

1 LAURA A. STOLL (SBN 255023)
LStoll@goodwinlaw.com
2 HONG-AN VU (SBN 266268)
HVu@goodwinlaw.com
3 **GOODWIN PROCTER LLP**
601 South Figueroa Street, 41st Floor
4 Los Angeles, California 90017
Tel.: +1 213 426 2500
5 Fax: +1 213 623 1673

6 Attorneys for Defendant
ALCLEAR, LLC
7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 MEREDITH MEAD on behalf of herself
12 and all others similarly situated,

13 Plaintiff,

14 v.

15 ALCLEAR, LLC and DOES 1 through
16 10, inclusive,

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

Case No.

**DEFENDANT ALCLEAR, LLC'S
NOTICE OF REMOVAL**

[Removal from the Superior Court of
the State of California, County of Los
Angeles, Case No. 20STCV19395]

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA, AND TO ALL PARTIES AND
THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that Defendant Alclear, LLC (“Defendant” or “CLEAR”) hereby removes the above-captioned action, *Margaret Mead v. Alclear, LLC*, Case No. 20STCV19395, which is currently pending in the Superior Court of the State of California for the County of Los Angeles (the “State Court Action”), to the United States District Court for the Central District of California, Western Division, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.¹ As grounds for removal, Defendant states as follows:

INTRODUCTION

This case is removable under 28 U.S.C. § 1441 and the Class Action Fairness Act of 2005, P.L. 109-2, as codified at 28 U.S.C. § 1332(d) and 28 U.S.C. § 1453 (“CAFA”). Pursuant to CAFA, federal courts have original jurisdiction over class actions where: (1) the putative class consists of at least 100 members (28 U.S.C. § 1332(d)(5)(B)); (2) there is minimal diversity between the parties (28 U.S.C. § 1332(d)(2)(A)); and (3) the aggregate classwide amount in controversy exceeds \$5,000,000, exclusive of interest and costs (28 U.S.C. § 1332(d)(2) and (d)(6)). Based upon Plaintiff’s allegations (which CLEAR expressly denies and intends to demonstrate are without merit), removal here is proper because CAFA’s requirements are met, no exception to CAFA jurisdiction applies, and CLEAR has timely removed.

BACKGROUND

1. On May 20, 2020, Plaintiff Meredith Mead (“Plaintiff”) filed a

¹ Defendant sets forth the allegations in Plaintiff’s Complaint solely to establish the prerequisites for jurisdiction and removal of this action. By filing this Notice of Removal, Defendant does not waive any objections it may have as to lack of jurisdiction over Defendant, or venue, or any other defenses or objections to the State Court Action, including, but not limited to, the viability of class certification. Defendant intends no admission of fact, law, or liability by this Notice, and reserves all defenses, motions, and pleas.

1 putative Class Action Complaint against Defendant and Does 1-10 for (1) Violation
2 of California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*
3 (“CLRA”); (2) Violation of California’s Unfair Competition Law, Cal. Bus. & Prof.
4 Code §§ 17200, *et seq.* (“UCL”); (3) Violation of California’s False Advertising
5 Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* (“FAL”); (4) Money Had and
6 Received; and (5) Unjust Enrichment, in California Superior Court, Los Angeles
7 County.

8 2. Defendant was served with the Summons and Complaint on July 21,
9 2020 by personal service.

10 3. Plaintiff alleges that Defendant’s advertising and marketing of its
11 biometric identification services (“CLEAR”) as being offered at “65 plus airports,
12 stadiums, and other venues” was inaccurate and misleading because Defendant
13 allegedly closed its locations following the COVID-19 pandemic. *See* Compl. ¶¶ 2,
14 13, 45-49. Plaintiff further alleges that Defendant unlawfully retained Plaintiff’s
15 and the putative class members’ enrollment fees for memberships with CLEAR,
16 despite the alleged closures. *See id.* ¶¶ 3, 13-14, 28, 36-37, 44, 52, 56-58. Finally,
17 Plaintiff claims that, as a result, she and the putative class members suffered
18 injuries because they allegedly were unable to access CLEAR for a full year. *See*
19 *id.* ¶¶ 29, 38, 49, 60.

20 4. Plaintiff, on behalf of herself and those similarly situated, seeks
21 certification of a class and subclass, a declaratory judgment that Defendant’s
22 conduct violated the law, an award finding in favor of Plaintiff and the putative
23 class, compensatory damages, prejudgment interest, restitution and other equitable
24 monetary relief, injunctive relief, attorney’s fees, expenses, and costs. *See id.*,
25 Prayer for Relief.

