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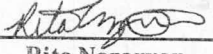
PACIFIC TRIAL ATTORNEYS
 A Professional Corporation
 Scott J. Ferrell, Bar No. 202091
 sferrell@trialnewport.com
 4100 Newport Place Drive, Ste. 800
 Newport Beach, CA 92660
 Tel: (949) 706-6464
 Fax: (949) 706-6469

Attorneys for Plaintiff

FILED
 Superior Court of California
 County of Los Angeles

MAY 15 2020

Sherri R. Carter, Executive Officer/Clerk

By , Deputy
 Rita Nazaryan

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

LUIS LICEA, individually and on behalf of all
 others similarly situated

Plaintiff,

v.

LIQUID WEB, LLC, a Delaware limited liability
 company; and DOES 1 – 10, inclusive,

Defendants.

Case No. **20STCV18957**

CLASS ACTION COMPLAINT FOR:

1. VIOLATIONS OF CALIFORNIA'S
 AUTOMATIC RENEWAL LAW
 (BUSINESS AND PROFESSIONS CODE §§
 17600-17604); AND
2. VIOLATIONS OF CALIFORNIA'S
 UNFAIR COMPETITION LAW (BUSINESS
 AND PROFESSIONS CODE §§ 17200-
 17204)

1 Plaintiff Luis Licea ("Plaintiff"), on behalf of himself and all others similarly situated,
2 complains and alleges as follows:

3 INTRODUCTION & OVERVIEW OF CLAIMS

4 1. Plaintiff brings this class action on behalf of himself and a class of others similarly
5 situated consisting of all visually impaired persons in California who, within the applicable statute of
6 limitations period up to and including the date of judgment in this action, purchased subscriptions for
7 products (such as web hosting services and related products) from Liquid Web, LLC ("Defendant").
8 The class of others similarly situated to Plaintiff is referred to herein as "Class Members." The claims
9 for damages, restitution, injunctive and/or other equitable relief, and reasonable attorneys' fees and
10 costs arise under California Business and Professions Code (hereinafter "Cal. Bus. & Prof. Code") §§
11 17602, 17603, 17604) and 17200, et seq., and California Code of Civil Procedure § 1021.5. Plaintiff
12 and Class Members are consumers for purposes of Cal. Bus. & Prof. Code §§ 17600-17606.

13 2. During the Class Period, Defendant made automatic renewal or continuous service
14 offers to consumers in California and (a) at the time of making the automatic renewal or continuous
15 service offers, failed to present the automatic renewal offer terms or continuous service offer terms, in
16 a clear and conspicuous manner and in visual proximity to the request for consent to the offer before
17 the subscription or purchasing agreement was fulfilled in violation of Cal. Bus. & Prof. Code §
18 17602(a)(1); (b) charged Plaintiff's and Class Members' credit or debit cards, or third-party account
19 (hereinafter "Payment Method") without first obtaining Plaintiff's and Class Members' affirmative
20 consent to the agreement containing the automatic renewal offer terms or continuous service offer
21 terms in violation of Cal. Bus. & Prof. Code § 17602(a)(2); and (c) failed to provide an
22 acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation
23 policy, and information regarding how to cancel in a manner that is capable of being retained by the
24 consumer in violation of Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b). As a result, all goods,
25 wares, merchandise, or products sent to Plaintiff and Class Members under the automatic renewal of
26 continuous service agreements are deemed to be an unconditional gift pursuant to Cal. Bus. & Prof.
27 Code § 17603.
28

3. As a result of the above, Plaintiff, on behalf of himself and Class Members, seeks damages, restitution, declaratory relief, injunctive relief and reasonable attorneys' fees and costs pursuant to Cal. Bus. & Prof. Code, §§ 17603, 17203, and 17204, and Code of Civil Procedure § 1021.5.

JURISDICTION AND VENUE

4. This Court has jurisdiction over all causes of action asserted herein.

5. Venue is proper in this Court because Defendant knowingly engages in activities directed at consumers in this County and conducted wrongful conduct alleged herein against residents of this County.

6. Any out-of-state participants can be brought before this Court pursuant to California's "long-arm" jurisdictional statute.

PARTIES

7. Plaintiff Luis Licea is a resident of San Bernardino County, California. Plaintiff is completely blind. Plaintiff purchased a subscription plan from Defendant in California during the Class Period. Plaintiff and Class Members are consumers as defined under Cal. Bus. & Prof. Code § 17601(d).

