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Superior Court of California
County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk of Court
By: Isaac Lovo, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11 CHRISTINE LUNSFORD, on behalf of
12 herself and all others similarly situated,

13 Plaintiff,

14 vs.

15 THE JUICE PLUS+ COMPANY, LLC,
16 NATURAL ALTERNATIVES
17 INTERNATIONAL, INC., and DOES 1-
18 10, inclusive,

19 Defendants.

Case No.:

19STCV42051

CLASS ACTION COMPLAINT FOR:

1. VIOLATIONS OF CALIFORNIA'S
UNFAIR COMPETITION LAW (BUSINESS
AND PROFESSIONS CODE §§ 17200 et
seq.)

JURY TRIAL DEMANDED

By Fax

20 Plaintiff Christine Lunsford ("Plaintiff"), by and through her attorneys, alleges the
21 following based upon personal knowledge as to her own acts, and upon information and belief and
22 her attorneys' investigation as to all other facts.

23 1. Plaintiff, on behalf of herself and on behalf of a Class (defined herein) of California
24 citizens who purchased subscriptions for dietary supplements, from defendants The Juice Plus+
25 Company, LLC and Natural Alternatives International, Inc. (collectively, "Juice Plus"), brings this
26 class action complaint for violations of California's Unfair Competition Law, Bus. & Prof. Code
27 §§ 17200 et seq. (the "UCL") based upon Juice Plus's violations of California's Automatic
28 Renewal Law, Bus & Prof. Code §§ 17600 et seq. (the "ARL"). The Class includes all California
citizens who purchased product subscriptions from Juice Plus within the applicable statute of
limitations period up to and include the date of judgment in this action (the "Relevant Period").

1 Plaintiff and Class members are consumers for purposes of Cal. Bus. & Prof. Code §§ 17600 -
2 17606.

3 2. During the Relevant Period, Juice Plus made automatic renewal or continuous
4 service offers to consumers in California and (i) at the time of making the automatic renewal or
5 continuous service offers, failed to present the terms of said offers in a clear and conspicuous
6 manner and in visual proximity to the request for consent to the offer before the subscription or
7 purchasing agreement was fulfilled in violation of Cal. Bus. & Prof. Code § 17602(a)(1); (ii)
8 charged Plaintiff's and Class member's credit or debit cards, or third-party account (the "Payment
9 Method(s)") without first obtaining Plaintiff's and Class members' affirmative consent to the
10 agreement containing the automatic renewal offer terms or continuous service offer terms in
11 violation of Cal. Bus. & Prof. Code § 17602(a)(2); (iii) failed to provide an acknowledgment that
12 includes the automatic renewal or continuous service offer terms, cancellation policy, information
13 regarding how to cancel in a manner that is capable of being retained by the consumer in violation
14 of Cal. Bus. & Prof. Code §§ 17602(a)(3), 17602(b); and (iv) failed to provide an online method
15 of termination for the automatic renewal or continuous service offer to Plaintiff and other class
16 members who accepted such automatic renewal or continuous service offer online in violation of
17 Cal. Bus. & Prof. Code §§ 17602(c). As a result of such violations by Juice Plus, all goods, wares,
18 merchandise, or products sent to Plaintiff and Class Members under the automatic renewal or
19 continuous service agreements are deemed to be an unconditional gift pursuant to Cal. Bus. &
20 Prof. Code § 17603.

21 3. Plaintiff, on behalf of himself and the Class, seeks, declaratory relief, injunctive
22 relief, reasonable attorneys' fees, and any other relief that this Court deems necessary, just, proper,
23 and appropriate pursuant to Cal. Bus. & Prof. Code, §§ 1603, 17203, 17204, and Cal. Code. Civ.
24 Pro. § 1021.5.

25 **STATUTORY BACKGROUND**

26 4. As of December 1, 2010, the ARL has been in effect in California. The
27 Legislature's stated intent for enacting the ARL was "to end the practice of ongoing charging of
28 consumer credit or debit cards or third party payment accounts without the consumers' explicit

1 consent for ongoing shipments of a product or ongoing deliveries of service.” Cal. Bus. & Prof.
2 Code § 17600.

