer’s credit or debit card or the consumer’s account with a  
12 third party for an automatic renewal or continuous service without first obtaining the consumer’s  
13 affirmative consent to the agreement containing the automatic renewal offer terms or continuous  
14 service offer terms. (Bus. & Prof. Code, § 17602(a)(2).)

15 (3) Fail to provide an acknowledgment that includes the automatic renewal or  
16 continuous service offer terms, cancellation policy, and information regarding how to cancel in a  
17 manner that is capable of being retained by the consumer. If the offer includes a free trial, the  
18 business shall also disclose in the acknowledgment how to cancel and allow the consumer to cancel  
19 before the consumer pays for the goods or services. (Bus. & Prof. Code, § 17602(a)(3).)

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

21 13. On or about July 2, 2019, Plaintiff responded to an on-line survey that had been sent  
22 to him by a retailer. After submitting the survey response, Plaintiff was presented with an offer  
23 from Primitive Survivors for a “free” headlamp, if he would pay for the shipping and handling cost  
24 of \$4.95. During the order process, Plaintiff somehow ended up with two headlamps in the on-line  
25 shopping cart, rather than one. Plaintiff attempted to remove the extra headlamp from the cart, but  
26 for reasons unknown to Plaintiff, he was unable to do so. Plaintiff decided to proceed with the order,  
27 which he believed would entail a one-time purchase of about \$10.00 to complete the transaction for  
28 both headlamps.



1 **Pattern of Complaint**

2 On June 13, 2017, BBB recognized a pattern of complaints from consumers  
3 regarding advertising and billing issues. Complaints allege that Primitive Survivors  
4 advertises a free flashlight promotion and consumers took advantage of the  
5 promotion. Later, consumers alleged they received an unauthorized charge in the  
6 amount of \$14.95 for a Primitive Survivors membership they did not agree to.

7 On July 25, 2017, BBB received a response from Primitive Survivors. The company  
8 is working with BBB to eliminate the underlying cause of its pattern of complaints.

9 A true and correct printout of the Pattern of Complaints is attached as Exhibit 4.

10 22. The warning quoted above gives the impression that, as of July 25, 2017,  
11 SGM/Primitive Survivors had agreed to work with the BBB to “eliminate the underlying cause of  
12 its pattern of complaints.” But in fact, complaints about SGM have continued unabated and there  
13 is no indication that Defendants have changed their unlawful business practices. Customer reviews  
14 of SGM within the last several months illustrate that Defendants’ scheme is continuing and has  
15 adversely affected many consumers.

16 **Billing/Collection Issue (May 29, 2019)** I ordered a tac flashlight as they offered  
17 and was only supposed to pay shipping. Yesterday they again hit my account twice  
18 for \$34.95 and \$49.99. This additional charges were not authorized by me.

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

20 **Billing/Collection Issue (May 22, 2019)** I have called Primitive Survivors several  
21 times to cancel my phony subscription of 34 95 per month where I am sent a  
22 Primitive Survivors Drink Pad- and have been told over and over again it has been  
23 canceled. However, each month I see a \$34.95 charge on my account.

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

25 **Billing/Collection Issue (May 20, 2019)** After ordering a flashlight and thinking I  
26 was paying for shipping only, (\$4.95) I was advised that I could get two additional  
27 flashlights if I paid the shipping charge of \$4.95 for each. Nothing was said about  
28 becoming a member and since December I’ve been charged \$24.95 monthly, which  
shows as TL 900 Headlamp, and when I call or e-mail they tell me they’ll stop the  
“membership” of which I knew nothing, and as of today, agreed to refund \$12.47  
(one-half) the amount this month. This is AFTER I’ve written and called repeatedly  
telling them to stop charging my card! I’ve followed up in writing today and now  
have proof that they’ve agreed to stop the madness (at least an employee  
confirmation number) which I followed up with via e-mail. I hope to be able to get  
charges reversed by my bank.

