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County of San Diego

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Clerk of the Superior Court
By Iris Tellez, Deputy Clerk

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

11 NINO KOLLER and
12 MICHELLE BROWN,
13 individually and on behalf of all others
similarly situated,

14 Plaintiffs,

15 vs.

16 CONSUMER REPORTS, INC., a New York
17 nonprofit corporation; and
DOES 1-50, inclusive,

18 Defendants.
19
20
21
22

CASE NO. 37-2020-00011819-CU-BT-CTL

CLASS ACTION

COMPLAINT FOR:

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

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

(3) VIOLATION OF THE CALIFORNIA
UNFAIR COMPETITION LAW; and

(4) UNJUST ENRICHMENT.

DEMAND FOR JURY TRIAL

INTRODUCTION

1 2. This class action complaint alleges that defendant Consumer Reports, Inc.
 2 ("Consumer Reports") violates California law in connection with the marketing and sale of
 3 subscription programs. Among other things, Consumer Reports enrolls consumers in automatic-
 4 renewal or continuous service subscriptions without providing the "clear and conspicuous"
 5 disclosures mandated by California law, and posts charges to consumers' credit or debit cards for
 6 purported automatic renewal or continuous service subscriptions without first obtaining the
 7 consumers' affirmative consent to an agreement containing the requisite clear and conspicuous
 8 disclosures. This course of conduct violates the California Automatic Renewal Law (Bus. & Prof.
 9 Code, § 17600 et seq.) ("ARL"), the Consumers Legal Remedies Act (Civ. Code, § 1750 et seq.)
 10 ("CLRA"), and the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) ("UCL").

THE PARTIES

12 2. Plaintiff Nino Koller ("Koller") is an individual residing in San Diego County,
 13 California.

14 3. Plaintiff Michelle Brown ("Brown") is an individual residing in San Diego County,
 15 California. Koller and Brown are collectively referred to herein as "Plaintiffs."

16 4. Plaintiffs are informed and believe and thereon allege that defendant Consumer
 17 Reports is a New York nonprofit corporation that does business in San Diego County, including the
 18 marketing of magazine subscriptions.

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

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

BACKGROUND

7. Consumer Reports provides consumers with product reviews through a monthly magazine entitled *Consumer Reports*, which is available in a print and/or digital format.

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

9. During the 1990s, some marketers came to view the traditional model as constraint on sales and profits, and advocated instead adoption of a “negative option” model. In a “negative option,” the seller “interpret[s] a customer’s failure to take affirmative action, either to reject an offer or cancel an agreement, as assent to be charged for goods or services.” (See “*Negative Options*,” Federal Trade Commission, January 2009, available at <https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf> [last accessed March 2, 2020].) Defendants have implemented a negative option model that does not comply with California law.

10. Defendants have adopted a negative option model in which they solicit orders for magazine subscriptions that purport to be for a fixed period of time (e.g., one year, or two years), whereas upon receipt of an order, Defendants enroll the consumer in a program under which the magazine subscription will be “automatically renewed” for subsequent periods, with corresponding charges posted to the consumer’s credit card, debit card, or other payment account. Defendants enroll consumers in such “automatic renewal” subscriptions without making the clear and conspicuous disclosures required by California law.

SUMMARY OF APPLICABLE LAW

The California Automatic Renewal Law

11. In 2009, the California Legislature passed Senate Bill 340, which took effect on December 1, 2010 as Article 9 of Chapter 1 of the False Advertising Law. (Bus. & Prof. Code, § 17600 *et seq.* (the California Automatic Renewal Law or “ARL”).) SB 340 was introduced because:

It has become increasingly common for consumers to complain about unwanted charges on their credit cards for products or services that the consumer did not explicitly request or know they were agreeing to. Consumers report they believed 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.

(See Exhibit 1 at p. 4.)

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

This non-controversial bill, which received a unanimous vote on the Senate floor, seeks to protect consumers from unwittingly consenting to “automatic renewals” of subscription orders or other “continuous service” offers. According to the author 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.

(See Exhibit 2 at p. 8.)

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

(1) Fail to present the automatic renewal offer terms or continuous service offer terms 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. For this purpose, “clear and conspicuous” means “in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same

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

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

(3) Fail to provide an acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. (Bus. & Prof. Code § 17602(a)(3).)

14. Bus. & Prof. Code § 17602(b) requires that the acknowledgment specified in § 17602(a)(3) include a toll-free telephone number, electronic mail address, a postal address if the seller directly bills the consumer, or it shall provide another cost-effective, timely, an easy-to-use mechanism for cancellation that shall be described in the acknowledgment.

