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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11
12 ROBERT TURNIER and
13 BEATRICE MORAN,
14 individually and on behalf of all
others similarly situated,

15 Plaintiffs,

16
17 vs.

18 BED BATH & BEYOND INC., a
19 New York corporation; and DOES
20 1-50, inclusive,

21 Defendants.
22
23

CASE NO. 3:20-cv-00288-L-MSB

CLASS ACTION

SECOND AMENDED COMPLAINT
FOR:

(1) FALSE ADVERTISING (BASED ON
VIOLATION OF THE CALIFORNIA
AUTOMATIC RENEWAL LAW)
[Cal. Bus. & Prof. Code § 17535 &
§ 17600 et seq.];

(2) UNFAIR COMPETITION
[Cal. Bus. & Prof. Code § 17200 et seq.].

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INTRODUCTION

1. This class action complaint alleges that defendant Bed Bath & Beyond Inc. (“BB&B”) violates California law in connection with a subscription program operated under the name BEYOND+. Among other things, BB&B enrolls consumers in automatic-renewal or continuous service subscriptions without providing the “clear and conspicuous” disclosures mandated by California law, and posts charges to consumers’ credit or debit cards for purported automatic renewal or continuous service subscriptions without first obtaining the consumers’ affirmative consent to an agreement containing the requisite clear and conspicuous disclosures. This course of conduct constitutes false advertising, for which an equitable remedy is provided by Cal. Bus. & Prof. Code § 17535 (based on violation of the California Automatic Renewal Law, Cal. Bus. & Prof. Code § 17600 et seq. (“ARL”), which is part of California’s False Advertising Law), and violates the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”).

THE PARTIES

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

3. Plaintiff Beatrice Moran (“Moran”) is an individual residing in Los Angeles County, California. Turnier and Moran are collectively referred to as “Plaintiffs.”

4. Plaintiffs are informed and believe and thereon allege that defendant Bed Bath & Beyond Inc. (“BB&B”) is a New York corporation that does business in San Diego County, including the marketing and sale of household merchandise.

5. Plaintiffs do not know the names of the defendants sued as DOES 1 through 50 but will amend this complaint when that information becomes known. Plaintiffs allege on information and belief that each of the DOE defendants is affiliated with the named defendant in some respect and is in some manner responsible for the wrongdoing alleged herein, either as a direct participant, or as the principal,

1 agent, successor, alter ego, or co-conspirator of or with one or more of the other
2 defendants. For ease of reference, Plaintiffs will refer to the named defendant and the
3 DOE defendants collectively as “Defendants.”

4 **JURISDICTION AND VENUE**

5 6. Defendant BB&B removed the action to this Court from the San Diego
6 County Superior Court on February 14, 2020. *See* ECF No. 1.

7 **SUMMARY OF APPLICABLE LAW**

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

13 It has become increasingly common for consumers to complain about
14 unwanted charges on their credit cards for products or services that the
15 consumer did not explicitly request or know they were agreeing to.
16 Consumers report they believed they were making a one-time purchase
17 of a product, only to receive continued shipments of the product and
18 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.

19 *See* Exhibit 1 at 4.

20 8. The Assembly Committee on Judiciary provided the following
21 background for the legislation:

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

28 *See* Exhibit 2 at 8.

1 9. The ARL seeks to ensure that, before there can be a legally-binding
2 automatic renewal or continuous service arrangement, there must first be clear and
3 conspicuous disclosure of certain terms and conditions and affirmative consent by the
4 consumer. To that end, section 17602(a) makes it unlawful for any business making
5 an automatic renewal offer or a continuous service offer to a consumer in California
6 to do any of the following:

7 a. Fail to present the automatic renewal offer terms or continuous
8 service offer terms in a clear and conspicuous manner before the subscription or
9 purchasing agreement is fulfilled and in visual proximity, or in the case of an offer
10 conveyed by voice, in temporal proximity, to the request for consent to the offer. For
11 this purpose, “clear and conspicuous” means “in larger type than the surrounding text,
12 or in contrasting type, font, or color to the surrounding text of the same size, or set off
13 from the surrounding text of the same size by symbols or other marks, in a manner
14 that clearly calls attention to the language.” Cal. Bus. & Prof. Code § 17601(c). “In
15 the case of an audio disclosure, ‘clear and conspicuous’ ... means in a volume and
16 cadence sufficient to be readily audible and understandable.” *Id.* The statute defines
17 “automatic renewal offer terms” to mean the “clear and conspicuous” disclosure of
18 the following: (a) that the subscription or purchasing agreement will continue until
19 the consumer cancels; (b) the description of the cancellation policy that applies to the
20 offer; (c) the recurring charges that will be charged to the consumer’s credit or debit
21 card or payment account with a third party as part of the automatic renewal plan or
22 arrangement, and that the amount of the charge may change, if that is the case, and
23 the amount to which the charge will change, if known; (d) the length of the automatic
24 renewal term or that the service is continuous, unless the length of the term is chosen
25 by the consumer; and (e) the minimum purchase obligation, if any. Cal. Bus. & Prof.
26 Code § 17601(b).

27 b. Charge the consumer’s credit or debit card or the consumer’s
28 account with a third party for an automatic renewal or continuous service without first

1 obtaining the consumer’s affirmative consent to the agreement containing the
2 automatic renewal offer terms or continuous service offer terms, including the terms
3 of an automatic renewal offer or continuous service offer that is made at a promotional
4 or discounted price for a limited period of time. Cal. Bus. & Prof. Code § 17602(a)(2).

5 c. Fail to provide an acknowledgment that includes the automatic
6 renewal or continuous service offer terms, cancellation policy, and information
7 regarding how to cancel in a manner that is capable of being retained by the consumer.
8 Cal. Bus. & Prof. Code § 17602(a)(3). Section 17602(b) requires that the
9 acknowledgment specified in § 17602(a)(3) include a toll-free telephone number,
10 electronic mail address, or another “cost-effective, timely, and easy-to-use”
11 mechanism for cancellation.

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

22 **DEFENDANT’S WEBSITE CHECK-OUT PROCESS**

23 11. When a consumer selects an item to purchase online through the BB&B
24 website, the website walks the consumer through a purchase sequence.

25 12. The first screen (“Screen 1”) is a review of the consumer’s order. In the
26 “Order Summary” box, the consumer is provided with two different prices: the regular
27 “Order Subtotal” price, and a discounted “BEYOND+ Member Price,” as shown
28 below:

Add a Gift Card
Always the Perfect Gift. Never a Fee. Never Expires.

\$100
Add To Cart

Order Summary Chat Now

Congratulations! You have earned free shipping

Apply Offers/Coupons

Order Subtotal	\$149.99
BEYOND+ Member Price Join Now	\$119.99
Shipping Details	FREE
Pre-Tax Total	\$149.99
Total Savings	\$350.00

Checkout

Your Cart (1) [Email cart](#)

Metro 4-Piece Outdoor Conversation Set in Pearl White/Brown

\$149.99 ~~\$499.99~~ ea

Color: White/Brown
Size: 4 Piece

Qty 1

\$149.99

Add Assembly
Powered by [Porch](#) [Learn More](#)

Remove | Save For Later

Ship this Item
[Shipping Restrictions Apply](#)

Reserve Online Pay in Store
This item is not available for in-store pickup within 25 miles

Find at another store

13. If the consumer clicks the “Join Now” link next to the BEYOND+ Member Price, he or she is presented with another screen (“Screen 2”) that invites the consumer to become a BEYOND+ member. Screen 2 indicates that for \$29.00, BEYOND+ members receive a 20% discount on every purchase for one year, as well as free standard shipping.

Become a BEYOND+ member today

Never Look for a Coupon Again!

You love coupons (hey, who doesn't?). But why wait for one? For just \$29 a year, BEYOND+ members get 20% off their Entire Purchase and free shipping!

Sign Me Up

[Terms and Conditions](#)

BEYOND+

MEMBERS SAVE MORE

20%

OFF
ENTIRE PURCHASE
EVERY TIME YOU SHOP

+

FREE

STANDARD
SHIPPING

ALL YEAR LONG!