8. Plaintiff both genuinely wanted to avail himself of Defendant's goods and services as offered on Defendant's website and, as a consumer advocate for the blind, also wanted to determine whether Defendant offered its services in accordance with its obligations under California law. As such, he is a "tester" who advances important public interests who should be "praised." (*Murray v. GMAC Mortgage Corp.* (7th Cir. 2006) 434 F.3d 948, 954.)

9. Plaintiff is informed and believes, and upon such information and belief alleges, that Defendant Liquid Web, LLC is a Delaware limited liability company with its principal place of business located in Lansing, Michigan. Defendant operates in California and has done business in California at all times during the Class Period. Also during the Class Period, Defendant made, and continues to make, automatic renewal or continuous service offers to consumers in California. Defendant operates a website which markets website hosting and related products.

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

11. At all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and/or scope of said agency and/or employment with the full knowledge and consent of each of the Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants (Liquid Web, LLC and DOE Defendants will hereafter collectively be referred to as "Defendant").

FACTUAL BACKGROUND

California Business Professions Code §§ 17600-17606

12. On December 1, 2010, sections 17600-17606 of the Cal. Bus. & Prof. Code came into effect. The Legislature's stated intent for this Article was to end the practice of ongoing charges to consumers' Payment Methods without consumers' explicit consent for ongoing shipments of a product or ongoing deliveries of service. *See* Cal. Bus. & Prof. Code § 17600.

13. Cal. Bus. & Prof. Code § 17602(a) makes it unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state 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.
- (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.
- (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. If the offer includes a free trial, the business shall also disclose in the acknowledgment how to cancel and allow the consumer to cancel before the consumer pays for the goods or services.

1 14. Cal. Bus. & Prof. Code § 17601(a) defines the term “Automatic renewal” as a “plan or
2 arrangement in which a paid subscription or purchasing agreement is automatically renewed at the end
3 of a definite term for a subsequent term.”

4 15. Cal. Bus. & Prof. Code § 17601(b) defines the term “Automatic renewal offer terms”
5 as “the following clear and conspicuous disclosures: (1) That the subscription or purchasing
6 agreement will continue until the consumer cancels. (2) The description of the cancelation policy that
7 applies to the offer. (3) The recurring charges that will be charged to the consumer’s credit or debit
8 card or payment account with a third party as part of the automatic renewal plan or arrangement, and
9 that the amount of the charge may change, if that is the case, and the amount to which the charge will
10 change, if known. (4) The length of the automatic renewal term or that the service is continuous,
11 unless the length of the term is chosen by the consumer. (5) The minimum purchase obligation, if any.”

12 16. Pursuant to Cal. Bus. & Prof. Code § 17601(c), “clear and conspicuous” or “clearly and
13 conspicuously” means “in larger type than the surrounding text, or in contrasting type, font, or color
14 to the surrounding text of the same size, or set off from the surrounding text of the same size by
15 symbols or other marks, in a manner that clearly calls attention to the language.”

16 17. Section 17602(b) provides: “A business making automatic renewal or continuous
17 service offers shall provide a toll-free telephone number, electronic mail address, a postal address only
18 when the seller directly bills the consumer, or another cost-effective, timely, and easy-to-use
19 mechanism for cancellation that shall be described in the acknowledgment specified in paragraph (3)
20 of subdivision (a).”

21 18. Section 17603 of Cal. Bus. & Prof. Code provides: “In any case in which a business
22 sends any goods, wares, merchandise, or products to a consumer, under a continuous service
23 agreement or automatic renewal of a purchase, without first obtaining the consumer’s affirmative
24 consent as described in Section 17602, the goods, wares, merchandise, or products shall for all
25 purposes be deemed an unconditional gift to the consumer, who may use or dispose of the same in any
26 manner he or she sees fit without any obligation whatsoever on the consumer’s part to the business,
27 including, but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares,
28 merchandise, or products to the business.”

1 **Defendant's Business**

2 19. Defendant offers, at its website, found at www.liquidweb.com, various subscriptions
3 for **website hosting** and related **products**. Defendant's product and services plan constitutes an
4 automatic renewal and/or continuous service plan or arrangement for the purposes of Cal. Bus. & Prof.
5 Code § 17601.

