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

10
11 ROBERT TURNIER,
individually and on behalf of all others
12 similarly situated,

13 Plaintiff,

14 vs.

15 BED BATH & BEYOND INC.,
a New York corporation; and
16 DOES 1-50, inclusive,

17 Defendants.

CASE NO. 37-2020-00002499-CU-BT-CTL

CLASS ACTION

COMPLAINT FOR:

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

[Bus. & Prof. Code, §§ 17600 et seq. & 17535];

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

(3) UNFAIR COMPETITION
[Bus. & Prof. Code, § 17200 et seq.]; AND

(4) UNJUST ENRICHMENT.

DEMAND FOR JURY TRIAL

1 INTRODUCTION

2 1. This class action complaint alleges that defendant Bed Bath & Beyond Inc.
3 (“BB&B”) violates California law in connection with a subscription program operated under the
4 name BEYOND+. Among other things, BB&B enrolls consumers in automatic-renewal or
5 continuous service subscriptions without providing the “clear and conspicuous” disclosures
6 mandated by California law, and posts charges to consumers’ credit or debit cards for purported
7 automatic renewal or continuous service subscriptions without first obtaining the consumers’
8 affirmative consent to an agreement containing the requisite clear and conspicuous disclosures.
9 This course of conduct violates the California Automatic Renewal Law (Bus. & Prof. Code,
10 § 17600 et seq.) (“ARL”) (which is part of California’s False Advertising Law), the Consumers
11 Legal Remedies Act (Civ. Code, § 1750 et seq.) (“CLRA”), and the Unfair Competition Law
12 (Bus. & Prof. Code, § 17200 et seq.) (“UCL”).

13 THE PARTIES

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

16 3. Plaintiff is informed and believes and thereon alleges that defendant Bed Bath &
17 Beyond Inc. (“BB&B”) is a New York corporation that does business in San Diego County,
18 including the marketing and sale of household merchandise.

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

26 5. Venue is proper in this judicial district because Defendants do business in this
27 judicial district and a material part of the complained of conduct occurred in this judicial district.
28

1 SUMMARY OF APPLICABLE LAW

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

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

10 (See Exhibit 1 at p. 7.)

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

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

17 (See Exhibit 2 at p. 11.)

18 8. The ARL seeks to ensure that, before there can be a legally-binding automatic
19 renewal or continuous service arrangement, there must first be clear and conspicuous disclosure of
20 certain terms and conditions and affirmative consent by the consumer. To that end, § 17602(a)
21 makes it unlawful for any business making an automatic renewal offer or a continuous service
22 offer to a consumer in California to do any of the following:

23 a. Fail to present the automatic renewal offer terms or continuous service offer
24 terms in a clear and conspicuous manner before the subscription or purchasing agreement is
25 fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal
26 proximity, to the request for consent to the offer. For this purpose, “clear and conspicuous” means
27 “in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding
28 text of the same size, or set off from the surrounding text of the same size by symbols or other

1 marks, in a manner that clearly calls attention to the language.” (§ 17601(c).) “In the case of an
2 audio disclosure, ‘clear and conspicuous’ ... means in a volume and cadence sufficient to be
3 readily audible and understandable.” (*Ibid.*) The statute defines “automatic renewal offer terms”
4 to mean the “clear and conspicuous” disclosure of the following: (a) that the subscription or
5 purchasing agreement will continue until the consumer cancels; (b) the description of the
6 cancellation policy that applies to the offer; (c) the recurring charges that will be charged to the
7 consumer’s credit or debit card or payment account with a third party as part of the automatic
8 renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and
9 the amount to which the charge will change, if known; (d) the length of the automatic renewal
10 term or that the service is continuous, unless the length of the term is chosen by the consumer; and
11 (e) the minimum purchase obligation, if any. (Bus. & Prof. Code § 17601(b).)

12 b. Charge the consumer’s credit or debit card or the consumer’s account with a
13 third party for an automatic renewal or continuous service without first obtaining the consumer’s
14 affirmative consent to the agreement containing the automatic renewal offer terms or continuous
15 service offer terms, including the terms of an automatic renewal offer or continuous service offer
16 that is made at a promotional or discounted price for a limited period of time. (Bus. & Prof. Code
17 § 17602(a)(2).)