15. If a business sends any goods to a consumer under a purported automatic renewal or continuous service arrangement without first obtaining the consumer’s affirmative consent to an agreement containing the “clear and conspicuous” disclosures as specified in the ARL, the goods

are deemed to be an unconditional gift to the consumer, who may use or dispose of them without any obligation whatsoever. (Bus. & Prof. Code, § 17603.) In addition, violation of the ARL gives rise to restitution and injunctive relief under the general remedies provision of the False Advertising Law, Bus. & Prof. Code § 17535. (Bus. & Prof. Code, § 17604, subd. (a).)

FACTS GIVING RISE TO THIS ACTION

Nino Koller's Transaction with Defendants

16. In October 2018, Plaintiff Koller downloaded a Consumer Reports app on his iPhone and submitted an order for a one-year subscription to *Consumer Reports*. Koller paid \$55.00 for that one-year subscription (print and digital), which amount was paid with Koller's credit card. Koller believes that the online checkout screens were similar to what is depicted in Exhibit 3. On that basis, Koller alleges that the checkout screen through which he submitted the order and made the payment did not contain clear and conspicuous disclosure of automatic renewal offer terms as required by Bus. & Prof. Code § 17601(b) and (c) and § 17602(a)(1) and (a)(2).

17. On October 8, 2018, Koller received an email from Defendants confirming that his subscription was active, with a "Start Date" of October 8, 2018 and an "End Date" of October 7, 2019. A true and correct copy of that email is attached hereto as Exhibit 4. That email does not contain clear and conspicuous disclosure of automatic renewal offer terms as required by Bus. & Prof. Code § 17601(b) and (c) and § 17602(a)(3).

18. In October 2019, without Koller's authorization or consent, Defendants posted a charge of \$59.00 to Koller's credit card, purportedly for renewal of *Consumer Reports*.

19. When Koller submitted the order for the one-year subscription to *Consumer Reports*, he was not aware that Defendants were going to enroll him in a program under which the subscription would automatically renew for subsequent periods, and he did not consent to be enrolled in such a program. If Koller had known that Defendants were going to enroll him in an automatically renewing subscription program, Koller would not have submitted the order for *Consumer Reports* and would not have paid any money to Defendants.

1 **Michelle Brown's Transaction with Defendants**

2 20. In March 2017, Brown responded to an offer from Defendants to receive *Consumer*
3 *Reports* for ten months at a discounted rate of \$20.00. Brown accepted the offer and provided
4 Defendants with her credit card information in order to complete the purchase. Brown does not
5 remember whether she provided her credit card information to Defendants over the internet or in
6 writing. Brown does not have a copy of either the advertisement to which she responded or the form
7 by which her credit card information was submitted to Defendants. Brown is informed and believes
8 and thereon alleges that both the advertisement to which she responded and the form by which her
9 credit card information was submitted are in the possession, custody, or control of Defendants.
10 Therefore, Brown will seek production of the advertisement/order form and the payment form from
11 Defendants through discovery.

12 21. When Brown submitted the order form and when she made the \$20.00 credit card
13 payment, she was not aware that Defendants were going to enroll her in a program under which the
14 subscription would automatically renew for subsequent periods, and she did not consent to be
15 enrolled in such a program. On that basis, Brown is informed and believes that the
16 advertisement/order form to which she responded and the payment form through which the credit
17 card payment was submitted did not contain clear and conspicuous disclosure of automatic renewal
18 offer terms as required by Bus. & Prof. Code § 17601(b) and (c) and § 17602(a)(1) and (a)(2).
19 Brown believes this allegation will likely have documentary support after a reasonable opportunity
20 for discovery.

21 22. In July 2017, without Brown's authorization or consent, Defendants posted a charge
22 to Brown's credit card in the amount of \$26.00. Subsequently, without Brown's authorization or
23 consent, Defendants posted additional charges to Brown's credit card in the amount of \$26.00 in
24 July 2018 and again in July 2019.

25 23. In or about December 2019, Brown realized for the first time that her credit card had
26 been charged by Defendants for purported renewal of *Consumer Reports*. Upon discovering that
27 fact, Brown called to cancel her subscription. Defendants cancelled her subscription and refunded
28 her \$16.00.

24. If Brown had known that Defendants were going to enroll her in an automatically renewing magazine subscription program, Brown would not have submitted the order for *Consumer Reports* and would not have paid any money to Defendants.

EXPERIENCES OF OTHER CONSUMERS

25. Plaintiffs are not the only consumers to be charged without consent in connection with Defendants' magazine subscriptions. There are consumer complaints about similar experiences posted on a variety of websites, including but not limited to consumeraffairs.com and pissedconsumer.com.