26 **REMOVAL IS PROPER UNDER 28 U.S.C. §§ 1332(d) AND 1453**

27 **(CAFA JURISDICTION)**

28 5. This Court has original jurisdiction under 28 U.S.C. §§ 1332(d) and

1 1453 on the basis of CAFA jurisdiction because (1) the citizenship of at least one
 2 putative class member is different from that of Defendant, (2) the putative class
 3 consists of more than 100 proposed class members, and (3) “the matter in
 4 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and
 5 costs.” *See* 28 U.S.C. §§ 1332(d)(2), (d)(2)(A), (d)(5)(B), (d)(6).

6 *Citizenship of the Parties (28 U.S.C. § 1332(d)(2)(A)).*

7 6. Diversity of citizenship exists because Plaintiff and members of the
 8 putative class are citizens of a state different from Defendant.

9 7. For purposes of diversity, Plaintiff is, as she alleges, “a citizen of
 10 California, residing in Los Angeles, California.” Compl. ¶ 7.

11 8. Defendant CLEAR is, and at the time this action was filed was, a
 12 limited liability company duly organized under the laws of the State of Delaware,
 13 with its principal place of business located in the State of New York. *Id.* ¶ 8.²
 14 Defendant is comprised of members that are citizens of thirteen (13) states,
 15 including California, Colorado, Connecticut, Florida, Georgia, Illinois, Maryland,
 16 Massachusetts, Michigan, New York, Pennsylvania, Virginia, and Washington, and
 17 the District of Columbia.

18 9. In traditional diversity jurisdiction cases, a limited liability company is
 19 deemed a citizen of each state of which its members are citizens. *See Johnson v.*
 20 *Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). However,
 21 for purposes of CAFA jurisdiction, “an unincorporated association shall be deemed
 22 to be a citizen of the State where it has its principal place of business and the State
 23 under whose laws it is organized.” *See* 28 U.S.C. § 1332(d)(10); *Abrego v. Dow*
 24 *Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (“[A]n unincorporated association
 25 shall be deemed to be a citizen of the State where it has its principal place of
 26 business and the State under whose laws it is organized.”). As such, Defendant is a

27 _____
 28 ² Plaintiff alleges that CLEAR is “a *corporation* organized and operating under the
 laws of Delaware.” Compl. ¶ 8 (emphasis added). Although this is incorrect, the
 error is immaterial for purposes of this Notice of Removal.

1 citizen of the States of Delaware and New York for purposes of diversity under
2 CAFA. *See Ferrell v. Express Check Advance of SC LLC*, 591 F.3d 698, 700 (4th
3 Cir. 2010) (holding that an LLC is properly considered an “unincorporated
4 association” within the meaning of § 1332(d)(10) “and therefore is a citizen of the
5 State under whose laws it is organized and the State where it has its principal place
6 of business.”); *Ramirez v. Carefusion Res., LLC*, No. 18-CV-2852-BEN-MSB,
7 2019 WL 2897902, at *2 (S.D. Cal. July 5, 2019) (noting that “most courts to
8 consider the issue have reached the same conclusion” as the Fourth Circuit that an
9 LLC constitutes an “unincorporated association” under § 1332(d)(10)).

10 10. Regardless, even to the extent Defendant’s citizenship was deemed to
11 be that of every state of which its members are citizens, there would still be
12 minimal diversity here. Plaintiff purports to represent a nationwide class of “[a]ll
13 consumers in the United States who paid usage fees to Defendants for CLEAR
14 from March 17, 2019 to a date to be determined.” Compl. ¶ 15. As such, at least
15 one such person (if not most such persons) must be a citizen of a state different than
16 those states of which Defendant may be considered a citizen. *See Rosas v.*
17 *Carnegie Mortg., LLC*, No. CV 11-7692 CAS CWX, 2012 WL 1865480, at *5
18 (C.D. Cal. May 21, 2012) (holding that “[b]ecause the complaint alleges a
19 ‘nationwide class,’ . . . minimal diversity necessarily exists” under the Class Action
20 Fairness Act).

21 11. Accordingly, the diversity of citizenship requirement is satisfied here
22 because Plaintiff—and, at a minimum, other members of the putative nationwide
23 class—is a citizen of a state different than Defendant. 28 U.S.C. § 1332(d)(2)(A).

24 *Putative Class Size (28 U.S.C. § 1332(d)(5)(B)).*

25 12. Removal is proper under 28 U.S.C. § 1332(d)(5)(B) because the
26 number of members of the proposed class exceeds 100.

27 13. Plaintiff defines the proposed class as:
28

1 All consumers in the United States who paid usage fees
 2 to Defendants for CLEAR from March 17, 2019 to a date
 3 to be determined.

4 Compl. ¶ 15.

5 14. Plaintiff also defines a proposed subclass of:

6 All consumers in California who paid usage fees to
 7 Defendants for CLEAR from March 17, 2019 to a date to
 8 be determined.

