

1 JAMES T. HANNINK (131747)
jhannink@sdlaw.com
2 ZACH P. DOSTART (255071)
zdostart@sdlaw.com
3 DOSTART HANNINK & COVENEY LLP
4180 La Jolla Village Drive, Suite 530
4 La Jolla, California 92037-1474
Tel: 858-623-4200
5 Fax: 858-623-4299

6 Attorneys for Plaintiffs
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO
10

11 ILENE MORENO,
12 CHERYL JAMES-WARD,
13 LARAY PETERSON,
14 ANTHONY GONZALEZ,
HENRY DE LEON, and
15 KYLE LANESEY,
individually and on behalf of all others
similarly situated,

16 Plaintiffs,

17 vs.

18 DISNEY INTERACTIVE STUDIOS, INC.,
19 a California corporation, and DOES 2-50,
20 inclusive,

21 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/07/2020 at 12:38:00 PM
Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

CASE NO. 37-2019-00039785-CU-BT-CTL

CLASS ACTION

SECOND AMENDED COMPLAINT FOR:

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

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

(2) SOLICITATION OF PAYMENT FOR
GOODS NOT ORDERED

[Civ. Code, § 1716];

(3) VIOLATION OF THE CALIFORNIA
CONSUMERS LEGAL REMEDIES ACT

[Civ. Code, § 1750 et seq.]; and

(4) UNFAIR COMPETITION

[Bus. & Prof. Code, § 17200 et seq.].

[IMAGED FILE]

Judge: Hon. Eddie C. Sturgeon
Dept.: C-67

Action Filed: July 30, 2019

Trial Date: None Set

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. This class action complaint alleges that Buena Vista Catalogue Co., d/b/a Disney
3 Movie Club (“Disney”) violates California law in connection with a subscription program operated
4 under the same name, Disney Movie Club (“DMC”).¹ Among other things, Disney enrolls
5 consumers in automatic-renewal or continuous service subscriptions without providing the “clear
6 and conspicuous” disclosures mandated by California law; posts charges to consumers’ credit or
7 debit cards for purported automatic renewal or continuous service subscriptions without first
8 obtaining the consumers’ affirmative consent to an agreement containing the requisite clear and
9 conspicuous disclosures; and solicits payment of money for goods that consumers did not order.
10 This course of conduct violates the California Automatic Renewal Law (Bus. & Prof. Code, § 17600
11 et seq.) (“ARL”), which is part of California’s False Advertising Law; California’s statutory
12 prohibition on soliciting payment for unordered goods or services (Civ. Code, § 1716); the
13 Consumers Legal Remedies Act (Civ. Code, § 1750 et seq.) (“CLRA”); and the Unfair Competition
14 Law (Bus. & Prof. Code, § 17200 et seq.) (“UCL”).

15 **THE PARTIES**

16 2. Plaintiff Ilene Moreno (“Moreno”) is an individual residing in San Diego County,
17 California.

18 3. Plaintiff Cheryl James-Ward (“James-Ward”) is an individual residing in San Diego
19 County, California.

20 4. Plaintiff LaRay Peterson (“Peterson”) is an individual residing in Sacramento
21 County, California.

22 5. Plaintiff Anthony Gonzalez (“Gonzalez”) is an individual residing in Los Angeles
23 County, California.

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26 ¹ The original Complaint in this action identified the named defendant as Disney Interactive Studios,
27 Inc. On January 28, 2020, the Court entered an Order Substituting True Name of Defendant, in
28 which Buena Vista Catalogue Co. (which does business under the fictitious business name “Disney
Movie Club”) was substituted in the place of Disney Interactive Studios, Inc. (ROA# 30.)

1 6. Plaintiff Henry De leon (“De leon”) is an individual residing in Merced County,
2 California.

3 7. Plaintiff Kyle Lanese (“Lanese”) is an individual residing in Los Angeles County,
4 California. Plaintiffs Moreno, James-Ward, Peterson, Gonzalez, De leon, and Lanese are
5 collectively referred to as “Plaintiffs.”