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

24 9. If a business sends any goods, wares, merchandise, or products to a consumer
25 under a purported automatic renewal or continuous service arrangement without first obtaining the
26 consumer’s affirmative consent to an agreement containing the “clear and conspicuous”
27 disclosures as specified in the ARL, the goods, wares, merchandise, and/or products are deemed to
28 be an unconditional gift to the consumer, who may use or dispose of them without any obligation

1 whatsoever. (Bus. & Prof. Code, § 17603.) Violation of the ARL gives rise to restitution and
2 injunctive relief under the general remedies provision of the False Advertising Law, Bus. & Prof.,
3 Code § 17535. (Bus. & Prof. Code, § 17604(a).) As well, violation of the ARL gives rise to
4 restitution and injunctive relief under the UCL.

5 **FACTS GIVING RISE TO THIS ACTION**

6 10. In or about August 2018, while Plaintiff was in San Diego County, he purchased an
7 item of merchandise through BB&B's website. Plaintiff paid for that purchase by entering his
8 credit card information as part of the website check-out process.

9 11. The following year, in or about August 2019, Plaintiff noticed a charge of \$29.00
10 on his credit card statement, which was posted by BB&B.

11 12. Plaintiff is informed and believes and thereon alleges that the \$29.00 charge that
12 BB&B posted to his credit card in or about August 2019 was for purported renewal of a
13 BEYOND+ membership. Plaintiff did not authorize or consent to that charge.

14 13. If Plaintiff had known that Defendants were going to enroll him in an automatically
15 renewing membership program that would result in subsequent charges, Plaintiff would have
16 either not purchased the merchandise from BB&B in the first place or would have taken other
17 steps to avoid becoming enrolled in such a membership program, such that Plaintiff would not
18 have paid money to Defendants for such program.

19 **BB&B'S DECEPTION OF CONSUMERS**

20 14. When a consumer selects an item to purchase online through the BB&B website,
21 the website walks the consumer through a purchase sequence.

22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

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

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

5 \$100

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

7  **Metro 4-Piece Outdoor Conversation Set in Pearl White/Brown**
 \$149.99 ~~\$189.99~~
 Color: White/Brown
 Size: 4 Piece

8 **Ship this Item**
Shipping Restrictions Apply

9 **Add Assembly**
 Powered by Touch Learn More

10

11

12 **Order Summary** [Chat Now](#)

13 Congratulations! You have earned free shipping

14 **Order Subtotal** \$149.99
BEYOND+ Member Price ~~\$189.99~~ \$119.99
Shipping Details FREE
Pre-Tax Total \$149.99
Total Savings \$350.00

15

16

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

21 **Become a BEYOND+ member today**

22 **Never Look for a Coupon Again!**

23 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!

24

25 [Terms and Conditions](#)

BEYOND+

— MEMBERS SAVE MORE —

20% OFF + **FREE**
ENTIRE PURCHASE EVERY TIME YOU SHOP **STANDARD SHIPPING**

— ALL YEAR LONG! —

26 **All the Benefits for Just \$29 a Year**

27

28

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

3 **Billing Address**

4 **First Name**

Last Name

5
6 **Company (Optional)**

7 **Country**
8 **United States**

9 **Street Address**

10 **Apt/Suite/Floor (Optional)**

11 **City**

State

Zip Code

12
13 **Contact Information**

14 **Phone Number, maximum 10**

15
16
17 **Terms and Conditions**

18 I accept the terms and conditions of the program

19
20 **Review**

21 BEYOND+ 1 Year Membership

22
23
24 18. From the foregoing, it is evident that there is no clear and conspicuous disclosure of
25 automatic renewal offer terms as required by the ARL.