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

28

1        **Advertising/Sales Issues (May 17, 2019)** I took a survey that stated you get a free  
2 gift if you complete the survey you just need to pay shipping and handling I picked  
3 the headlamp and paid the shipping and handling about \$6. A month later I got a bill  
4 for \$49.99 I called the customer service number and was told that the gift was  
5 actually a 14day trial and I didn't return the lamp so they charged me the \$49.99. I  
6 stated to them that the survey/ gift never said anything about the trial and I felt they  
7 were running a scam. I asked them to remove the charge and send me a return label  
8 for the lamp they said no, I continued to complain they offered to give me 20%off  
9 then50%off then 75% off. I stated that I would dispute the charge with the credit  
10 card company and report them to the BBB. They did credit me 75%of the charge but  
11 I still want the entire charge removed from my bill, I truly feel this is a scam by them.

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

13        **Billing/Collection Issue (May 11, 2019)** This company has been charging for  
14 merchandise we never ordered. I filled out a survey for Walmart and chose  
15 flashlights as a thank you gift (paying shipping and handling). Then Primitive  
16 Survival started charging our credit card with charges for items we did not receive  
17 or order. This began in Mar 2019. The charge was taken off my bill once but now  
18 it is back on.

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

20        23. A consumer complaint posted to Amazon's website about the TL900 Tactical  
21 Headlamp details the consumer's negative experience with being signed up to the Survivors Club  
22 and being charged amounts that the consumer did not authorize:

23        **cutiemcb (January 20, 2019)** This company will begin sending you unsolicited  
24 emails and making charges to your account that you have not authorized. I emailed  
25 them to cancel and they would not process my request. I would call and be put on  
26 hold without every having the call being picked back up, and they refused to call me,  
27 though they were always quick to respond by email. Finally go over \$70 in charges  
28 reversed by complaining through BBB. Check out their business profile – it happens  
to people a lot.

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

### **CLASS ACTION ALLEGATIONS**

24        24. Plaintiff brings this lawsuit as a class action under Code of Civil Procedure § 382 on  
25 behalf of two classes, as follows:

26        a. The "ARL Class" is defined as "All individuals in California who, within the  
27 applicable limitations period, were enrolled by Defendants in an automatic renewal or continuous  
28 service program and had a credit card, debit card, and/or a third-party payment account charged by  
Defendants. Excluded from the ARL Class are all employees of Defendants, all employees of  
Plaintiff's counsel, and the judicial officers to whom this case is assigned."



1           b.       The “Free Offer Class” is defined as “All individuals in California who,  
2 within the applicable limitations period, were charged by Defendants for an item that was advertised  
3 as a “free” offer, a “free trial” offer, or a “risk-free trial” offer. Excluded from the Free Offer Class  
4 are all employees of Defendants, all employees of Plaintiff’s counsel, and the judicial officers to  
5 whom this case is assigned.”

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

9           26.     Common Questions of Fact or Law. There are questions of fact or law that are  
10 common to the members of each Class, which predominate over individual issues. Common  
11 questions regarding the ARL Class include, without limitation: (1) Whether Defendants presented  
12 the terms of an automatic renewal or continuous service program in a manner that is “clear and  
13 conspicuous” within the meaning of California law and in “visual proximity” to a request for consent  
14 to the offer (or in the case of an offer conveyed by voice, in temporal proximity to a request for  
15 consent to the offer); (2) Defendants’ policies, practices and procedures for obtaining affirmative  
16 consent from customers before charging a credit card, debit card, or third-party payment account;  
17 (3) whether Defendants provide consumers with an acknowledgment that informs them of the  
18 subscription enrollment terms, the cancellation policy, and information regarding how to cancel, in  
19 a manner that is capable of being retained by the consumer; (4) Defendants’ record-keeping  
20 practices; and (5) the appropriate remedies for Defendants’ conduct. Common questions regarding  
21 the Free Offer Class include, without limitation: (1) Whether Defendants charged money for items  
22 that were represented to be free; (2) whether Defendants’ advertising is untrue, misleading, and  
23 likely to mislead a reasonable consumer; (3) Defendants’ record-keeping practices; and (4) the  
24 appropriate remedies for Defendants’ conduct.

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

28

1           28.     Typicality and Adequacy. Plaintiff’s claims are typical of the claims of the members  
2 of each Class. Plaintiff alleges on information and belief that Defendants make the same or  
3 substantially similar misleading advertisements and representations to other Class members;  
4 enrolled ARL Class members in an automatic renewal or continuous service program without  
5 presenting the applicable terms in the clear and conspicuous manner required by law; charged ARL  
6 Class members’ credit cards, debit cards, or third-party accounts without first obtaining the Class  
7 members’ affirmative consent to an agreement containing the required clear and conspicuous  
8 disclosures; and failed to provide the requisite acknowledgment in a manner capable of being  
9 retained by the ARL Class members. Plaintiff has no interests that are adverse to those of the other  
10 Class members. Plaintiff will fairly and adequately protect the interests of the Class members.