All the Benefits for Just \$29 a Year

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1 14. If the consumer clicks the “Sign Me Up” button on Screen 2, he or she
2 is then presented with a screen for entry of name and contact information (“Screen
3 3”), as shown below:

4 **Billing Address**

5 First Name Last Name

6 Company (Optional)

7

8 Country
United States

9 Street Address

10

11 Apt/Suite/Floor (Optional)

12 City State Zip Code

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14 **Contact Information**

15 Phone Number, maximum 10
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18 **Terms and Conditions**

19 I accept the [terms and conditions](#) of the program

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21 **Review**

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23 BEYOND+ 1 Year Membership

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1 **FACTS GIVING RISE TO THIS ACTION**

2 **Robert Turnier's Transaction**

3 15. On August 11, 2018, while Turnier was in San Diego County, he
4 purchased an item of merchandise through BB&B's website. In connection with that
5 purchase, Turnier selected the option to join BEYOND+ to obtain the stated discount,
6 through a sequence of screens that was in all material respects the same as set forth
7 above. Turnier paid for that purchase by entering his credit card information as part
8 of the website check-out process. The BB&B checkout screens did not disclose that
9 the BEYOND+ membership will continue until the consumer cancels; did not
10 describe a cancellation policy; did not disclose that a recurring charge would be made
11 to the consumer's credit card, debit card, or third-party payment account in
12 subsequent years; and did not disclose any automatic renewal term or that the service
13 is continuous.

14 16. On August 11, 2018, Turnier received a confirmation email regarding
15 the "BEYOND+ 1 Year Membership," for which he was charged \$29.00, plus tax of
16 \$2.25, for a total of \$31.25. That amount was charged to Turnier's credit card. The
17 confirmation email did not disclose that the membership will continue until he
18 cancels; did not describe a cancellation policy; did not disclose that a recurring charge
19 would be made to his credit card in subsequent years; and did not disclose any
20 automatic renewal term or that the service is continuous.

21 17. The following year, on or about August 12, 2019, BB&B posted a charge
22 to Turnier's credit card in the amount of \$31.25. Turnier is informed and believes
23 and thereon alleges that that \$31.25 charge was for purported renewal of a BEYOND+
24 membership. Turnier did not authorize or consent to that charge. When that charge
25 was imposed, Turnier did not know that BB&B was going to re-enroll him in a
26 BEYOND+ membership, and Turnier did not want to be re-enrolled in a BEYOND+
27 membership.

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1 18. On or about August 11, 2020, BB&B posted another charge to Turnier's
2 credit card in the amount of \$31.25. Turnier is informed and believes and thereon
3 alleges that that \$31.25 charge was for purported renewal of a BEYOND+
4 membership. Turnier did not authorize or consent to that charge. Turnier did not
5 know that BB&B was going to re-enroll him in a BEYOND+ membership, and
6 Turnier did not want to be re-enrolled in a BEYOND+ membership.

7 19. If Turnier had known that Defendants were going to enroll him in an
8 automatically renewing membership program that would result in subsequent charges,
9 Turnier would have either not purchased the merchandise from BB&B in the first
10 place, or would have taken other steps to avoid becoming enrolled in such a
11 membership program, or would have cancelled before any subsequent charge, such
12 that Turnier would not have paid money to Defendants for such program or for
13 purported renewal charges.

14 20. In August 2019, if Turnier had known that Defendants were going to re-
15 enroll him in a BEYOND+ membership, Turnier would have declined to be re-
16 enrolled and he would not have been willing to pay anything for a renewed
17 membership. The re-enrollment had no value to Turnier, and it resulted in zero value
18 to him.

19 21. In August 2020, if Turnier had known that Defendants were going to re-
20 enroll him in a BEYOND+ membership, Turnier would have declined to be re-
21 enrolled and he would not have been willing to pay anything for a renewed
22 membership. The re-enrollment had no value to Turnier, and it resulted in zero value
23 to him.

24 **Beatrice Moran's Transaction**

25 22. On or about August 12, 2019, Moran purchased an item of merchandise
26 through BB&B's website. Moran paid for that purchase by entering her debit card
27 information as part of the website check-out process. BB&B did not disclose to
28 Moran, either as part of the check-out process or thereafter as an acknowledgment,

1 that it was enrolling Moran in a BEYOND+ membership; did not disclose that a
2 BEYOND+ membership would continue until the consumer cancels; did not describe
3 a cancellation policy; did not disclose that a recurring charge would be made to the
4 consumer's credit card, debit card, or third-party payment account in subsequent
5 years; and did not disclose any automatic renewal term or that the service is
6 continuous. Moran was not aware BB&B enrolled her in a BEYOND+ membership
7 and she did not want to be enrolled in any such membership.