3 5. The ARL makes it unlawful for any business making an automatic renewal or
4 continuous service offer to a consumer in California to do any of the following:

5 (a)(1) Fail to present the automatic renewal offer terms or
6 continuous service offer terms in a clear and conspicuous manner
7 before the subscription or purchasing agreement is fulfilled and in
8 visual proximity, or in the case of an offer conveyed by voice, in
9 temporal proximity, to the request for consent to the offer. If the
10 offer also includes a free gift or trial, the offer shall include a clear
11 and conspicuous explanation of the price that will be charged after
12 the trial ends or the manner in which the subscription or purchasing
13 agreement pricing will change upon conclusion of the trial;

14 (a)(2) Charge the consumer’s credit or debit card, or the
15 consumer’s account with a third party for an automatic renewal or
16 continuous service without first obtaining the consumer’s
17 affirmative consent to the agreement containing the automatic
18 renewal offer terms or continuous service offer terms, including the
19 terms of an automatic renewal offer or continuous service offer that
20 is made at a promotional or discounted price for a limited period of
21 time; or

22 (a)(3) Fail to provide an acknowledgment that includes the
23 automatic renewal offer terms or continuous service offer terms,
24 cancellation policy, and information regarding how to cancel in a
25 manner that is capable of being retained by the consumer. If the
26 automatic renewal offer or continuous service offer includes a free
27 gift or trial, the business shall also disclose in the acknowledgment
28 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, Cal. Bus. & Prof. Code § 17602(a).

6. The ARL defines the term “Automatic Renewal” as “a plan or arrangement in
which a paid subscription or purchasing agreement is automatically renewed at the end of a definite
term for a subsequent term.” See, Cal. Bus. & Prof. Code § 17601(a).

7. The ARL defines the term “Automatic renewal offer terms” as the “following clear
and conspicuous disclosures”:

(a) That the subscription or purchasing agreement will continue
until the consumer cancels;

1 (b) The description of the cancellation policy that applies to the
2 offer;

3 (c) The recurring charges that will be charged to the consumer's
4 credit or debit card or payment account with a third party as part of
5 the automatic renewal plan or arrangement, and that the amount of
6 the charge may change, if that is the case, and the amount to which
7 the charge will change, if known;

8 (d) The length of the automatic renewal term or that the service
9 is continuous, unless the length of the term is chosen by the
10 consumer; and

11 (e) The minimum purchase obligation, if any.

12 *See*, Cal. Bus. & Prof. Code § 17601(b).

13 8. The ARL defines "clear and conspicuous" or "clearly and conspicuously" to mean,
14 "in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding
15 text of the same size, or set off from the surrounding text of the same size by symbols or other
16 marks, in a manner that clearly calls attention to the language." *See*, Cal. Bus. & Prof. Code §
17 17601(c).

18 9. The ARL mandates that such services shall be made readily cancellable by
19 consumers, specifically stating, "A business that makes an automatic renewal offer or continuous
20 service offer shall provide a toll-free telephone number, electronic mail address, a postal address
21 if the seller directly bills the consumer, or it shall provide another cost-effective, timely, and easy-
22 to-use mechanism for cancellation that shall be described in the acknowledgment specified in
23 paragraph (3) of subdivision (a)." *See*, Cal. Bus. & Prof. Code §17602(b).

24 10. Furthermore, the ARL mandates that, "In addition to the requirements of
25 subdivision (b), a consumer who accepts an automatic renewal or continuous service offer online
26 shall be allowed to terminate the automatic renewal or continuous service exclusively online,
27 which may include a termination email formatted and provided by the business that a consumer
28 can send to the business without additional information." *See*, Cal. Bus. & Prof. Code § 17602(c).

11. Pursuant to § 17603 of Cal. Bus. & Prof. Code, "In any case in which a business
sends any goods, wares, merchandise, or products to a consumer, under a continuous service

1 agreement or automatic renewal of a purchase, without first obtaining the consumers affirmative
 2 consent as described in § 17602, the goods, wares, merchandise, or products shall for all purposes
 3 be deemed an unconditional gift to the consumer, who may use or dispose of the same in any
 4 manner he or she sees fit without any obligation whatsoever on the consumer's part to the business,
 5 including, but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares,
 6 merchandise, or products to the business."

7 **PARTIES AND STANDING**

8 12. Plaintiff is a citizen of California. Plaintiff purchased a subscription plan from
 9 Juice Plus's website and subscription dietary supplement delivery service, www.juiceplus.com, in
 10 California during the Relevant Period. Plaintiff and Class Members are consumers as defined
 11 under Cal. Bus. & Prof. Code § 17601(d).