11           29.     Superiority. A class action is superior to other methods for resolving this  
12 controversy. Because the amount of restitution to which each Class member may be entitled is low  
13 in comparison to the expense and burden of individual litigation, it would be impracticable for Class  
14 members to redress the wrongs done to them without a class action forum. Furthermore, on  
15 information and belief, Class members do not know that their legal rights have been violated. Class  
16 certification would also conserve judicial resources and avoid the possibility of inconsistent  
17 judgments.

18           30.     Risk of Inconsistent or Varying Adjudications. Prosecuting separate actions by  
19 individual Class members would create a risk of inconsistent or varying adjudications with respect  
20 to individual Class members that would establish incompatible standards of conduct for Defendants.  
21 As a practical matter, adjudication with respect to individual Class members would be also  
22 dispositive of the interests of other members not parties to the individual adjudications or would  
23 substantially impair or impede their ability to protect their interests.

24           31.     Conduct on Grounds that Apply Generally to the Class. Defendants have acted or  
25 refused to act on grounds that apply generally to the Class, so that final injunctive relief or  
26 corresponding declaratory relief is appropriate respecting the Class as a whole.

27  
28

**FIRST CAUSE OF ACTION**

Violation of California’s Automatic Renewal Law

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

32. Plaintiff incorporates the previous allegations as though fully set forth herein.

33. Plaintiff is informed and believes and thereon alleges that, during the applicable statute of limitations period, Defendants have enrolled consumers, including Plaintiff and ARL Class members, in automatic renewal and/or continuous service programs and have (a) failed to present the automatic renewal or continuous service offer terms in a clear and conspicuous manner before the subscription or purchasing agreeing is fulfilled and in visual proximity (or in the case of an offer conveyed by voice, in temporal proximity) to the request for consent to the offer; (b) charged the consumer’s credit or debit card or the consumer’s third-party payment account for an automatic renewal or continuous service without first obtaining the consumer’s affirmative consent to an agreement containing clear and conspicuous disclosure of the required automatic renewal or continuous service offer terms; and/or (c) failed to provide an acknowledgment that includes clear and conspicuous disclosure of the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer, all in violation of § 17602.

34. Pursuant to §§ 17535 and 17603, Plaintiff and ARL Class members are entitled to restitution of all amounts that Defendants charged to Plaintiff’s and Class members’ credit cards, debit cards, or third-party payment accounts during the four years preceding the filing of this Complaint and continuing until Defendants’ statutory violations cease.

35. Pursuant to § 17535, Plaintiff and the ARL Class members are entitled to an injunction enjoining Defendants from making offers to California consumers that do not comply with California law, from making charges to credit cards, debit cards, or third-party accounts without prior affirmative consent to an agreement containing clear and conspicuous disclosure of all automatic renewal or continuous service offer terms, and from failing to provide information regarding how to cancel in a manner that is capable of being retained by the consumer.



1 **THIRD CAUSE OF ACTION**

2 Violation of the Consumers Legal Remedies Act

3 (Civ. Code, § 1750 et seq.)

4 44. Plaintiff incorporates the previous allegations as though fully set forth herein.

5 45. Plaintiff and the Class members are “consumers” within the meaning of Civil Code  
6 § 1761(d) in that Plaintiff and the Class members sought or acquired Defendants’ goods and/or  
7 services for personal, family, or household purposes.

8 46. Defendants’ merchandise and offers relating thereto constitute “goods” and/or  
9 “services” within the meaning of Civil Code § 1761(a) and (b).

10 47. The purchases by Plaintiff and Class members are “transactions” within the meaning  
11 of Civil Code § 1761(e).

12 48. Defendants have violated Civil Code § 1770, subdivisions (a)(5), (a)(9), (a)(13),  
13 (a)(14), and (a)(17) by representing that Defendants’ goods or services have certain characteristics  
14 that they do not have; advertising goods or services with the intent not to sell them as advertised;  
15 making false and misleading statements of fact concerning the reasons for, existence of and amounts  
16 of price reductions; representing that a transaction confers or involves rights, remedies, or  
17 obligations that it does not have or involve; and by 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.