26 19. Plaintiff is not the only consumer to be victimized by Defendants in connection
27 with the BEYOND+ membership. There are numerous complaints about BB&B posted on a
28 variety of websites, including but not limited to the Better Business Bureau, Complaints Board,

1 and pissedconsumer.com.¹

2 20. On the Better Business Bureau website, an illustrative complaint about another
3 consumer's experience with Defendants' membership program is as follows:

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

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

12 21. On the Complaints Board website, an illustrative complaint about the BB&B
13 membership program is as follows:

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

21 I called the customer service and they said they will refund the money, but they
22 called after few days and said they can't cancel the membership because I bought a
23 product with that membership. Once you said you cancelled the membership, isn't
24 that your responsibility to remove that from my account. How am I supposed to
25 know that I can't buy anything with my account until you cancel the one year
26 membership.

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

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

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35 ¹ Better Business Bureau reviews are available at
36 <https://www.bbb.org/us/nj/union/profile/linens/bed-bath-beyond-inc-0221-18001225/complaints>
37 (as of January 13, 2020); Complaints Board reviews are available at
38 <https://www.complaintsboard.com/?search=Bed+Bath+%26+Beyond> (as of January 13, 2020);
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 January 13, 2020).

39

1 22. On the Pissed Consumer website, two illustrative consumer complaints about
2 BB&B’s membership program are as follows:

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

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

14 So I still have no credit.

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

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

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

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

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

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

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

CLASS ACTION ALLEGATIONS

23 23. Plaintiff brings this lawsuit as a class action under Code of Civil Procedure § 382
24 on behalf of the following Class: “All individuals in California who, within the applicable
25 limitations period, were enrolled by Defendants in the BEYOND+ membership program.
26 Excluded from the Class are all employees of Defendants, all employees of Plaintiff’s counsel, and
27 the judicial officers to whom this case is assigned.”
28

1 24. Ascertainability. The members of the Class may be ascertained by reviewing
2 records in the possession of Defendants and/or third parties, including without limitation
3 Defendants' customer, order, and billing records.

4 25. Common Questions of Fact or Law. There are questions of fact or law that are
5 common to the members of the Class, which predominate over individual issues. Common
6 questions regarding the Class include, without limitation: (1) whether Defendants present all
7 statutorily-mandated automatic renewal or continuous service offer terms, within the meaning of
8 § 17601(b); (2) whether Defendants present automatic renewal or continuous service offer terms
9 in a manner that is "clear and conspicuous," within the meaning of § 17601(c), and in "visual
10 proximity" to a request for consent to the offer (or in the case of an offer conveyed by voice, in
11 temporal proximity to a request for consent to the offer), as required by § 17602; (3) whether
12 Defendants obtain consumers' affirmative consent to an agreement containing clear and
13 conspicuous disclosure of automatic renewal or continuous service offer terms before charging a
14 credit card, debit card, or third-party payment account; (4) whether Defendants provide consumers
15 with an acknowledgment that includes clear and conspicuous disclosure of all statutorily-
16 mandated automatic renewal or continuous service offer terms, the cancellation policy, and
17 information regarding how to cancel in a manner that is capable of being retained by the
18 consumer; (5) Defendants' record-keeping practices; (6) the appropriate remedies for Defendants'
19 conduct; and (7) the appropriate terms of an injunction.

20 26. Numerosity. The Class is so numerous that joinder of all Class members would be
21 impracticable. Plaintiff is informed and believes and thereon alleges that the Class consists of at
22 least 100 members.

23 27. Typicality and Adequacy. Plaintiff's claims are typical of the claims of the Class
24 members. Plaintiff alleges on information and belief that Defendants enrolled Plaintiff and Class
25 members in automatic renewal or continuous service programs without disclosing all terms
26 required by law, and without presenting such terms in the requisite "clear and conspicuous"
27 manner; charged Class members' credit cards, debit cards, or third-party accounts without first
28 obtaining Class members' affirmative consent to an agreement containing clear and conspicuous

1 disclosure of all automatic renewal offer terms in the manner required by California law; and
2 failed to provide the requisite acknowledgment with the required disclosures and information.
3 Plaintiff has no interests that are adverse to those of the other Class members. Plaintiff will fairly
4 and adequately protect the interests of the Class members.