12 13. Plaintiff is informed and believes, and thereon alleges, that defendant The Juice
 13 Plus+ Company, LLC is a Tennessee limited liability company with its principal place of business
 14 located at 140 Crescent Dr., Collierville, TN 38017-3374.

15 14. Plaintiff is informed and believes, and thereon alleges, that defendant Natural
 16 Alternatives International, Inc. is a Delaware corporation with its principal place of business
 17 located at 1535 Faraday Avenue, Carlsbad, CA 92008.

18 15. Plaintiff is informed and believes, and thereon alleges, that defendants The Juice
 19 Plus+ Company, LLC and Natural Alternatives International, Inc. together own, operate, and
 20 provide to the public in California, the United States, and elsewhere, www.juiceplus.com, and has
 21 done so throughout the Relevant Period. The website www.juiceplus.com provides access to a
 22 monthly dietary supplement subscription service, the products of which are also manufactured by
 23 The Juice Plus+ Company, LLC and Natural Alternatives International, Inc. During the Relevant
 24 Period Juice Plus made, and continues to make, automatic renewal or continuous service offers to
 25 consumers in California. Juice Plus's automatic renewal and/or continuous service plan is
 26 marketed and known as "Juice Plus+".

27 16. At all relevant times, each and every defendant was acting as an agent and/or
 28 employee of each of the other defendants and was acting within the course and/or scope of said

1 agency and/or employment with the full knowledge and consent of each of the defendants. Each
2 of the acts and/or omissions complained of herein were alleged and made known to, and ratified
3 by, each of the other defendants (Juice Plus and DOE Defendants will hereafter collectively be
4 referred to as "Defendants").

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

10 **JURISDICTION AND VENUE**

11 18. This Court has subject matter jurisdiction over this action. This Court has personal
12 jurisdiction over Defendants because they conducted and continue to conduct substantial business
13 in the State of California, County of Los Angeles, and Defendant's offending website is available
14 across California.

15 19. Venue is proper in this Court because Defendants conduct substantial business in
16 this County. Venue is also proper in this Court because a substantial portion of the misconduct
17 alleged herein occurred in the County of Los Angeles.

18 **CLASS ACTION ALLEGATIONS**

19 20. Class actions are certified when the question is one of a common or general interest,
20 of many persons, or when the parties are numerous, and it is impracticable to bring them all before
21 the court. Cal. Civ. Proc. Code § 382. The California Supreme Court has stated that a class should
22 be certified when the party seeking certification has demonstrated the existence of a "well-defined
23 community of interest" among the members of the proposed class. *Richmond v. Dart Indus., Inc.*,
24 29 Cal.3d 462, 470 (1981); *see also Daar v. Yellow Cab Co.*, 67 Cal.2d 695, 704 (1967).

25 21. Class actions are especially valuable in a context such as this one, in which
26 individual relief may be modest. It is well settled that a plaintiff need not prove the merits of the
27 action at the class certification stage.

1 22. Rather, the decision of whether to certify a class is “essentially a procedural one”
 2 and the appropriate analysis is whether, assuming the merits of the claims, they are suitable for
 3 resolution on a class-wide basis:

4 As the focus in a certification dispute is on what types of questions common or
 5 individual are likely to arise in the action, rather than on the merits of the case, in
 6 determining whether there is substantial evidence to support a trial court’s
 7 certification order, we consider whether the theory of recovery advanced by the
 proponents of certification is, as an analytical matter, likely to prove amenable to
 class treatment.

8 *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 327 (2004) (citations omitted).

9 23. In addition, the assessment of suitability for class certification entails addressing
 10 whether a class action is superior to individual lawsuits or alternative procedures for resolving the
 11 controversy. *Capitol People First v. State Dept. of Developmental Services* (2007) 155
 12 Cal.App.4th 676, 689.

13 24. Plaintiff brings this action on behalf of herself, and on behalf of all others similarly
 14 situated. The Class consists of all persons within California that, within the applicable statute of
 15 limitations period up to and including entry of judgment in this matter, purchased any product or
 16 service in response to an offer constituting an “Automatic Renewal” as defined by § 1601(a) of
 17 the ARL from Defendants, their predecessors, or their affiliates, via the website
 18 www.juiceplus.com (the Class).

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

24 26. The members of the Class are so numerous that joinder of all members is
 25 impracticable. While the exact number and identities of Class members are unknown to Plaintiff
 26 at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and
 27 believes the Class includes thousands of members. This amount likely reflects hundreds of
 28 thousands of unique customers, many of them California citizens, who have signed up for

1 Defendants' auto-renewal services. Plaintiff alleges that the Class may be ascertained by the
2 records maintained by Defendants.