6 **Defendant Fails to Provide Clear and Conspicuous Disclosures As Required By Law.**

7 20. During the Class Period, Defendant's webpage, found at www.liquidweb.com,
8 contained a section entitled "Terms of Service" ("Terms").

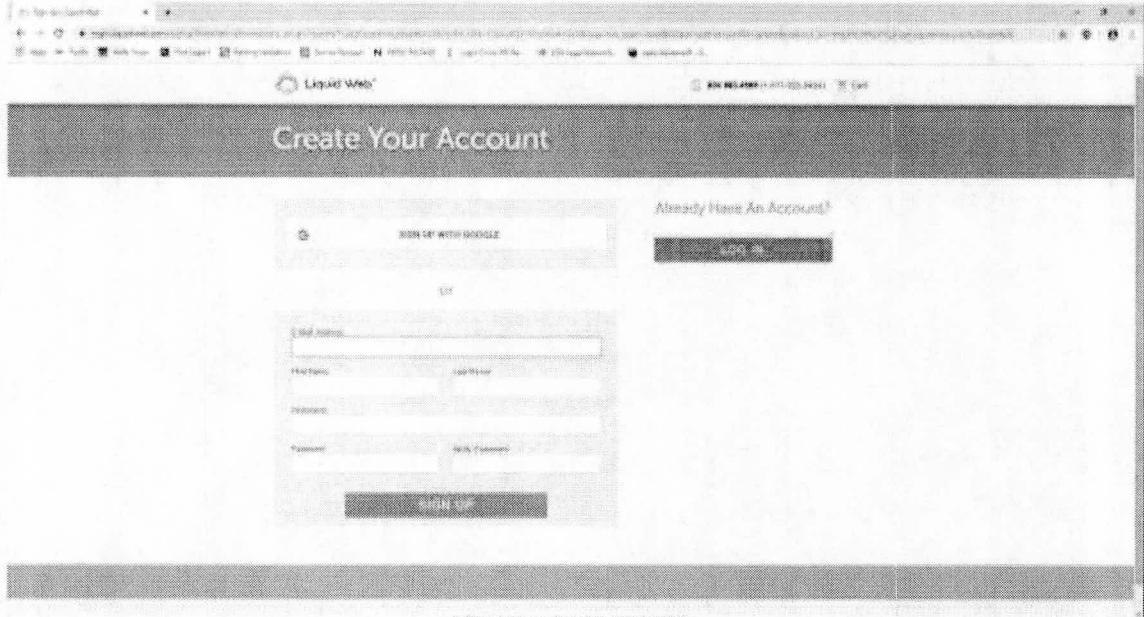
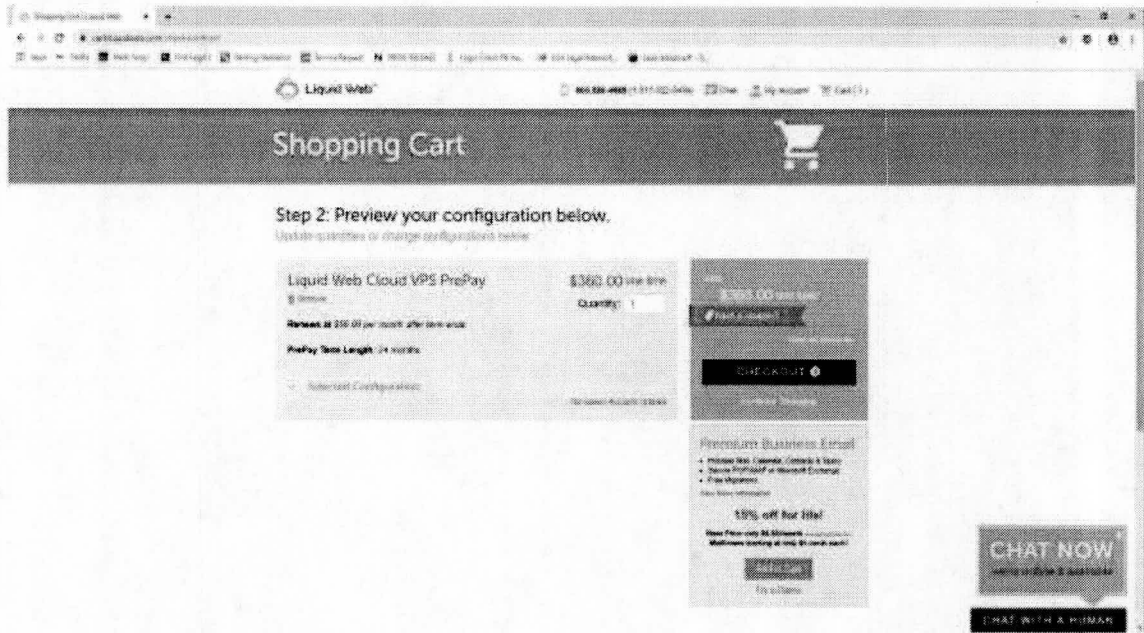
9 21. Within the Terms, Defendant failed to state in clear and conspicuous language (*i.e.*, in
10 larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of
11 the same size, or set off from the surrounding text of the same size by symbols of other marks, in a
12 manner that clearly calls attention to the language) that:

- 13 i) The subscription or purchasing agreement will continue until the consumer
14 cancels;
- 15 ii) Described the cancellation policy that applies to the offer;
- 16 iii) Recurring charges that will be charged to the consumer's Payment Method
17 account with a third party as part of the automatic renewal plan or arrangement,
18 and that the amount of the charge may change, if that is the case, and the
19 amount to which the charge will change, if known; and
- 20 iv) The length of the automatic renewal term or that the service is continuous
21 unless the length of the term is chosen by the consumer.

22 **Defendant Failed to Present the Automatic Renewal Offer Terms or Continuous Service Offer**
23 **Terms in a Clear and Conspicuous Manner Before the Subscription or Purchasing Agreement**
24 **was Fulfilled and in Visual Proximity to the Request for Consent to the Offer in Violation of**
25 **Cal. Bus. & Prof. Code § 17602(a)(1), (2).**

26 22. During the Class Period, Defendant made an automatic renewal offer for its
27 subscriptions plans to Consumers in the United States, including Plaintiff and Class Members. The
28 pages where a prospective subscriber finalizes a purchase do not set forth Defendant's full

cancellation policy as set forth in Defendant's Terms in a "clear and conspicuous manner" as required by Section 17602(a)(1).



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Browser: Chrome | URL: https://www.liquidweb.com/ | Liquid Web | 800.333.0000 | 1-877-333-0000 | Chat | My Account | Cart (1)

Billing Info

Company:

First Name: Last Name:

Company:

Phone Number:

Country: (or select from dropdown)

Billing Address: Billing Address 2 (Optional):

Team / City: State / Province / Region:

Postal Code:

we will not sell, rent, or otherwise disclose your information

SAVE AND CONTINUE

CHAT NOW
Having problems? We're here to help.
CHAT WITH A HUMAN

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Browser: Chrome | URL: https://www.liquidweb.com/ | Liquid Web | 800.333.0000 | 1-877-333-0000 | Chat | My Account | Cart (1)

Final Step: Complete Checkout Process.

Account Info

Welcome!
John Smith

Payment Method

Select Your Payment Method:

Service Info

Domain Name:

*A domain is provided at no charge for the first year.

Submit Your Order

By clicking Submit Your Order, you agree to our Terms of Service, Privacy Policy, and our Refund Policy.

By clicking Submit Your Order, you agree to our Terms of Service, Privacy Policy, and our Refund Policy.

SUBMIT YOUR ORDER

CHAT NOW
Having problems? We're here to help.
CHAT WITH A HUMAN

23. As a result, during the class period, prior to charging Plaintiff and Class Members, Defendant failed to obtain Plaintiff's and Class Members' affirmative consent to the automatic renewal offer terms or continuous service offer terms as required by Cal. Bus. & Prof. Code § 17602(a)(1), (2).

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

Defendant Failed to Provide an Acknowledgment as Required by Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b)

25. Furthermore, and in addition to the above, after Plaintiff and Class Members subscribed to one of Defendant's subscription plans, Defendant sent to Plaintiff and Class Members email follow-ups to their purchases, but has failed, and continues to fail, to provide an acknowledgement that includes the automatic renewal or continuous service offer terms, cancellation policy, and information on how to cancel in a manner that is capable of being retained by Plaintiff and Class Members in violation of Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b).

From: The Liquid Web Team <support@liquidweb.com>

Date: December 2, 2019 at 5:57:26 PM PST

To: [REDACTED]

Subject: Success! Your Liquid Web Cloud server will be ready soon.

Reply-To: support@liquidweb.com



Liquid Web™

POWERING YOUR BUSINESS POTENTIAL

Content. Commerce. Applications.