9 *Id.*

10 15. The class definition clearly encompasses more than 100 people
 11 because, as drafted, it literally includes all consumers who paid usage fees to
 12 CLEAR for more than a one-year period. *Id.* Plaintiff herself contends that “[t]he
 13 Class members consists [sic] of thousands, if not hundreds of thousands, of CLEAR
 14 customers.” *Id.* ¶ 17.

15 16. Defendant’s records confirm that the putative class size is in excess of
 16 100.

17 17. Accordingly, CAFA’s numerosity requirement is satisfied pursuant to
 18 28 U.S.C. § 1332(d)(5)(B).

19 *Amount in Controversy (28 U.S.C. §§ 1332(d)(2) and (d)(6)).*

20 18. For removal purposes, establishing the amount in controversy under
 21 CAFA requires only that a defendant provide a short and plain statement of the
 22 basis for jurisdiction—the equivalent of that required for a plaintiff filing a
 23 complaint. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81,
 24 89 (2014). This means “a defendant’s notice of removal need only include a
 25 plausible allegation that the amount in controversy exceeds the jurisdictional
 26 threshold.” *Id.*³

27 ³ Indeed, the determination of the amount in controversy does not require a
 28 prospective assessment of the defendant’s liability, but simply an estimate of the
 total amount in dispute. *See Lewis v. Verizon Communications, Inc.*, 627 F.3d 395,
 400-01 (9th Cir. 2010) (amount-in-controversy requirement satisfied where “[t]he

1 19. While Defendant denies that Plaintiff is entitled to recover any
 2 amount, and specifically denies that certification of any class is proper, the
 3 Plaintiff's putative class definition, allegations, and requests for relief plausibly
 4 place the amount in controversy in this case above CAFA's \$5,000,000 aggregate
 5 threshold, exclusive of interest and costs, for jurisdictional purposes. *See* 28 U.S.C.
 6 §§ 1332(d)(2), (d)(6).

7 20. Plaintiff alleges that her claims are "typical of those belonging to
 8 Class" and that she "is advancing the same claims and legal theories on behalf of
 9 herself and all members of the Class." Compl. ¶ 18. As noted previously, Plaintiff
 10 alleges the Class "consists [sic] of thousands, if not hundreds of thousands, of
 11 CLEAR customers." *Id.* ¶ 17. Indeed, Plaintiff's proposed Class includes, "[a]ll
 12 consumers in the United States who paid usage fees to Defendants for CLEAR
 13 from March 17, 2019..." *Id.* ¶ 15. Plaintiff alleges a broad class which clearly
 14 places more than \$5,000,000 in controversy.

15 21. Specifically, Plaintiff alleges that she and the other Class members
 16 paid an \$179.00 enrollment fee, but were "deprived full value of [the] fully paid
 17 service." *Id.* ¶ 29. She further alleges that Defendant has been "unjustly enriched
 18 in retaining the revenues derived from Plaintiff and Class members' enrollment fees
 19 without providing the expected full year service." *Id.* ¶ 58.

20 22. Consequently, Plaintiff seeks, on behalf of herself and the putative
 21 class, "restitution . . . for Defendants' unjust enrichment," *id.* ¶ 61, and either a full
 22 "refund or proportional refund as a result of [Defendant's] unfair business acts and
 23 practices," *id.* ¶ 39. CLEAR's preliminary investigation identified over 30,000
 24 consumers in the United States who paid usage fees to CLEAR during the alleged
 25 class period. Thus, Plaintiff's request for restitution alone places more than

26 _____
 27 Plaintiff is seeking recovery from a pot that Defendant has shown *could exceed* \$5
 28 million" (emphasis added)). This "burden is not 'daunting,' and 'a removing
 defendant is *not* obligated to research, state, and prove the plaintiff's claims for
 damages.'" *Coleman v. Estes Express Lines, Inc.*, 730 F. Supp. 2d 1141, 1148
 (C.D. Cal. 2010) (citation omitted).

1 \$5,000,000 in controversy even without consideration of the additional relief
 2 Plaintiff seeks.⁴ Even taking the California Subclass standing alone, the alleged
 3 amount in controversy would exceed the \$5 million threshold for CAFA
 4 jurisdiction.

5 23. Plaintiff also seeks an unidentified amount of compensatory damages;
 6 declaratory relief and injunctive relief;⁵ and attorneys' fees.⁶ Compl., Prayer for
 7 Relief. Moreover, Plaintiff's request also seeks "such other and further relief as the
 8 Court deems just and proper" (*id.*), beyond that specifically alleged in the
 9 Complaint.⁷

10 24. Thus, the total amount in controversy in this matter is well in excess of
 11 the \$5,000,000 jurisdictional threshold set by 28 U.S.C. § 1332(d)(2).