3 27. Common questions of law and fact exist as to all members of the Class, and
4 predominate over any questions affecting solely individual members of the Class. Among the
5 questions of law and fact common to the Class are:

6 (a) Whether during the Relevant Period Defendants failed to present the
7 automatic renewal offer terms, or continuous service offer terms, in a clear
8 and conspicuous manner before the subscription or purchasing agreement
9 was fulfilled and in visual proximity to the request for consent to the offer
10 in violation of Cal. Bus. & Prof. Code § 17602(a)(1);

11 (b) Whether during the Relevant Period Defendants charged Plaintiff's
12 and Class Members' Payment Method(s) for an automatic renewal or
13 continuous service without first obtaining Plaintiff's and Class Members'
14 affirmative consent to the automatic renewal offer terms or continuous
15 service offer terms in violation of Cal. Bus. & Prof. Code § 17602(a)(2);

16 (c) Whether during the Relevant Period Defendants failed to provide an
17 acknowledgment that included the automatic renewal or continuous service
18 offer terms, cancellation policy, and information on how to cancel in a
19 manner that is capable of being retained by Plaintiff and Class Members, in
20 violation of Cal. Bus. & Prof. Code § 17602(a)(3);

21 (d) Whether during the Relevant Period Defendants failed to provide an
22 acknowledgment that describes a cost-effective, timely, and easy-to-use
23 mechanism for cancellation in violation of Cal. Bus. & Prof. Code §
24 17602(b);

25 (e) Whether during the Relevant Period Defendants failed to provide an
26 online method of termination for its automatic renewal or continuous
27 service offer service to those members who signed up for said automatic
28 renewal or continuous service offers online in violation of Cal. Bus. & Prof.
Code § 17602(c)

(f) Whether Plaintiff and Class Members are entitled to restitution of
money paid in circumstances where the goods and services provided by
Defendants are deemed an unconditional gift in accordance with Cal. Bus.
& Prof. Code § 17603;

(g) Whether Plaintiff and Class Members are entitled to restitution in
accordance with Cal. Bus. & Prof. Code §§ 17200, 17203

(h) Whether Plaintiff and Class Members are entitled to injunctive relief
under Cal. Bus. & Prof. Code § 17203;

1 (i) Whether Plaintiff and Class Members are entitled to attorneys' fees
 2 and costs under California Code of Civil Procedure § 1021.5.

3 28. Plaintiff's claims are typical of the claims of the members of the Class, as Plaintiff
 4 and members of the Class sustained and continue to sustain injuries arising out of Defendants'
 5 conduct or omissions in violation of state law as complained of herein. Plaintiff, like all other
 6 members of the Class, claims that Defendants have violated state law by violating the ARL and
 7 UCL by, *inter alia* at the time of making an automatic renewal/continuous service offer, (i) failing
 8 to present the terms of said offers in a clear and conspicuous manner and in visual proximity to
 9 the request for consent to the offer before the subscription or purchasing agreement was fulfilled
 10 in violation of Cal. Bus. & Prof. Code § 17602(a)(1); (ii) charging Plaintiff's and Class member's
 11 Payment Method(s) without first obtaining Plaintiff's and Class members' affirmative consent to
 12 the agreement containing the automatic renewal offer terms or continuous service offer terms in
 13 violation of Cal. Bus. & Prof. Code § 17602(a)(2); and (iii) failing to provide an acknowledgment
 14 that includes the automatic renewal or continuous service offer terms, cancellation policy, and
 15 information regarding how to cancel in a manner that is capable of being retained by the consumer
 16 in violation of Cal. Bus. & Prof. Code §§ 17602(a)(3), 17602(b).

17 29. Plaintiff will fairly and adequately protect the interests of the members of the Class,
 18 and has retained counsel competent and experienced in class action litigation. Plaintiff has no
 19 interests antagonistic to, or in conflict with, those of the Class.

20 30. A class action is superior to other available methods for the fair and efficient
 21 adjudication of the controversy, since joinder of all members is impracticable. Furthermore,
 22 because the damages suffered by the individual Class members may be relatively small, the
 23 expense and burden of individual litigation make it impossible for members of the Class
 24 individually to redress the wrongs done to them.