4. Thanks for your order.

We're thrilled that you chose Liquid Web.

Before we start building your server, we'll send you an email with the exact server setup you ordered. Then, a Liquid Webber will make an effort to contact you by phone or email to review and confirm your configuration.

Once we've double-checked everything, your server will be created. Server creation typically takes about 30 minutes. We'll let you know when your server is online and ready for you to start building something brilliant.

If you are moving websites from another host, you can immediately start gathering the information our specialized migrations team will need to assist you. Once your server is online, we'll give you more information about contacting the migrations team. They are ready to help take the stress out of moving your data.

1. SPECIAL PROMOTION: 25% OFF ALL MAILBOXES

This purchase qualifies you to take 25% off all mailboxes for 6 months. Use code **25CLOUDMAIL18** at checkout to save.

[Shop Premium Business Email Now](#)



2. LOOKING FOR A HELPFUL HUMAN?

If you have any questions, don't hesitate to contact our Support team at [1-800-580-4985](tel:1-800-580-4985) (+1-517-322-0434) or send us an email at heretohelp@liquidweb.com. We're here to help 24x7x365.

LiquidWeb.com | [1.800.580.4985](tel:1-800-580-4985)
Copyright © 2019 Liquid Web LLC 2703 Ena Drive Lansing, MI

[Unsubscribe](#)

From: Liquid Web <noreply@liquidweb.com>

Date: December 2, 2019 at 5:59:30 PM PST

To: [REDACTED]

Subject: Your Liquid Web Order Details



Liquid Web™

POWERING YOUR BUSINESS POTENTIAL

Content. Commerce. Applications.

5. Your order is in progress.

Hi Luis,

We're working on your order. Please review your build details and let us know if anything needs to be changed.

3. ORDER DETAILS FOR ACCOUNT #: [REDACTED]

ConfigId: 2GB - SSD

Template: CentOS 7 64-bit with Interworx Fully-managed

Bandwidth: 10 TB Monthly Transfer

BandwidthOverage: Usage Based GB Overage

LiquidWebBackupPlan: Quota-based Backups(+100 GB)

ExtraIp: 0 Additional Public IPs

NetworkStorage: No Volume Required

Someone from our Liquid Web team will be contacting you soon by phone or email to confirm your account details and configuration. We'll also help you with any questions you may have. Typically, you should expect to be up and running within 24-48 hours (majority within one business day).

B. YOUR ACCOUNT INFORMATION

Manage your Liquid Web account, servers, and other services by logging into manage.liquidweb.com. Learn more about navigating your Liquid Web account [here](#).

Username: [REDACTED]

Password: A secure password has been generated and can be accessed by clicking [here](#).

C. YOUR PAYMENT INFORMATION

View your account statements anytime by visiting the [Billing Section](#) of manage.liquidweb.com.

D. MIGRATING YOUR DATA?

If you're transitioning from another host, you'll want to start planning your migration! Our migrations team is standing by to help you. We've created a [helpful checklist](#) to help ensure a smooth migration. Please note that

Linux and Windows systems require varying migration processes and your particular migration may require additional time or resources. When you're ready, click below to get started.

[Request Your Linux Migration](#)

[Request Your Windows Migration](#)

If you have any questions in the meantime, don't hesitate to contact our Support team at 800-580-4985 (+1-517-322-0434) or send us an email at heretohelp@liquidweb.com. We're here to help 24x7x365.



1. CHECK OUT OUR HELP CENTER

Access our continuously updated [Help Center](#) to find FAQ's, How-To's and resources to help you manage your servers and services.

LiquidWeb.com | [1.800.580.4985](tel:18005804985)

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From: Liquid Web <noreply@liquidweb.com>

Date: December 2, 2019 at 6:07:32 PM PST

To:

Subject: Now Ready: Your Liquid Web Configuration



Liquid Web™

POWERING YOUR BUSINESS POTENTIAL

Content. Commerce. Applications.

6. Your Order is Ready.

Hi Luis,

Your order is complete. Everything is now online and ready to use!

E. YOUR ORDER DETAILS

Server Hostname:

Server IP Address: [REDACTED]

SSH username: root

F. YOUR ACCOUNT INFORMATION

Manage your Liquid Web account, servers, and other services by logging into manage.liquidweb.com.

Username: [REDACTED]

View your account statements anytime by visiting the [Billing Section](#) of manage.liquidweb.com.