12 *No Exception to CAFA Jurisdiction Exists.*

13 25. Although Defendant denies that it bears the burden of showing that
 14 CAFA's exceptions to jurisdiction in 28 U.S.C. §§ 1332(d)(3), (4), (5), and (9) are
 15 inapplicable, none apply.

16 26. First, the discretionary exception in 28 U.S.C. § 1332(d)(3) does not
 17 apply because Defendant is a citizen of Delaware and New York, so no defendant is
 18 a citizen of the State in which the Complaint was originally filed—California.
 19 Moreover, California citizens do not make up more than one-third of the members of
 20 the proposed nationwide class.⁸

21 ⁴ See *Lewis*, 627 F.3d at 400.

22 ⁵ "In actions seeking declaratory or injunctive relief, it is well established that the
 23 amount in controversy is measured by the value of the object of the litigation."
Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 347 (1997),
 superseded by statute on other grounds.

24 ⁶ See *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998)
 25 (attorneys' fees properly considered in determining amount in controversy where
 26 legal claims may support award of attorney's fees); see also Cal Civ. Code
 § 1780(e) (prevailing plaintiff may recover attorneys' fees under CLRA).

27 ⁷ See Fed. R. Civ. P. 54(c) (providing that a court should award "relief to which
 each party is entitled," though not specifically demanded in the pleadings).

28 ⁸ Nor does Plaintiff's Complaint contain any allegations that California citizens
 make up more than one-third of the class.

1 27. Second, the exceptions in 28 U.S.C. § 1332(d)(4) do not apply for the
 2 same reasons as above—Defendant is not a citizen of California and the proposed
 3 class would not be comprised of two-thirds California citizens with injuries occurring
 4 in California.

5 28. Third, the exception in 28 U.S.C. § 1332(d)(5)(A) does not apply
 6 because Defendant is not a State, State official, or other governmental entity.

7 29. Fourth, the exception in 28 U.S.C. § 1332(d)(5)(B) does not apply
 8 because, as previously indicated, the number of putative class members is greater
 9 than 100.

10 30. Finally, the exceptions in 28 U.S.C. § 1332(d)(9) do not apply because
 11 this case does not involve a claim that: (i) concerns a covered security as defined
 12 under federal securities laws (28 U.S.C. § 1332(d)(9)(A)); (ii) “relates to the
 13 internal affairs or governance of a corporation or other form of business enterprise”
 14 or “arises under or by virtue of the laws of the State in which such corporation or
 15 business enterprise is incorporated or organized” (28 U.S.C. § 1332(d)(9)(B)); or
 16 (iii) “relates to the rights, duties . . . and obligations relating to or created by or
 17 pursuant to any security” (28 U.S.C. § 1332(d)(9)(C)).

18 *Jurisdiction is Mandatory.*

19 31. Jurisdiction is mandatory, not discretionary, under CAFA because
 20 Defendant is not a citizen of California, the “state in which th[is] action was
 21 originally filed,” and more than one-third of the proposed class would not be
 22 California citizens. 28 U.S.C. § 1332(d)(3).

23 **PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED**

24 32. *Removal is Timely.* This removal is timely under 28 U.S.C.
 25 § 1446(b)(1) because Defendant removed the State Court Action within 30 days of
 26 service of the Complaint. *See* 28 U.S.C. § 1446(b)(1) (“The notice of removal of a
 27 civil action or proceeding shall be filed within 30 days after the receipt by the
 28 defendant, through service or otherwise, of a copy of the initial pleading setting

1 forth the claim for relief upon which such action or proceeding is based, or within
 2 30 days after the service of summons upon the defendant if such initial pleading has
 3 then been filed in court and is not required to be served on the defendant, whichever
 4 period is shorter.”). Defendant was served with the Summons and Complaint on
 5 July 21, 2020.

6 33. Removal to Proper Court. Pursuant to 28 U.S.C. §§ 1332(d), 1441(a),
 7 and 1446(a), this Notice of Removal is being filed in the United States District
 8 Court for the Central District of California, Western Division, which is the “district
 9 court” embracing the place where the State Court Action was filed.

10 34. Signature. This Notice of Removal is signed pursuant to Rule 11 of
 11 the Federal Rules of Civil Procedure, in compliance with 28 U.S.C. § 1446(a).

12 35. Pleadings and Process. Copies of all process, pleadings and orders
 13 served upon Defendant in the State Court Action are attached hereto as **Exhibit A**,
 14 in compliance with 28 U.S.C. § 1446(a).

15 36. Notice of Filing of Notice of Removal. Attached hereto as **Exhibit B** is
 16 a copy of the Notice of Filing of Notice of Removal, without exhibits, which will
 17 be promptly filed with the Clerk of the Los Angeles County Superior Court in Los
 18 Angeles, California, pursuant to 28 U.S.C. § 1446(d).