25 31. There will be no difficulty in the management of this action as a class action.
 26 Moreover, judicial economy will be served by the maintenance of this lawsuit as a class action,
 27 in that it is likely to avoid the burden which would be otherwise placed upon the judicial system
 28

1 by the filing of thousands of similar suits by disabled people across the California. There are no
 2 obstacles to effective and efficient management of the lawsuit as a class action.

3 **RELEVANT FACTUAL BACKGROUND**

4 **Juice Plus's Business**

5 32. Juice Plus offers, at its website, found at www.juiceplus.com, subscriptions for the
 6 delivery of monthly dietary supplements, and related products. Juice Plus's service constitutes an
 7 automatic renewal and/or continuous service plan or arrangement pursuant to the ARL. Cal. Bus.
 8 & Prof. Code § 17601(a).

9 **Plaintiff's Subscription**

10 33. On August 20, 2019, Plaintiff visited Defendants' website, www.juiceplus.com,
 11 and purchased online, for monthly delivery, one package of "JP+ Caps 3 Blend" dietary
 12 supplements, (the "Product(s)"). Plaintiff's credit card incurred a \$71.25 charge (inclusive of
 13 shipping and taxes) for the purchase of the Products.

14 34. Also on August 20, 2019, after placing her order, Plaintiff received an email from
 15 Juice Plus ("Email 1") that indicated that her delivery was on its way and provided tracking
 16 information.

17 35. Thereafter on August 26, 2019, Plaintiff received a second email ("Email 2") from
 18 Juice Plus that welcomed the Plaintiff to Juice Plus and indicated that her first order had been
 19 placed and that the shipment was on its way.

20 36. Plaintiff received the first order of Products from Juice Plus shortly thereafter.

21 37. On or about September 20, 2019, Plaintiff received was charged for a second order
 22 of the Products.

23 38. Shortly thereafter Plaintiff received the second order of Products from Juice Plus.

24 39. On October 20, 2019, Plaintiff received was charged for a second order of the
 25 Products.

26 40. Shortly thereafter Plaintiff received a third order of Products from Juice Plus

27 41. From August 2019 through the present, Juice Plus has continually delivered the
 28 Products to Plaintiff on a monthly basis.

1 42. Because the “automatic renewal offer terms” (the “AROT”) were not properly
 2 disclosed Plaintiff did not understand the frequency at which she would continue to be charged
 3 \$71.25.

4 43. As a result of Defendants not properly displaying the AROT at the time of purchase,
 5 or providing the AROT in subsequent emails, Plaintiff, unbeknownst to her, incurred at least three
 6 (3) monthly charges of \$71.25 for Products she did not wish to receive.

7 44. Plaintiff’s Counsel, upon being retained to investigate Juice Plus’s violations of the
 8 ARL and the UCL by the Plaintiff, engaged the services of an expert to analyze Juice Plus’s
 9 website as it is presented to the public.

10 **ARL VIOLATION 1 – Juice Plus Fails to Disclose the Automatic Renewal Offer Terms in**
 11 **a Clear and Conspicuous Manner in Violation of Cal. Bus. & Prof. Code § 17601**

12 45. Juice Plus is required to “clearly and conspicuously” disclose the AROT. *See*, Cal.
 13 Bus. & Prof. Code § 17601. Throughout the Relevant Period, Juice Plus has failed to meet this
 14 requirement. Specifically, Juice Plus’s website, www.juiceplus.com contains no section that
 15 properly discloses the AROT related to its subscription/renewal service. In fact, the only
 16 information related to the service is a one sentence description of how to cancel the service by
 17 either calling or e-mailing Juice Plus; this small kernel of information is only accessible via a
 18 hyperlink labeled only as “Return Policy” which leads to a section titled “Satisfaction Guaranteed”
 19 in the footer of its website, below the fold. This small amount of information, insufficient to
 20 constitute a properly AROT, is not clearly and conspicuously disclosed because this page can only
 21 be accessed via a hyperlink labeled as “Return Policy” which leads to a section titled “Satisfaction
 22 Guaranteed” located at a footer on the home page of www.juiceplus.com, and which is not apparent
 23 until a user scrolls past the fold of the webpage.