If you have any questions in the meantime, don't hesitate to contact our Support team at 800-580-4985 (+1-517-322-0434) or send us an email at heretohelp@liquidweb.com. We're here to help 24x7x365.



1. CHECK OUT OUR HELP CENTER

Access our continuously updated [Help Center](#) to find FAQ's, How-To's and resources to help you manage your servers and services.

LiquidWeb.com | 1.800.580.4985

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CLASS ACTION ALLEGATIONS

26. Plaintiff brings this class action for damages and other monetary and injunctive relief on behalf of the following class:

"All visually impaired persons within California that, within the applicable statute of limitations period up to and including entry of judgment in this matter, purchased any product or service in response to an offer constituting an "Automatic Renewal" as defined by § 17601(a) of the Business and Professions Code, from Liquid Web, LLC, its predecessors, or its affiliates, via the website www.liquidweb.com."

1 27. Excluded from the Class are governmental entities, Defendant, any entity in which
2 Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal
3 representatives, employees, co-conspirators, successors, subsidiaries, and assigns, and individuals
4 bound by any prior settlement. Also excluded from the Class is any judge, justice, or judicial officer
5 presiding over this matter, and any callers who did receive a warning that their calls were recorded.

6 28. The proposed Class is so numerous that individual joinder of all its members is
7 impracticable; according to the National Federation for the Blind, there are over 700,000 visually
8 impaired consumers living in California. Due to the nature of the trade and commerce involved,
9 however, Plaintiff believes that the total number of Class members is at least in the thousands and
10 members of the Class are numerous and geographically dispersed across the United States. While the
11 exact number and identities of the Class members are unknown at this time, such information can be
12 ascertained through appropriate investigation and discovery. The disposition of the claims of the Class
13 members in a single class action will provide substantial benefits to all parties and to the Court.

14 29. There is a well-defined community of interest in the questions of law and fact involved
15 affecting the plaintiff class and these common questions predominate over any questions that may
16 affect individual Class members. Common questions of fact and law include, but are not limited to,
17 the following:

- 18 i. Whether Defendant failed to present the automatic renewal offer terms, or
19 continuous service offer terms, in a clear and conspicuous manner before the
20 subscription or purchasing agreement was fulfilled and in visual proximity to
21 the request for consent to the offer in violation of Cal. Bus. & Prof. Code §
22 17602(a)(1);
- 23 ii. Whether Defendant charged Plaintiff's and Class Members' Payment Method
24 for an automatic renewal or continuous service without first obtaining the
25 Plaintiff's and Class Members' affirmative consent to the automatic renewal
26 offer terms or continuous service offer terms in violation of Cal. Bus. & Prof.
27 Code§ 17602(a)(2);
- 28

- 1 iii. Whether Defendant failed to provide an acknowledgement that included the
- 2 automatic renewal or continuous service offer terms, cancellation policy, and
- 3 information on how to cancel in a manner that is capable of being retained by
- 4 Plaintiff and Class Members, in violation of Cal. Bus. & Prof. Code §
- 5 17602(a)(3);
- 6 iv. Whether during the Class Period Defendant failed to provide an
- 7 acknowledgment that describes a cost-effective, timely, and easy-to-use
- 8 mechanism for cancellation in violation of Cal. Bus. & Prof. Code § 17602(b);
- 9 v. Whether Plaintiff and the Class Members are entitled to restitution of money
- 10 paid in circumstances where the goods and services provided by Defendant are
- 11 deemed an unconditional gift in accordance with Cal. Bus. & Prof. Code §
- 12 17603;
- 13 vi. Whether Plaintiff and Class Members are entitled to restitution in accordance
- 14 with Cal. Bus. & Prof. Code §§ 17200, 17203;
- 15 vii. Whether Plaintiff and Class Members are entitled to injunctive relief under Cal.
- 16 Bus. & Prof. Code § 17203;
- 17 viii. Whether Plaintiff and Class Members are entitled to attorneys' fees and costs
- 18 under California Code of Civil Procedure § 1021.5; and
- 19 ix. The proper formula(s) for calculating the restitution owed to Class Members.

20 30. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all

21 members of the Class have been subjected to Defendant's common course of unlawful conduct as

22 complained of herein and are entitled to the same statutory damages based on Defendant's wrongful

23 conduct as alleged herein.

24 31. Plaintiff will fairly and adequately represent and protect the interests of the Class.