19 37. Notice of Removal to All Adverse Parties. Attached hereto as **Exhibit**
 20 **C** is a copy of the Notice of Removal to All Adverse Parties, which will be
 21 promptly served upon Plaintiff’s counsel. *See* 28 U.S.C. § 1446(d).

22 38. Bond and Verification. Pursuant to Section 1016 of the Judicial
 23 Improvements and Access to Justice Act of 1988, no bond is required in connection
 24 with this Notice of Removal. Pursuant to Section 1016 of the Act, this Notice need
 25 not be verified.

26 CONCLUSION

27 Based upon the foregoing, this Court has jurisdiction over this matter
 28 pursuant to 28 U.S.C. §§ 1332(d) and 1453, and the State Court Action is properly

1 removed to this Court under 28 U.S.C. §§ 1441 and 1446.

2 In filing this Notice of Removal, Defendant reserves the right to a jury trial
3 and any and all defenses, objections, and exceptions, and nothing in this Notice of
4 Removal shall be interpreted or construed as a waiver or relinquishment of its right
5 to arbitrate this action, or any portion thereof, or to assert any defenses or
6 counterclaims including, without limitation, insufficiency of process or service of
7 process, jurisdiction, improper joinder or misjoinder of claims and/or parties, failure
8 to join a necessary party, failure to state a claim, the viability of class certification,
9 and any other procedural or substantive defense available to Defendant. Defendant
10 further reserves the right to amend or supplement this Notice of Removal.
11

12 Dated: August 18, 2020

Respectfully submitted,

13 **GOODWIN PROCTER LLP**

14 By: /s/ Laura A. Stoll

15 Laura A. Stoll

16 *LStoll@goodwinlaw.com*

17 Hong-An Vu

HVu@goodwinlaw.com

601 South Figueroa Street, 41st Floor

Los Angeles, California 90017

18 Tel.: +1 213 426 2500

19 Fax: +1 213 623 1673

20 Attorneys for Defendant
21 ALCLEAR, LLC
22
23
24
25
26
27
28

ORIGINAL

James R. Hawkins, Esq. SBN 192925
 Isandra Fernandez, Esq. SBN 220482
JAMES HAWKINS APLC
 9880 Research Drive, Suite 200
 Irvine, CA 92618
 TEL: (949) 387-7200
 FAX: (949) 387-6676

FILED
 Superior Court of California
 County of Los Angeles

MAY 20 2020

Sherri R. [Signature], Executive Officer/Clerk
 By [Signature], Deputy
 Steven Drew

Attorneys for Plaintiff, MEREDITH MEAD
 on behalf of herself and all others similarly situated

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

MEREDITH MEAD on behalf of herself and all
 others similarly situated

CASE No.: **20STCV19395**

JUDGE:

DEPT:

Plaintiff,

CLASS ACTION COMPLAINT

vs.

ALCLEAR, LLC., a Delaware corporation, and
 DOES 1 through 10, inclusive,

Defendants.

- 1) Violation of California Consumer Legal Remedies Act, California Civil Code §§ 1750, *et. seq.* (injunctive relief only);
- 2) Violation of California's Unfair Competition Law, California Business & Professions Code §§ 17200, *et. seq.*;
- 3) Violation of California's False Advertising Law, California Business & Professions Code §§17500, *et. seq.*;
- 4) Money Had and Received; and
- 5) Unjust Enrichment.

JURY TRIAL DEMANDED

Plaintiff MEREDITH MEAD (hereinafter "Plaintiff") on behalf of herself and all others similarly situated assert claims against Defendants ALCLEAR, LLC., and DOES 1 through 10 (hereinafter "Defendants") as follows:

FAXED

I.

INTRODUCTION

1. This is a consumer protection class action, pursuant to Code of Civil Procedure section 382, brought against Defendants and any subsidiaries and affiliated companies on behalf of Plaintiff and all others similarly situated.

2. Defendants charge customers a yearly fee to use its biometric secure identity platform, known as CLEAR. It stores individuals' personal information and links it to biometric data, allowing them to bypass the travel document checker at security checkpoints by using fingerprint and/or iris. CLEAR is in 65 plus airports, stadiums, and other venues nationwide. On March 16, 2020, as the Coronavirus pandemic grew throughout the world, Defendants closed CLEAR throughout the country, preventing Plaintiff and others from fully using its service.

3. Plaintiff seeks relief in this action individually and on behalf of all of Defendants' customers who paid fees and were enrolled when Defendants closed access to CLEAR.

II.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

5. This Court has jurisdiction over all Defendants because, upon information and belief, they sufficient minimum contacts in California or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice

6. Venue as to each defendant is proper in this judicial district, pursuant to California Code of Civil Procedure section 395. On information and belief, Defendants distribute, market and sell their products/services in Los Angeles County and throughout California, and each defendant is within the jurisdiction of this Court for service of process purposes. The unlawful

1 acts alleged herein have a direct effect on Plaintiff and those similarly situated within the State
2 of California and the United States.