8 23. The following year, on or about August 10, 2020, BB&B posted a charge
9 to Moran's debit card in the amount of \$31.97. Moran is informed and believes and
10 thereon alleges that the \$31.97 charge that BB&B posted to her debit card on or about
11 August 10, 2020 was for purported renewal of a BEYOND+ membership. Moran did
12 not authorize or consent to that charge. Moran did not know that BB&B was going
13 to enroll or re-enroll her in a BEYOND+ membership, and Moran did not want to be
14 enrolled or re-enrolled in any such membership.

15 24. If Moran had known that Defendants were going to enroll her in an
16 automatically renewing membership program that would result in subsequent charges,
17 Moran would have either not purchased the merchandise from BB&B in the first
18 place, or would have taken other steps to avoid becoming enrolled in such a
19 membership program, or would have cancelled before any subsequent charge, such
20 that Moran would not have paid money to Defendants for such program or for
21 purported renewal charges. The enrollment had no value to Moran, and it resulted in
22 zero value to her.

23 25. In August 2020, if Moran had known that Defendants were going to
24 enroll or re-enroll her in a BEYOND+ membership, Moran would have declined to
25 be enrolled or re-enrolled in such a membership and she would not have been willing
26 to pay anything for a renewed membership. The re-enrollment had no value to Moran,
27 and it resulted in zero value to her.

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1 **BB&B’S CONDUCT REGARDING OTHER CONSUMERS**

2 26. Plaintiffs are not the only consumers to be victimized by Defendants in
3 connection with the BEYOND+ membership. There are numerous complaints about
4 BB&B posted on a variety of websites, including but not limited to the Better Business
5 Bureau, Complaints Board, and pissedconsumer.com.¹

6 27. On the Better Business Bureau website, an illustrative complaint about
7 another consumer’s experience with Defendants’ membership program is as follows:

8 **Complaint Type: Guarantee/Warranty Issues (August 2, 2019).** I
9 was pressed into a one year membership in order to receive a discount
10 for a large one time purchase. I told salesperson I would only agree if it
11 was not the auto renew deal scam most of them use unless you clarify. I
12 was told it would be set up as requested. I refuse to join these scams
13 otherwise. My girlfriend was my witness as she does the same. They
14 lied and just helped themselves to my **** card. Upon requesting they
15 reverse and cancel they said it was impossible.

14 A true and correct printout of that complaint is attached as Exhibit 3.

15 28. On the Complaints Board website, an illustrative complaint about the
16 BB&B membership program is as follows:

17 **Sam1981. Bed Bath & Beyond – one year bed bath and beyond**
18 **membership (June 14, 2018).** I went online to order Bona Hardfloor
19 cleaning liquid, all of sudden I saw an item added to the cart for one year
20 Bed Bath and Beyond Membership. I am not sure how that got added, I
21 did not realize and made the payment thinking that I bought Bona
22 Hardfloor cleaning liquid. After few days, I did not see anything
23 shipment, went back to my account and saw that I purchased one year
24 membership.

23 I called the customer service and they said they will refund the money,
24 but they called after few days and said they can’t cancel the membership

25 ¹ Better Business Bureau reviews are available at
26 [https://www.bbb.org/us/nj/union/profile/linens/bed-bath-beyond-inc-0221-](https://www.bbb.org/us/nj/union/profile/linens/bed-bath-beyond-inc-0221-18001225/complaints)
27 [18001225/complaints](https://www.bbb.org/us/nj/union/profile/linens/bed-bath-beyond-inc-0221-18001225/complaints) (as of October 1, 2021); Complaints Board reviews are
28 available at <https://www.complaintsboard.com/?search=Bed+Bath+%26+Beyond> (as
of October 1, 2021); Pissed Consumer reviews are available at [https://bed-bath-and-](https://bed-bath-and-beyond.pissedconsumer.com/review.html)
[beyond.pissedconsumer.com/review.html](https://bed-bath-and-beyond.pissedconsumer.com/review.html) (as of October 1, 2021).