24 **ARL VIOLATION 2 – Juice Plus Fails to Present the Automatic Renewal Offer Terms in a**
 25 **Clear and Conspicuous Manner Before the Subscription or Purchasing Agreement is**
 26 **Fulfilled and in Visual Proximity to the Request for Consent to the Offer in Violation of**
 27 **Cal. Bus. & Prof. Code § 17602(a)(1)**

28 46. Juice Plus is required to “clearly and conspicuously” disclose the AROT on the
 checkout screen. *See*, Cal. Bus. & Prof. Code § 17602(a)(1). Juice Plus does not do this. Again,
 at checkout, www.juiceplus.com does not provide a viable AROT whatsoever, and as such,

provides no recitation of an AROT nor does it provide a link to the AROT near the point of acceptance. Additionally Juice Plus does not provide any language referencing an AROT or any other such terms, including cancellation instructions, on the checkout page.

47. Notably, cancellation information (but not a complete AROT), can only be accessed via a hyperlink in the footer of the www.juiceplus.com. Moreover, on the website, the as "Return Policy" which leads to a section titled "Satisfaction Guaranteed" hyperlink is located in the general footer of the websites home page only and is not located at all on the checkout page of the website. Clearly the minimal terms given related to an AROT are not given in a "clear and conspicuous" manner that clearly calls attention to the language before the subscription or purchasing agreement is fulfilled and in visual proximity thereto. In order to properly comply with the terms of the ARL, Juice Plus should disclose proper information constituting an AROT and place it directly on the checkout screen.

The screenshot displays the Juice Plus checkout interface. At the top, there is a navigation bar with links like 'Home', 'About Us', 'Contact Us', and 'My Account'. Below this, the main content area is divided into several sections:

- ORDER SUMMARY:** This section lists the items being purchased, including 'Juice Plus Drink' and 'Juice Plus Smoothie'. It also shows the 'SUBTOTAL' as \$32.50 and the 'TOTAL' as \$32.50.
- SHIPPING:** This section shows the shipping address as 'Michael McCaffrey' and the shipping method as 'Standard Shipping'.
- BILLING:** This section shows the billing address as 'Michael McCaffrey' and the payment method as 'American Express'.
- PAYMENT SCHEDULE:** This section shows the payment schedule as '12 Months'.

At the bottom of the page, there is a large 'PURCHASE' button.

ARL VIOLATION 3 – Juice Plus Fails to Obtain Affirmative Consent to the Automatic Renewal Offer Terms Before the Subscription or Purchasing Agreement is Fulfilled and Charged to the Plaintiff and Other Consumers in Violation of Cal. Bus. & Prof. Code § 17602(a)(2)

48. Juice Plus is required to obtain the “consumer’s affirmative consent to the agreement containing the automatic renewal offer terms”, and must obtain such affirmative consent before charging the consumer’s Payment Method.

49. “Affirmative consent” is an express act such as a check-box or similar button/mechanism that must be chosen/selected before the purchase order can be submitted/completed.¹

50. As shown in the figure above, at checkout, www.juiceplus.com provides only for a button that states “Purchase” without any presentation of the AROT or any language referencing the same. www.juiceplus.com fails to provide any check-box or similar mechanism to indicate that the consumer has read, understood and has affirmatively consented to any AROT. In fact, no reference to any AROT is made on the checkout page of the website at all.

51. As a result, during the Relevant Period, prior to charging Plaintiff’s and Class members’ Payment Method(s), Defendants failed to obtain Plaintiff’s and Class members’

¹ California courts have provided judicial guidance as to what constitutes “affirmative consent” under the ARL. In both *eHarmony* and *Beachbody*, California courts have taken the position that affirmative consent under the ARL must be obtained through an “express act” by the consumer to consent to the terms of the automatic renewal contract. In the final judgment against Beachbody, the court held that “consent is obtained by an express act by the consumer through a check-box, signature, express consent button or other substantially similar mechanism that consumers must select to give their consent. This mechanism cannot relate to consent for anything other than the automatic renewal or continuous service offer terms.” *People of the State of California v Beachbody LLC*, Case No. 55029222, Superior Court for the State of California, Los Angeles County (Aug. 24, 2017). Similarly, in the final judgment against eHarmony the court reiterated this position stating that “consent is obtained by an express act by the consumer through a check-box, signature, or other substantially similar mechanism that consumers must affirmatively select or sign to accept the AUTOMATIC RENEWAL OFFER TERMS and no other part of the transaction.” *People of the State of California v eHarmony Inc.*, Case No. 17-cv-03314, Superior Court for the State of California, County of Santa Cruz (Jan. 8, 2018).