3 **III.**

4 **PARTIES**

5 7. Plaintiff is a citizen of California, residing in Los Angeles, California. At all
6 relevant times, Plaintiff was enrolled in CLEAR.

7 8. Defendant ALCLEAR is a Delaware corporation with its headquarters, upon
8 information and belief, located in New York, NY. It is the parent technology company that owns
9 and operates CLEAR, a biometric secure identity platform.

10 9. The true names and capacities of Defendants, whether individual, corporate,
11 associate, or otherwise, sued herein as DOES 1 through 10, inclusive, are currently unknown to
12 Plaintiff, who therefore sues Defendants by such fictitious names. Plaintiff is informed and
13 believes and based thereon alleges that each of the Defendants designated herein as a DOE is
14 legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek
15 leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
16 designated hereinafter as DOES when such identities become known.

17 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
19 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
20 Defendant are legally attributable to the other Defendants.

21 **IV.**

22 **FACTUAL BACKGROUND**

23 11. Defendants operate CLEAR, a biometric secure identity platform most known
24 for its expedited access through security in airports and stadiums. On the first page of its website,
25 Defendants promote that CLEAR will make you “Feel peace of mind accessing our nationwide
26 network of 65 plus airports, stadiums, and other locations.” The same page instructs customers
27 to provide their name, date of birth, and an email.

28 12. The second page requests payment information and acceptance of CLEAR’s

1 Terms and Conditions. When both are submitted, customers are then charged \$179.00 for one
 2 year of access to CLEAR¹. Accepting CLEAR's Terms and Conditions can be done by checking
 3 a box and clicking "submit," without reading or scrolling through any term.

4 13. Plaintiff paid the yearly fee in December 2019, then on March 16, 2020, as the
 5 coronavirus pandemic spread throughout the United States, Defendants closed its CLEAR
 6 platforms.

7 14. As of date, Defendants have not issued/offered refunds or any other type of credit.
 8 By not doing so, Defendants are able to keep tens of millions of dollars.

9 IV.

10 CLASS DEFINITION AND ALLEGATIONS

11 15. Pursuant to California Code of Civil Procedure 382, Plaintiff brings this action on
 12 behalf of herself and on behalf of all members of the following class and subclass of similarly
 13 situated individuals (hereinafter collectively "Class members"):

14 Class:

15 All consumers in the United States who paid usage fees to Defendants for CLEAR
 16 from March 17, 2019 to a date to be determined.

17 California Subclass:

18 All consumers in California who paid usage fees to Defendants for CLEAR from
 19 March 17, 2019 to a date to be determined.

20 16. Excluded from the Class members are (1) Defendants, each of its corporate parents
 21 subsidiaries and affiliates, officers and directors, and any entity in which Defendants has a
 22 controlling interest; (2) persons who properly and timely request to be excluded; and (3) the legal
 23 representatives, successors, or assigns of any such excluded person or entities.

24 17. **Numerosity.** The Class members consists of thousands, if not hundreds of
 25 thousands, of CLEAR customers and is thus so numerous that joinder of all members is
 26 impractical. Although the exact number of members is currently unknown to Plaintiff, the
 27 identities and addresses of the Class members can be readily determined from business records

28 ¹ First page of Defendants website displays "CLEAR \$15/month."

1 maintained by Defendants.

2 **18. Typicality.** Plaintiff's claims are typical of those belonging to Class members and
3 stem from Defendants' improper and illegal practices as alleged in this complaint. Plaintiff is
4 advancing the same claims and legal theories on behalf of herself and all members of the Class.

5 **19. Common questions of law and fact predominate** over any individualized
6 questions affecting Class members. Such questions include, but not limited to:

- 7 a. Whether the claims discussed above are true, misleading, or reasonably
8 likely to deceive;
- 9 b. Whether Defendant engaged in false or misleading advertising
- 10 c. Whether Plaintiff and Class members are entitled to declaratory relief;
- 11 d. Whether Plaintiff and Class members are entitled to injunctive or other
12 equitable relief;
- 13 e. Whether Defendants' alleged conduct violates public policy; and
- 14 f. Whether Plaintiff and Class members have sustained monetary loss
15 and the proper measure of that loss.

16 **20. Adequacy of Representation.** Plaintiff will fairly and adequately protect the
17 interests of the members of the Class members. Plaintiff has retained highly competent counsel
18 and experienced class action attorneys to represent her interests and that of the Class members.
19 Plaintiff and her counsel have the financial resources to adequately and vigorously litigate this
20 class action. Plaintiff has no adverse or antagonistic interests to those of the Class members.
21 Plaintiff is willing and prepared to serve the Court and the Class members in a representative
22 capacity with all of the obligations and duties material thereto and is determined to diligently
23 discharge those duties by vigorously seeking the maximum possible recovery for Class members.