1 because I bought a product with that membership. Once you said you
2 cancelled the membership, isn't that your responsibility to remove that
3 from my account. How am I supposed to know that I can't buy anything
with my account until you cancel the one year membership.

4 I am really annoyed with this, I don't need the membership and please
5 refund my money.

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

7 29. On the Pissed Consumer website, two illustrative consumer complaints
8 about BB&B's membership program are as follows:

9 **Diane D. Bed Bath and Beyond - CREDIT (April 15, 2018).** I ordered
10 what I believed was an item online. When I never received it and
11 contacted customer service I was told it was delivered and that it was a
\$29.99 membership I purchased.

12 I asked for a credit back on my card. It took 6 phone calls back and still
13 no refund. I was told in the first call a credit would be put on usually the
14 following day, the second and third calls were the credit has been issued
15 the fourth I was told to read the tiny fine print online it states no refund.
16 The fifth was a supervisor who apologized and said a refund would be
17 issued. The final sixth was Tom who assured me of this credit,
apologized and actually gave me a personal contact (or could be made
up I never even called at this point)

18 So I still have no credit.

19 To go into a store and purchase is no problem, I suggest you never order
20 online.

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

22 **Heidi N. Bed Bath and Beyond "club" (March 19, 2018).** ordered
23 something online and got rooked into signing up for their CLUB!!! What
24 an fin.....rip off for sure...No refund available, per nancy.... Very
25 Pissed!!!! I will not be a bb&b shopper any longer, so buyer beware!! I
guess they are trying to be like amazon with their yearly fee.....

26 Not happening.. I hope everyone is very cautious when shopping online
with this store.

27 Not very cooperative as far as getting refunded. I really did not need
28 more of their coupons, for sure.

1 I guess they had to figure out a way to make up for people not shopping
2 their without a coupon. That is for sure.....

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

4 **CLASS ACTION ALLEGATIONS**

5 30. Plaintiffs bring this lawsuit as a class action on behalf of the following
6 Class: “All individuals in California who, within the applicable limitations period,
7 were enrolled by Defendants in the BEYOND+ membership program. Excluded from
8 the Class are all employees of Defendants, all employees of Plaintiffs’ counsel, and
9 the judicial officers to whom this case is assigned.”

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

13 32. Common Questions of Fact or Law. There are questions of fact or law
14 that are common to the members of the Class, which predominate over individual
15 issues. Common questions regarding the Class include, without limitation:
16 (1) whether Defendants present all statutorily-mandated automatic renewal or
17 continuous service offer terms, within the meaning of § 17601(b); (2) whether
18 Defendants present automatic renewal or continuous service offer terms in a manner
19 that is “clear and conspicuous,” within the meaning of § 17601(c), and in “visual
20 proximity” to a request for consent to the offer (or in the case of an offer conveyed by
21 voice, in temporal proximity to a request for consent to the offer), as required by
22 § 17602(a)(1); (3) whether Defendants obtain consumers’ affirmative consent to an
23 agreement containing clear and conspicuous disclosure of automatic renewal or
24 continuous service offer terms before charging a credit card, debit card, or third-party
25 payment account, as required by § 17602(a)(2); (4) whether Defendants provide
26 consumers with an acknowledgment that includes clear and conspicuous disclosure
27 of all statutorily-mandated automatic renewal or continuous service offer terms, the
28 cancellation policy, and information regarding how to cancel in a manner that is

1 capable of being retained by the consumer, as required by § 17602(a)(3) and
2 § 17602(b); (5) Defendants’ record-keeping practices; (6) and the appropriate
3 remedies for Defendants’ conduct.

4 33. Numerosity. The Class is so numerous that joinder of all Class members
5 would be impracticable. Plaintiffs are informed and believe and thereon allege that
6 the Class consists of at least 100 members.

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

19 35. Superiority. A class action is superior to other methods for resolving this
20 controversy. Because the amount of restitution to which the Class member may be
21 entitled is low in comparison to the expense and burden of individual litigation, it
22 would be impracticable for Class members to redress the wrongs done to them without
23 a class action forum. Furthermore, on information and belief, Class members do not
24 know that their rights have been violated. Class certification would also conserve
25 judicial resources and avoid the possibility of inconsistent judgments.

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FIRST CLAIM FOR RELIEF

False Advertising (Based on Violation of the Automatic Renewal Law)
(Cal. Bus. & Prof. Code § 17535 and § 17600 et seq.)