26. The consumer complaints below were reported on consumeraffairs.com by consumers in California.

Shonya. Penn Valley, California (October 25, 2019). They auto renewed my membership which I absolutely remember not authorizing when I joined last year. I called them the very day they charged me for an additional year within minutes of the email coming through. While they cancelled my membership, they would not refund the total amount. Even though it had been 10 minutes, they charged me for a whole month. Crooks! I will never join again, they are totally dishonest.

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

Kimberly. Huntington Beach, California (October 15, 2018). Consumer Reports charged my credit card (October 2018) after canceling this account almost 10 years ago. The customer service rep said "after you cancel auto renew, you need to cancel every year so you don't get charged"! What?! I have to call every year AFTER I cancel the account? This is fraudulent and I plan to investigate this further. They should not be able to get away with charging canceled decade-old accounts! All of the information they provide is online for FREE through customer reviews. They're obviously hurting for cash and trying to find ways to stay around. Not cool!

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

Lucinda. Thousand Oaks, California (April 23, 2015). Years ago I enrolled in CR for what I thought was a year. Every year I attempt to be discontinued from their billing access to my credit card but these guys have become as corrupt as those they deemed to protect American population from.

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

27. A few of the customer reviews of Consumer Reports posted on pissedconsumer.com are shown below.

1 **San Jacinto, California (June 28, 2016).** I am thoroughly discussed with
 2 Consumer's Report! I had gone online last month and cancelled my upcoming
 renewal scheduled for this month.

3 Unbeknownst to me, they automatically debited \$30.00 from my account this
 4 morning! When I called the company they said that they had never received my
 cancellation.

5 It should be a law that ANY automatic debits should be prefaced with an email alert
 6 at least 72 hours before, a my very credible Geico insurance company does on a
 7 monthly basis. I will most definitely be following up on this, but please beware of
 this company in the meantime

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

9 **Cancelling my subscription seems impossible (June 4, 2019).** Consumers beware.
 10 I have requested a cancellation for my Consumer Reports subscription twice via their
 website no success.

11 Despite my cancellation request confirmations, they have still renewed my
 12 membership for the past two years without my consent.

13 I recently tried to email customer care from the link on their website and the link
 14 does not work. I am very concerned about the business practices of this company and
 would not recommend anyone to sign up for their magazine or services.

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

16 **Levie (July 8, 2019).** For over two years now I have tried to cancel my consumer
 17 reports subscription. Then June/July comes and they bill me again.

18 I call them each year within a few days after receiving the bill and demand a full
 19 refund and tell them to permanently cancel my subscription. This year they had the
 20 nerve to tell me they can't keep giving me a refund each year! I demanded to speak
 to a supervisor, then they agreed to a full refund. I once again asked them to
 permanently cancel my subscription.

21 I also this year put a permanent stop for consumer reports with my credit card
 22 company. It is ironic the publication we looked up to for protection of consumer
 rights, abuses consumer rights so blatantly.

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

24 **CLASS ACTION ALLEGATIONS**

25 28. Plaintiffs bring this lawsuit as class action under Code of Civil Procedure § 382 on
 26 behalf of the following Class: "All individuals in California who, within the applicable limitations
 27 period, were enrolled by Defendants in an automatic renewal or continuous service program.
 28 Excluded from the Class are all employees of Defendants, all employees of Plaintiffs' counsel, and

1 the judicial officers to whom this case is assigned.”

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

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

17 31. Numerosity. The Class is so numerous that joinder of all Class members would be
18 impracticable. Plaintiffs are informed and believe and thereon allege that the Class consists of at
19 least 100 members.

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

1 Plaintiffs will fairly and adequately protect the interests of the Class members.

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

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

12 FIRST CAUSE OF ACTION

13 False Advertising -- Violation of the Automatic Renewal Law

14 35. Plaintiffs incorporate the previous allegations as though set forth herein.

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

27 37. Plaintiffs have suffered injury in fact and lost money as a result of Defendants'
28 business practices alleged herein.

1 38. Pursuant to Bus. & Prof. Code §§ 17603 and 17535, Plaintiffs and Class members
2 are entitled to restitution of all amounts that Defendants charged to Plaintiffs' and Class members'
3 credit cards, debit cards, or third-party payment accounts during the four years preceding the filing
4 of this Complaint and continuing until Defendants' statutory violations cease.