1 affirmative consent to the automatic renewal/continuous service offer terms as required by Cal.
2 Bus. & Prof. Code § 17602(a)(2).

3 52. Because of Defendants' failure to gather affirmative consent to the automatic
4 renewal terms, all goods, wares, merchandise, or products sent to Plaintiff and Class members
5 under the automatic renewal/continuous service agreement are deemed to be an unconditional gift
6 pursuant to Cal. Bus. & Prof. Code § 17603, and Plaintiff and Class members may use or dispose
7 of the same in any manner they see fit without any obligation whatsoever on their part to
8 Defendants, including, but not limited to, bearing the cost of, or responsibility for, shipping any
9 goods, wares, merchandise or products.

10 **ARL VIOLATION 4 – Juice Plus Failed to Provide an Acknowledgment as Required by**
11 **Cal. Bus. & Prof. Code § 17602(a)(3) and 17602(b)**

12 53. Furthermore, and in addition to the above, after Plaintiff and Class members
13 subscribed to www.juiceplus.com, Defendants sent to Plaintiff and Class members email follow-
14 ups to their purchases, including email(s) entitled “Your Juice Plus+ Order.” and “Your Order Has
15 Shipped!” but has failed, and continues to fail, to provide an acknowledgment that includes the
16 automatic renewal offer terms or continuous service offer terms, cancellation policy, and
17 information regarding how to cancel in a manner that is capable of being retained by Plaintiff and
18 Class members in violation of Cal. Bus. & Prof. Code § 17602(a)(3), and 17602(b).

19 **FIRST CAUSE OF ACTION**

20 **Violation of the Unfair Competition Law - (Cal. Bus. & Prof. Code § 17200 et seq.)**

21 54. Plaintiff incorporates by reference the above allegations set forth in the Complaint
22 as if fully set forth herein.

23 55. The UCL prohibits unfair competition in the form of any “unlawful, unfair or
24 fraudulent business act or practice.” *See*, Cal. Bus. & Prof. Code § 17200.

25 56. The UCL permits “a person who has suffered injury in fact and has lost money or
26 property” to prosecute a civil action for violation of the UCL. This civil action may be brought
27 individually or on behalf of the injured individual and all others similarly situated who are affected
28 by the unlawful and/or unfair business practice or act. *See*, Cal. Bus. & Prof. Code § 17204.

1 57. Since December 1, 2010, and continuing through and including the Relevant
2 Period, Defendants have committed unlawful and/or unfair business acts or practices as defined
3 by the UCL, by violating the ARL, specifically, Cal. Bus. & Prof. Code §§ 17602(a)(1)-(3) and
4 17602(b). The public policy underlying a UCL action under the unfair prong of the UCL is
5 tethered to a specific statutory provision. *See*, Cal. Bus. & Prof. Code §§ 17600, 17602. In
6 addition, besides offending an established public policy, Defendants' acts or practices are immoral,
7 unethical, oppressive, unscrupulous or substantially injurious to consumers. Further, the utility of
8 Defendants' conduct is outweighed by the gravity of the harm to Plaintiff and Class members.

9 58. Plaintiff has standing to pursue this claim because she suffered injury in fact and
10 has lost money or property as a result of Defendants' actions as set forth herein. Plaintiff purchased
11 Juice Plus's Products for personal and/or family purposes/use.

12 59. As a direct and proximate result of Defendant's unlawful and/or unfair business
13 acts or practices described herein, Defendant has received, and continues to hold, unlawfully
14 obtained property and money belonging to Plaintiff and Class members in the form of payments
15 made for automatic renewal agreements by Plaintiff and Class members. Defendant has profited
16 from its unlawful and/or unfair business acts or practices in the amount of those business expenses
17 and interest accrued thereon.

18 60. Plaintiff and similarly-situated Class members are entitled to restitution pursuant to
19 Cal. Bus. & Prof. Code § 17203 for all monies paid by Class Members under the subscription
20 agreements from their inception, to the date of such restitution at rates specified by law. Defendant
21 should be required to disgorge all the profits and gains it has reaped and restore such profits and
22 gains to Plaintiff and Class members, from whom they were unlawfully taken.

23 61. Plaintiff and similarly situated Class members are entitled to enforce all applicable
24 penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202, and to obtain injunctive relief
25 pursuant to Cal. Bus. & Prof. Code § 17203.