25 Plaintiff has retained counsel with substantial experience in handling complex class action litigation.

26 Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class and

27 have the financial resources to do so.

28

32. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the class is impracticable. Even if individual class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed.

33. The conduct of this action as a class action conserves the resources of the parties and of the judicial system and protects the rights of the class members. Furthermore, for many, if not most, a class action is the only feasible mechanism that allows an opportunity for legal redress and justice.

34. Defendant may argue that Plaintiff and the class members are bound by such anti-consumer provisions as a class action waiver, arbitration provision, inconvenient venue clause, limitations on damages, or indemnity duties. Any such argument must fail, as no such terms were ever reasonably communicated to visually-impaired class members in a way that enabled them to manifest or reject the necessary informed consent, nor were they aware of such anti-consumer limitations. (*See, e.g., National Federation of the Blind v. The Container Store, Inc.* (1st Cir. 2018) 904 F.3d 70, 75-77, 83-84.)

FIRST CAUSE OF ACTION

FAILURE TO PRESENT AUTOMATIC RENEWAL OFFER TERMS OR CONTINUOUS SERVICE OFFER TERMS CLEARLY AND CONSPICUOUSLY AND IN VISUAL, PROXIMITY TO THE REQUEST FOR CONSENT OFFER (CAL. BUS. & PROF. CODE§ 17602(a)(1))

(By Plaintiff, on his own behalf and on behalf of the Class, against All Defendants)

35. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

36. Cal. Bus. Prof. Code§ 17602(a)(1) provides:

(a) It shall be unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state 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.

37. Plaintiff and Class Members purchased Defendant's online **website hosting** and related **products** for personal, family or household purposes. Defendant failed to present the automatic

renewal offer terms, or continuous service offer terms, in a clear and conspicuous manner and in visual proximity to the request for consent to the offer before the subscription or purchasing agreement was fulfilled.

38. As a result of Defendant's violations of Cal. Bus. & Prof. Code § 17602(a)(1), Defendant is subject under Cal. Bus. & Prof. Code § 17604 to all civil remedies that apply to a violation of Article 9, of Chapter 1, of Part 3, of Division 7 of the Cal. Bus. & Prof. Code.

39. Plaintiff, on behalf of himself and Class Members, requests relief as described below.

SECOND CAUSE OF ACTION

FAILURE TO OBTAIN CONSUMER'S AFFIRMATIVE CONSENT

BEFORE THE SUBSCRIPTION IS FULFILLED

(CAL BUS. & PROF. CODE §§ 17602(a)(2) and 17603)

(By Plaintiff, on his own behalf and on behalf of the Class, against All Defendants)

40. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

41. Cal. Bus. & Prof. Code § 17602(a)(2) provides:

(a) It shall be unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state to do any of the following:

(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.

42. Plaintiff and Class Members purchased Defendant's online **website hosting** and related **products** for personal, family or household purposes. Defendant charged, and continues to charge Plaintiff's and Class Members' Payment Method for an automatic renewal or continuous service without first obtaining Plaintiff's and Class Members affirmative consent to the Terms containing the automatic renewal offer terms or continuous service offer terms.

43. As a result of Defendant's violations of Cal. Bus. & Prof. Code § 17602(a)(2), Defendant is liable to provide restitution to Plaintiff and Class Members under Cal. Bus. & Prof. Code § 17603.

44. Plaintiff, on behalf of himself and Class Members, requests relief as described below.

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THIRD CAUSE OF ACTION

**FAILURE TO PROVIDE ACKNOWLEDGMENT WITH
AUTOMATIC RENEWAL TERMS AND INFORMATION REGARDING
CANCELLATION POLICY**

(CAL. BUS. & PROF. CODE §§ 17602(a)(3), 17602(b))

(By Plaintiff, on his own behalf and on behalf of the Class, against All Defendants)

45. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

46. Cal. Bus. & Prof. Code § 17602(a)(3) provides:

(a) It shall be unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state to do any of the following:

(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. If the offer includes a free trial, the business shall also disclose in the acknowledgment how to cancel and allow the consumer to cancel before the consumer pays for the goods or services.

47. Cal. Bus. & Prof. Code § 17602(b) provides:

“A business making automatic renewal or continuous service offers shall provide a toll-free telephone number, electronic mail address, a postal address only when the seller directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be described in the acknowledgment specified in paragraph (3) of subdivision (a).”