24 **21. Superiority.** A class action is superior to other available methods for the fair and
25 efficient adjudication of this controversy since individual joinder of all Class members is
26 impractical. The injuries suffered by individual Class members are, though important to them,
27 relatively small compared to the burden and expense of individual prosecution needed to address
28

1 Defendants' conduct. Furthermore, even if Class members could afford such individualized
 2 litigation, the court system could not. Individualized litigation would create the danger of
 3 inconsistent or contradictory judgments arising from the same set of facts. Individualized
 4 litigation would also increase the delay and expense to all parties and the court system from the
 5 issues raised by this action. By contrast, the class action device provides the benefits of
 6 adjudication of these issues in a single proceeding, economies of scale, and comprehensive
 7 supervision by a single court, and presents no unusual management difficulties under the
 8 circumstances here.

9 22. Plaintiff cannot be certain of the form and manner of a proposed notice to Class
 10 members until the Class is finally defined and discovery is completed regarding the identity of
 11 Class members. Plaintiff anticipates, however, that notice by mail or email will be given to Class
 12 members who can be identified specifically. In addition, notice may be published in appropriate
 13 publications, on the Internet, in press releases and in similar communications in a way that is
 14 targeted to reach class members. The cost of notice, after class certification, trial, or settlement
 15 before trial, should be borne by Defendant.

16 23. Unless a Class is certified, Defendant will retain monies received as a result of its
 17 conduct that were taken from Plaintiff and Class members. Unless a Class-wide injunction is
 18 issued, Defendant will continue to commit the violations alleged, and the members of the Class
 19 and the general public will continue to be deceived

20 24. Plaintiff reserves the right to modify or amend the definition of the proposed Class
 21 at any time before the Class is certified by the Court.

22 **VI.**
 23 **CAUSES OF ACTION**

24 **First Cause of Action**

25 Violation of California Consumer Legal Remedies Act
 California Civil Code §§ 1750 (injunctive relief only)

26 25. Plaintiff repeats and incorporates herein by reference every allegation set forth
 27 above, as though fully set forth herein.

26. Plaintiff brings this claim individually and on behalf of the proposed Class members against Defendant.

27. Plaintiff and Class members are consumers, as defined by California Civil Code §1761(d), who paid fees for use of Defendants' CLEAR services for personal purposes. Defendants' CLEAR program is a service within the meaning of California Civil Code §1761(b).

28. Defendants' retention of Plaintiff's and Class members' entire enrollment fee (\$179.00) without providing full year of service is an unfair business practice in violation of California Consumer Legal Remedies Act.

29. Plaintiff and the Class members acted reasonably when they enrolled and paid for CLEAR expecting a full year of service. Plaintiff and the Class suffered injuries caused by Defendant because they have been deprived full value of fully paid service.

30. Pursuant to California Civil Code §1782(d), Plaintiffs and the Class seek a Court order enjoining the above-described wrongful acts and practices of Defendant.

31. Pursuant to California Civil Code §1780(d), attached hereto as Exhibit "A" is the affidavit showing that this action has been commenced in the proper forum

32. WHEREFORE, Plaintiff, and the Class members she seeks to represent, request relief as described herein and below

Second Cause of Action

Violation of Unfair Competition Law
(Bus. & Prof. Code, §§ 17200 *et. Seq.*)

33. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

34. Plaintiff brings this claim individually and on behalf of the Class members.

35. Business & Professions Code Section 17200 provides:

“As used in this chapter, unfair competition shall mean and include any unlawful, *unfair* . . . business act . . .” (Emphasis added.)

36. Defendants' retention of the entire yearly fee without providing a full year service as set forth above constitute unlawful and/or unfair business acts or practices.

37. The actions of Defendants, as alleged within this Complaint, constitute unlawful and unfair within the meaning of Business and Professions Code section 17200, *et seq.*

38. Plaintiff and Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein.

39. As a direct and proximate result of the unfair business practices of Defendants, Plaintiff, individually and on behalf of all Class members, are entitled to a refund or proportional refund as a result of the unfair business acts and practices described herein.

40. WHEREFORE, Plaintiff and the Class members she seeks to represent request relief as described herein and below.

Third Cause of Action

Violation of California's False Advertising Law,
California Business & Professions Code §§17500, *et. seq.*)

41. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

42. Plaintiff brings this claim individually and on behalf of the Class members.

43. California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*, makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, ... in any advertising device ... or in any other manner or means whatever, including over the Internet, any statement, concerning ... personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

44. Defendants engage(d) in a practice of charging customers a yearly enrollment fee even after CLEAR closed, consequently, denying access to Plaintiff and the Class members.