26 62. Plaintiff has assumed the responsibility of enforcement of the laws and public
27 policies specified herein by suing on behalf of himself and others similarly situated. Plaintiff's
28 success in this action will enforce important rights affecting the public interest. Plaintiff will incur

1 a financial burden in pursuing this action in the public interest. An award of reasonable attorneys'
2 fees to Plaintiff is thus appropriate pursuant to California Code of Civil Procedure § 1021.5.

3 63. Plaintiff, on behalf of himself and Class members, requests relief as described
4 below.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
7 relief:

8 A. That this Court Order a preliminary and permanent injunction
9 enjoining Defendants from violating the UCL, Bus. & Prof. Code §§ 17200
10 et seq. and the ARL §§ 17600 et seq.;

11 B. That this Court find and declare that Defendants have violated Cal.
12 Bus. & Prof. Code § 17602(a)(1) by failing to present the automatic renewal
13 offer terms in a clear and conspicuous manner and in the visual proximity
14 to the request for consent to the offer before the subscription or purchasing
15 agreement was fulfilled;

16 C. That this Court find and declare that Defendants have violated Cal.
17 Bus. & Prof. Code § 17602(a)(2) by charging Plaintiff's and Class
18 Members' Payment Method without first obtaining their affirmative consent
19 to the automatic renewal offer terms or continuous service terms;

20 D. That this Court find and declare that Defendants have violated Cal.
21 Bus. & Prof. Code § 17602(a)(3) by failing to provide an acknowledgment
22 that includes the automatic renewal or continuous service offer terms and
23 cancellation policy;

24 E. That this Court find and declare that Defendants have violated Cal.
25 Bus. & Prof. Code § 17602(b) by failing to provide an acknowledgment that
26 describes a toll-free telephone number, electronic mail address, a postal
27 address only when the seller directly bills the consumer, or another cost-
28 effective, timely, and easy-to-use mechanism for cancellation;

1 F. That this Court find and declare that Defendants have violated Cal.
2 Bus. & Prof. Code § 17602(c) by failing to provide an exclusively online
3 method of termination for the automatic renewal or continuous service for
4 these consumers who signed up for such service online;

5 G. That this Court find and declare that Defendants have violated the
6 UCL and committed unfair and unlawful business practices by violating
7 Cal. Bus. & Prof. Code § 1702;

8 H. That the Court award to Plaintiff and Class members full restitution
9 due to Defendant's UCL violations and finds pursuant to Cal. Bus. & Prof.
10 Code §§ 17200 – 17205; that all goods, wares, merchandise, or products
11 sent to Plaintiff and Class members under the automatic renewal/continuous
12 service agreement are deemed to be an unconditional gift pursuant to Cal.
13 Bus. & Prof. Code § 17603, and Plaintiff and Class members may use or
14 dispose of the same in any manner they see fit without any obligation
15 whatsoever on their part to Defendant, including, but not limited to,
16 bearing the cost of, or responsibility for, shipping any goods, wares,
17 merchandise or products in the amount of their subscription agreement
18 payments

19 I. That this Court Order a preliminary and permanent injunction
20 requiring Defendants to take the steps necessary to bring
21 www.juiceplus.com into compliance with the ARL;

22 J. That this Court award reasonable attorneys' fees and costs
23 (including expert fees) and other expenses of suit pursuant to California
24 Code of Civil Procedure § 1021.5, and/or other applicable law; and

25 K. That this Court awards such other and further relief as it deems
26 necessary, just, proper, and appropriate.
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury on all issues which can be heard by a jury.

Dated: November 22, 2019

BRODSKY & SMITH, LLC

By: 

Evan J. Smith (SBN242352)

Ryan P. Cardona (SBN302113)

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Beverly Hills, CA 90212

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Attorneys for Plaintiff

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Evan J. Smith (SBN242352) Brodsky & Smith, LLC 9595 Wilshire Blvd., Suite 900 Beverly Hills, CA 90212 TELEPHONE NO. 877-534-2590 FAX NO. 310-247-0160 ATTORNEY FOR (Name): Christine Lunsford		FOR COURT USE ONLY CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles NOV 22 2019 Sherri R. Carter, Executive Officer/Clerk of Court By: Isaac Lovo, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill St. MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central Civil West - Stanley Mosk Courthouse		
CASE NAME: Christine Lunsford v. The Juice Plus+ Company, LLC, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		CASE NUMBER: 19STCV42051 JUDGE: DEPT:
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		By Fax

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 1
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 22, 2019

Evan J. Smith

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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