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

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

15 **FIRST CAUSE OF ACTION**

16 False Advertising - Violation of the California Automatic Renewal Law

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

18 30. Plaintiff incorporates the previous allegations as though set forth herein.

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

1 conspicuous disclosure of all automatic renewal or continuous service offer terms, the cancellation
2 policy, and information regarding how to cancel.

3 32. Plaintiff has suffered injury in fact and lost money as a result of Defendants'
4 violations of the ARL.

5 33. Pursuant to Bus. & Prof. Code §§ 17603 and 17535, Plaintiff and Class members
6 are entitled to restitution of all amounts that Defendants charged to Plaintiff's and Class members'
7 credit cards, debit cards, or third-party payment accounts for BEYOND+ membership during the
8 four years preceding the filing of this Complaint and continuing until Defendants' statutory
9 violations cease.

10 34. Unless enjoined and restrained by this Court, Defendants will continue to commit
11 the violations alleged herein. Pursuant to § 17535, Plaintiff and the Class members are entitled to
12 an injunction enjoining Defendants from making membership program offers and/or posting
13 charges to a credit card, debit card, or third party payment account without first complying with
14 California law. Plaintiff reserves the right to seek other prohibitory or mandatory aspects of
15 injunctive relief, whether on behalf of Plaintiff, the Class, and/or for the benefit of the general
16 public of the State of California.

17 **SECOND CAUSE OF ACTION**

18 Violation of the California Consumers Legal Remedies Act

19 (Civ. Code, § 1750 et seq.)

20 35. Plaintiff incorporates the allegations of paragraphs 1-28 as though set forth herein.

21 36. Plaintiff and the Class members are "consumers" within the meaning of Civil Code
22 § 1761(d) in that the goods and/or services sought or acquired were for personal, family, or
23 household purposes.

24 37. Defendants' merchandise and membership program are "goods" or "services"
25 within the meaning of Civil Code § 1761, subdivisions (a) and (b).

26 38. The purchases and payments by Plaintiff and Class members are "transactions"
27 within the meaning of Civil Code § 1761(e).

28

1 terms, in violation of Bus. & Prof. Code § 17602(a)(2); (c) failing to provide an acknowledgment
2 that includes clear and conspicuous disclosure of automatic renewal or continuous service offer
3 terms, cancellation policy, and information regarding how to cancel in a manner that is capable of
4 being retained by the consumer, in violation of Bus. & Prof. Code § 17602(a)(3); (d) representing
5 that Defendants' goods and services have certain characteristics that they do not, in violation of
6 Civil Code § 1770(a)(5); (e) advertising goods and services with the intent not to sell them as
7 advertised, in violation of Civil Code § 1770(a)(9); (f) making false and misleading statements of
8 fact concerning the reasons for, existence of and amounts of price reductions, in violation of Civil
9 Code § 1770(a)(13); (g) representing that a transaction confers or involves rights, remedies, or
10 obligations that it does not have or involve, or that are prohibited by law, in violation of Civil
11 Code § 1770 (a)(14); and (h) representing that the consumer will receive a rebate, discount, or
12 other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent
13 to the consummation of the transaction, in violation of Civil Code § 1770(a)(17). Plaintiff
14 reserves the right to allege other violations of law that constitute unlawful or unfair business acts
15 or practices.

16 44. Defendants' acts and omissions as alleged herein violate obligations imposed by
17 statute, are substantially injurious to consumers, offend public policy, and are immoral, unethical,
18 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits
19 attributable to such conduct.

20 45. There were reasonably available alternatives to further Defendants' legitimate
21 business interests, other than the conduct described herein.

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

24 47. Plaintiff has suffered injury in fact and lost money as a result of Defendants' acts of
25 unfair competition.

26 48. Pursuant to § 17203, Plaintiff and the Class members are entitled to restitution of
27 all amounts paid to Defendants for BEYOND+ membership in the four years preceding the filing
28 of this Complaint and continuing until Defendants' acts of unfair competition cease.