5 39. Pursuant to Bus. & Prof. Code § 17535, Plaintiffs and Class members are entitled to
6 an injunction enjoining Defendants from making automatic renewal or continuous service offers to
7 California consumers that do not comply in all respects with California law, and enjoining
8 Defendants from charging California consumers' credit cards, debit cards, and/or third party
9 payment accounts until such time as Defendants obtain the consumer's affirmative consent to an
10 agreement that contains clear and conspicuous disclosure of all automatic renewal or continuous
11 service offer terms.

12 **SECOND CAUSE OF ACTION**

13 **Violation of the Consumers Legal Remedies Act**

14 40. Plaintiffs incorporate the allegations of paragraphs 1-34 as though set forth herein.

15 41. Plaintiffs and the Class members are "consumers" within the meaning of Civil Code
16 § 1761(d) in that Plaintiffs and the goods and/or services sought or acquired were for personal,
17 family, or household purposes.

18 42. Defendants' magazine offers and the magazines pertaining thereto are "goods"
19 and/or "services" within the meaning of Civil Code § 1761(a) and (b).

20 43. The purchases and payments by Plaintiffs and Class members are "transactions"
21 within the meaning of Civil Code § 1761(e).

22 44. Defendants have violated Civil Code § 1770, subdivisions (a)(5), (a)(9), (a)(13),
23 (a)(14), and (a)(17), by representing that Defendants' goods and services have certain characteristics
24 that they do not have; advertising goods and services with the intent not to sell them as advertised;
25 making false and misleading statements of fact concerning the reasons for, existence of and amounts
26 of price reductions; representing that a transaction confers or involves rights, remedies, or
27 obligations that it does not have or involve, or that are prohibited by law; and by representing that
28 the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit

1 is contingent on an event to occur subsequent to the consummation of the transaction.

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

5 **THIRD CAUSE OF ACTION**

6 **Violation of the California Unfair Competition Law**

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

8 47. The California Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 *et seq.*,
9 defines unfair competition as including any unlawful, unfair or fraudulent business act or practice
10 and unfair, deceptive, untrue, or misleading advertising.

11 48. In the course of conducting business within the applicable limitations period,
12 Defendants committed "unlawful," "unfair," and/or "fraudulent" business practices, and engaged in
13 conduct that constitutes unfair, deceptive, untrue, or misleading advertising, by *inter alia* and
14 without limitation: (a) failing to present the terms of automatic renewal or continuous service offers
15 in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in
16 visual proximity (or in the case of an offer conveyed by voice, in temporal proximity), to a request
17 for consent to the offer, in violation of Bus. & Prof. Code § 17602(a)(1); (b) charging the consumer's
18 credit card, debit card, or third-party payment account for an automatic renewal or continuous
19 service without first obtaining the consumer's affirmative consent to an agreement containing clear
20 and conspicuous disclosures of automatic renewal offer terms or continuous service offer terms, in
21 violation of Bus. & Prof. Code § 17602(a)(2); (c) failing to provide an acknowledgment that
22 includes clear and conspicuous disclosure of automatic renewal or continuous service offer terms,
23 cancellation policy, and information regarding how to cancel, in violation of Bus. & Prof. Code
24 § 17602(a)(3); (d) representing that Defendants' goods and services have certain characteristics that
25 they do not have, in violation of Civil Code § 1770(a)(5); (e) advertising goods and services with
26 the intent not to sell them as advertised, in violation of Civil Code § 1770(a)(9); (f) making false
27 and misleading statements of fact concerning the reasons for, existence of and amounts of price
28 reductions, in violation of Civil Code § 1770(a)(13); (g) representing that a transaction confers or

1 involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by
2 law, in violation of Civil Code § 1770 (a)(14); and (h) representing that the consumer will receive a
3 rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to
4 occur subsequent to the consummation of the transaction, in violation of Civil Code § 1770(a)(17).
5 Plaintiffs reserve the right to allege other violations of law that constitute unlawful or unfair business
6 acts or practices.

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

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

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

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

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

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

28

FOURTH CAUSE OF ACTION

Unjust Enrichment

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

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

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

PRAYER

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

On the First Cause of Action:

1. For restitution;
2. For an order that all goods sent to Class members are unconditional gifts;
3. For a public injunction for the benefit of the People of the State of California;

On the Second Cause of Action:

4. For a public injunction for the benefit of the People of the State of California;
5. For an award of attorneys' fees pursuant to Civil Code § 1780(d);

On the Third Cause of Action:

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

On the Fourth Cause of Action:

8. For restitution;

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

DOSTART HANNINK & COVENEY LLP

Zach P. Dostart
ZACH P. DOSTART
Attorneys for Plaintiffs

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

DOSTART HANNINK & COVENEY LLP

Zachary Paul Dostart
ZACH P. DOSTART
Attorneys for Plaintiffs

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