45. Defendants' national advertising and marketing of CLEAR as being accessible at 65 plus airports, stadiums, and other venues nationwide misrepresented and/or omitted the true content and nature of Defendants' services. Defendants' advertisements and inducements were made in California and come within the definition of advertising as contained in Bus. & Prof. Code § 17500, *et seq.* in that the promotional materials were intended as inducements to enroll in

1 CLEAR, and are statements disseminated by Defendant to Plaintiff and Class members. Defendant
2 knew that these statements were inaccurate and misleading.

3 46. Defendants' advertising that CLEAR is available at 65 plus airports, stadiums, and
4 other venues nationwide, and that its customers would have access to it upon paying a fee is false
5 and misleading to a reasonable consumer, including Plaintiff, because Defendant in fact closed
6 CLEAR while continuing to charge customers for access.

7 47. Defendant violated § 17500, *et seq.* by misleading Plaintiff and Class members to
8 believe that they would be charged fees only when they have access to CLEAR.

9 48. Defendant knew or should have known, through the exercise of reasonable care that
10 its advertising of CLEAR as being at 65 plus airports, stadiums, and other venues nationwide is
11 false and misleading. Further, Defendant knew or should have known that it was breaching its
12 contracts with its customers and fraudulently charging fees when it continued charging fees while
13 CLEAR was closed.

14 49. Plaintiff and Class members lost money or property as a result of Defendants'
15 violation because (a) they would not have enrolled in CLEAR absent Defendants' representations
16 and omission of a warning that it would continue charging customers' credit cards and debit cards
17 while CLEAR nationwide are closed; (b) they would not have purchased or paid for CLEAR on
18 the same terms absent Defendants' representations and omissions; (c) they paid a price premium
19 for CLEAR based on Defendants' misrepresentations and omissions; and (d) CLEAR did not have
20 the characteristics, benefits, or quantities as promised.

21 **Fourth Cause of Action**

22 **Money had and Received**

23 50. Plaintiff repeats and incorporates herein by reference every allegation set forth
24 above, as though fully set forth herein.

25 51. Plaintiff brings this claim individually and on behalf of the Class members.

26 52. Defendant received enrollment fees that were intended to be used for the benefit of
27 Plaintiff and the Class members. Defendant did not use those membership fees for the benefit of
28 Plaintiff and the Class members and has not returned any of the wrongfully obtained money.

1 53. WHEREFORE, Plaintiff, and the Class members she seeks to represent, request
2 relief as described herein and below.

3 **Fifth Cause of Action**
4 **Unjust Enrichment**

5 54. Plaintiff repeats and incorporates herein by reference every allegation set forth
6 above, as though fully set forth herein.

7 55. Plaintiff brings this claim individually and on behalf of the Class members.

8 56. Plaintiff and Class members conferred benefits on Defendant by paying its yearly
9 enrollment fee.

10 57. Defendant has knowledge of such benefits.

11 58. Defendant has been unjustly enriched in retaining the revenues derived from
12 Plaintiff and Class members' enrollment fees without providing the expected full year service.

13 59. Retention of Plaintiff's and Class members yearly access fees under these
14 circumstances is unjust and inequitable because Defendant is not providing a full year of CLEAR
15 services.

16 60. Defendant retaining the entire yearly enrollment fee injures Plaintiff and Class
17 members because they do not have access to Defendant service for a full year.

18 61. Because Defendants' retention of the non-gratuitous benefits conferred on it by
19 Plaintiff and Class members is unjust and inequitable, Defendant must pay restitution to Plaintiff
20 and members of the Class for Defendants' unjust enrichment, in an amount to be determined at
21 trial

22 62. WHEREFORE, Plaintiff, and the Class she seeks to represent, request relief as
23 described herein and below.

24 //

25 //

26 //

27 //

28 //

VII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

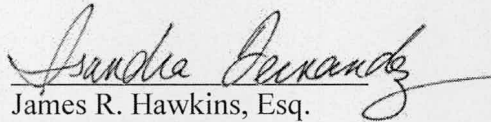
1. Certifying the Class and California Subclass as requested and naming Plaintiff as representative of the Class and Plaintiff's attorneys as Class Counsel to represent the Class members;
2. Award declaring that Defendants' conduct violates the statutes and laws referenced herein;
3. For an award finding in favor of Plaintiff and the Class members on all counts asserted herein;
4. For compensatory damages in amounts to be determined by the Court and/or jury;
5. For prejudgment interest on all amounts awarded;
6. For an order of restitution and all other forms of equitable monetary relief;
7. For injunctive relief as pleaded or as the Court may deem proper;
8. For an order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit; and
9. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

Dated: May 19, 2020

JAMES HAWKINS, APLC


James R. Hawkins, Esq.
Isandra Y. Fernandez, Esq.
Attorneys for Plaintiff
MEREDITH MEAD