36. Plaintiffs incorporate the previous allegations as though set forth herein.

37. During the applicable statute of limitations period, Defendants have enrolled consumers, including Plaintiffs and Class members, in automatic renewal programs and/or continuous service programs and have (a) failed to present the automatic renewal or continuous service offer in a clear and conspicuous manner before the subscription or purchasing agreement 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 automatic renewal or continuous service offer terms; and (c) failed to provide an acknowledgment that includes clear and conspicuous disclosure of all automatic renewal or continuous service offer terms, the cancellation policy, and information regarding how to cancel.

38. Plaintiffs have suffered injury in fact and lost money as a result of Defendants’ conduct alleged herein.

39. Pursuant to § 17535 and § 17603, Plaintiffs and Class members are entitled to restitution of all amounts that Defendants charged to Plaintiffs’ and Class members’ credit cards, debit cards, or third-party payment accounts for BEYOND+ membership during the four years preceding the filing of the initial Complaint and continuing until Defendants’ statutory violations cease.

40. The remedies provided by the FAL are “cumulative to each other and to the remedies or penalties available under all other laws of this state.” Cal. Bus. & Prof. Code § 17534.5. In this action, Plaintiffs seek restitution under the FAL, notwithstanding the availability of other remedies under California law.

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SECOND CLAIM FOR RELIEF

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

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

42. The California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 et seq., defines unfair competition as including any unlawful, unfair or fraudulent business act or practice, any unfair, deceptive, untrue or misleading advertising, and any act prohibited by Chapter 1 of Part 3 of Division 7 of the Business and Professions Code.

43. In the course of conducting business within the applicable limitations period, Defendants committed “unlawful,” “unfair,” and/or “fraudulent” business practices, engaged in unfair, deceptive, untrue or misleading advertising, and committed acts prohibited by Chapter 1 of Part 3 of Division 7 of the Business and Professions Code by, inter alia and without limitation: (a) failing to present the terms of automatic renewal or continuous service offers in a clear and conspicuous manner before a purchasing agreement is fulfilled and in visual proximity (or in the case of an offer conveyed by voice, in temporal proximity), to a request for consent to the offer, in violation of § 17602(a)(1); (b) charging the consumer’s credit card, debit card, or 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 disclosures of automatic renewal offer terms or continuous service offer terms, in violation of § 17602(a)(2); and (c) failing to provide an acknowledgment that includes clear and conspicuous disclosure of 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, in violation of § 17602(a)(3) and § 17602(b). Plaintiffs reserve the right to allege other violations of law that constitute unlawful or unfair business acts or practices. Defendants’ acts

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

5 44. There were reasonably available alternatives to further Defendants’
6 legitimate business interests, other than the conduct described herein.

7 45. Defendants’ acts, omissions, nondisclosures, and statements as alleged
8 herein were and are false, misleading, and/or likely to deceive the consuming public.

9 46. Plaintiffs have suffered injury in fact and lost money as a result of
10 Defendants’ acts of unfair competition.

11 47. Pursuant to § 17203, Plaintiffs and the Class members are entitled to
12 restitution of all amounts paid to Defendants for BEYOND+ membership during the
13 four years preceding the filing of the initial Complaint and continuing until
14 Defendants’ acts of unfair competition cease.

15 48. The remedies provided by the UCL are “cumulative to each other and to
16 the remedies or penalties available under all other laws of this state.” Cal. Bus. &
17 Prof. Code § 17205. In this action, Plaintiffs seek restitution under the UCL,
18 notwithstanding the availability of other remedies under California law.

19 **PRAYER**

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

21 On the First Claim for Relief:

- 22 1. For restitution;

23 On the Second Claim for Relief:

- 24 2. For restitution;

25 On All Claims for Relief:

- 26 3. For reasonable attorneys’ fees, pursuant to § 1021.5 of the California
27 Code of Civil Procedure;

28 ///

1 4. For costs of suit; and

2 5. For such other equitable relief as the Court may deem just and proper.

3 DATED: October 1, 2021

DOSTART HANNINK & COVENEY LLP

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s/ Zach P. Dostart

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ZACH P. DOSTART

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Attorneys for Plaintiffs

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