20 49. Plaintiff seeks an injunction prohibiting Defendants from continuing their unlawful  
21 practices in violation of the Consumers Legal Remedies Act, as described above.

22 **FOURTH CAUSE OF ACTION**

23 Violation of the California Unfair Competition Law

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

25 50. Plaintiff incorporates the previous allegations as though fully set forth herein.

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

28 52. In the course of conducting business within the applicable limitations period,

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

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

27         54. There were reasonably available alternatives to further Defendants’ legitimate  
28 business interests, other than the conduct described herein.

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

3 56. Plaintiff has suffered injury in fact and lost money as a result of Defendants' acts of  
4 unfair competition.

5 57. Pursuant to § 17203, Plaintiff and all Class members are entitled to restitution of all  
6 amounts Defendants received from them as result of the foregoing conduct during the four years  
7 preceding the filing of this Complaint and continuing until Defendants' acts of unfair competition  
8 cease.

9 58. Pursuant to § 17203, Plaintiff is entitled to an order enjoining Defendants from  
10 committing further acts of unfair competition.

11 **FIFTH CAUSE OF ACTION**

12 Unjust Enrichment

13 59. Plaintiff incorporates the previous allegations as though fully set forth herein.

14 60. As a result of money taken by or paid to Defendants in violation of California law,  
15 Defendants received money at the expense of Plaintiff and Class members. Defendants would be  
16 unjustly enriched if they were permitted to retain those funds, and Defendants should be ordered to  
17 restore said funds to Plaintiff and Class members.

18 61. Plaintiff alleges this unjust enrichment claim in the alternative to relief provided  
19 under any legal claim alleged herein.

20 **SIXTH CAUSE OF ACTION**

21 Violation of the Electronic Funds Transfer Act

22 62. Plaintiff incorporates the allegations of paragraphs 1-31 as though set forth herein.

23 63. The Electronic Funds Transfer Act ("EFTA") establishes the rights, liabilities, and  
24 responsibilities of participants in an electronic fund transfer system. 15 U.S.C. § 1693 *et seq.*

25 64. Defendants' transfers of money involving class members, as alleged herein, are  
26 "electronic fund transfers" within the meaning of the EFTA and its implementing regulations,  
27 Regulation E, 12 C.F.R. § 205 *et seq.*

28 65. The EFTA provides that a preauthorized electronic fund transfer from a consumer's

1 account may be authorized only by a writing signed or similarly authenticated by the consumer, and  
2 that the person who obtains an authorization must provide a copy to the consumer. 12 C.F.R.  
3 § 205.10(b).

4 66. Plaintiff is informed and believes and thereon alleges that Defendants initiated  
5 preauthorized transfers via debit cards and took money from the bank accounts of class members  
6 without obtaining their written authorization and/or without providing a copy of a such a written  
7 authorization. As a result of Defendants' violations of the EFTA, including Regulation E, affected  
8 class members are entitled to recover actual damages and/or statutory damages pursuant to 15 U.S.C.  
9 § 1693m(a).

10 **PRAYER**

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

12 On the First Cause of Action:

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

15 On the Second Cause of Action:

- 16 3. For a public injunction for the benefit of the People of the State of California;  
17 4. For restitution;

18 On the Third Cause of Action:

- 19 5. For a public injunction for the benefit of the People of the State of California;  
20 6. For reasonable attorneys' fees and costs pursuant to Civil Code § 1780(e);

21 On the Fourth Cause of Action:

- 22 7. For a public injunction for the benefit of the People of the State of California;  
23 8. For restitution;

24 On the Fifth Cause of Action:

- 25 9. For restitution;

26 On the Sixth Cause of Action:

- 27 10. For actual damages and/or statutory damages pursuant to 15 U.S.C. § 1693m(a);  
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On All Causes of Action:

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

DATED: October 2, 2019

DOSTART HANNINK & COVENEY LLP

  
 \_\_\_\_\_  
 ZACH P. DOSTART  
 Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

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

Dated: October 2, 2019

DOSTART HANNINK & COVENEY LLP

  
 \_\_\_\_\_  
 ZACH P. DOSTART  
 Attorneys for Plaintiff

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