48. Plaintiff and Class Members purchased Defendant’s online **website hosting** and related **products** for personal, family or household purposes. Defendant failed to provide an acknowledgement that includes the automatic renewal or continuous service offer terms, cancellation policy, and information on how to cancel in a manner that is capable of being retained by Plaintiff and Class Members.

49. As a result of Defendant’s violations of Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b), Defendant is subject to all civil remedies under Cal. Bus. & Prof. Code § 17604 that apply to a violation of Article 9, of Chapter 1 of Part 3, of Division 7 of the Cal. Bus. & Prof. Code.

50. Plaintiff, on behalf of himself and Class Members, requests relief as described below.

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FOURTH CAUSE OF ACTION

VIOLATION OF THE UNFAIR COMPETITION LAW

(CAL. BUS. & PROF. CODE § 17200 *et. seq.*)

(By Plaintiff, on his own behalf and on behalf of the Class, against All Defendants)

51. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

52. Cal. Bus. & Prof. Code § 17200, *et seq.* (the “UCL”) prohibits unlawful business acts or practices. Cal. Bus. & Prof. Code § 17204 allows “a person who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of himself or herself and others similarly situated who are affected by the unlawful business practice or act.

53. Since December 1, 2010, and continuing to the present, Defendant has committed unlawful business acts or practices as defined by the UCL, by violating Cal. Bus. & Prof. Code §§ 17602(a)(1), 17602(a)(2), and 17602(a)(3).

54. Plaintiff has standing to pursue this claim because he suffered injury in fact and has lost money or property as a result of Defendant’s actions as set forth herein. Plaintiff purchased Defendant’s online **website hosting** and related **products** for personal, family, or household purposes.

55. As a direct and proximate result of Defendant’s unlawful acts or practices described herein, Defendant has received, and continues to hold, unlawfully obtained property and money belonging to Plaintiff and Class Members in the form of payments made for subscription agreements by Plaintiff and Class Members. Defendant has profited from its unlawful acts or practices in the amount of those business expenses and interest accrued thereon.

56. Plaintiff and similarly-situated Class Members are entitled to restitution pursuant to Cal. Bus. & Prof. Code § 17203 for all monies paid by Class Members under the subscription agreements from December 1, 2010, to the date of such restitution at rates specified by law. Defendant should be required to disgorge all the profits and gains it has reaped and restore such profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

57. Plaintiff and similarly situated Class Members are entitled to enforce all applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202, and to obtain injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203.

58. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of himself and other similarly-situated Class Members. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. An award of reasonable attorneys' fees to Plaintiff is thus appropriate pursuant to California Code of Civil Procedure § 1021.5.

59. Plaintiff, on behalf of himself and Class Members, request relief as described below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. That the Court determine that this action may be maintained as a class action, and define the Class as requested herein;

B. That the Court find and declare that Defendant has violated Cal. Bus. & Prof. Code § 17602(a)(1) by failing to present the automatic renewal offer terms, or continuous service offer terms, in a clear and conspicuous manner and the visual proximity to the request for consent to the offer before the subscription or purchasing agreement was fulfilled;

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

D. That the Court find and declare that Defendant has violated Cal. Bus. & Prof. Code § 17602(a)(3) by failing to provide an acknowledgement that includes the automatic renewal or continuous service offer terms, cancellation policy and information on how to cancel in a manner that is capable of being retained by Plaintiff and Class Members;

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

1 F. That the Court find and declare that Defendant has violated the UCL and committed an
2 unlawful business practice by violating Cal. Bus. & Prof. Code § 17602;

3 G. That the Court award to Plaintiff and Class Members damages and full restitution due
4 to Defendant's UCL violations, pursuant to Cal. Bus. & Prof. Code §§ 17200-17205 in the amount of
5 their subscription agreement payments;

6 H. That the Court find that Plaintiff and Class Members are entitled to injunctive relief
7 pursuant to Cal. Bus. & Prof. Code § 17203;

8 I. That Plaintiff and the Class be awarded reasonable attorneys' fees and costs pursuant to
9 California Code of Civil Procedure § 1021.5, and/or other applicable law; and

10 J. That the Court award such other and further relief as this Court may deem appropriate.

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12 Dated: May 15, 2020

PACIFIC TRIAL ATTORNEYS, APC

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14 By:  _____

15 Scott. J. Ferrell
16 Attorneys for Plaintiff
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