6 8. Plaintiffs are informed and believe and thereon allege that defendant Buena Vista
7 Catalogue Co., d/b/a Disney Movie Club (“Disney”) is a California corporation that does business
8 under the fictitious business name Disney Movie Club, including the marketing and sale of Disney
9 movies and other merchandise.

10 9. Plaintiffs do not know the names of the defendants sued as DOES 2 through 50 but
11 will amend this complaint when that information becomes known. Plaintiffs allege on information
12 and belief that each of the DOE defendants is affiliated with Disney in some respect and is in some
13 manner responsible for the wrongdoing alleged herein, either as a direct participant, or as the
14 principal, agent, successor, alter ego, or co-conspirator of or with one or more of the other
15 defendants. For ease of reference, Plaintiffs will refer to Disney and the DOE defendants
16 collectively as “Defendants.”

17 10. Venue is proper in this judicial district because Defendants do business in this
18 judicial district and a material part of the complained of conduct occurred in this judicial district.

19 **FACTS GIVING RISE TO THIS ACTION**

20 11. Buena Vista Catalogue Co., d/b/a Disney Movie Club, distributes child- and family-
21 oriented movies such as *The Lion King*, *Bambi*, *Beauty and the Beast*, *Toy Story*, and *Peter Pan*.
22 Through the Disney Movie Club, Defendants sell movies to consumers for home use in DVD, Blu-
23 ray, and/or digital code formats. (For the sake of brevity, unless otherwise specified, references
24 herein to “DVDs” encompass movies that are sold in the DVD, Blu-ray, and/or digital code formats.)

25 12. One of the ways Disney generates DVD sales is by offering consumers the
26 opportunity to buy multiple movies for a nominal sum. For example, on one website, Disney
27 advertises “4 MOVIES FOR \$1.” (See <<https://disneymovieclub.go.com/magic>> [as of January 28,
28 2020].) On information and belief, Disney and/or its agents make similar offers through other

1 websites or media.

2 **Ilene Moreno**

3 13. In or about early 2015, while plaintiff Moreno was in San Diego County, she was
4 presented with an offer to purchase five Disney movies for \$1.00. In connection with that offer,
5 Moreno paid the amount of \$1.00.

6 14. At the time Moreno paid the \$1.00, she was unaware that Defendants would treat her
7 purchase as enrollment in a continuous service program called the “Disney Movie Club” and that
8 Defendants thereafter were going to send her additional movies on a recurring basis and post
9 corresponding charges to her debit card.

10 15. After purchasing the five movies in early 2015, plaintiff Moreno began to receive
11 DVDs from Defendants that she did not request or order, and Defendants began to post charges to
12 Moreno’s debit card. Moreno returned movies that were sent to her, and she also contacted Disney
13 to attempt to halt further shipments and to seek refunds for charges that had been posted to her debit
14 card. On information and belief, Disney did not refund charges for movies that Moreno returned.
15 Disney’s customer service staff told Moreno that she was obligated to purchase additional movies.
16 Believing that she had no other option, plaintiff Moreno eventually relented and made additional
17 purchases from Disney, including the purchase of a movie in June 2017 for which Moreno was
18 charged \$36.78.

19 16. If plaintiff Moreno had known that Defendants were going to enroll her in a program
20 under which additional movies would be shipped to her without her request and under which
21 corresponding charges would be posted to her debit card, Moreno would not have purchased any
22 movies in early 2015.

23 17. If plaintiff Moreno had known that she did not have an obligation under California
24 law to purchase additional movies, she would not have purchased any additional movies and would
25 not have paid any money to Defendants.

26 **Cheryl James-Ward**

27 18. In or about October 2018, a set of Disney DVDs was delivered to plaintiff James-
28 Ward at her residence in San Diego County, California, accompanied by a document stating that

1 James-Ward owed money to the Disney Movie Club. Also in October 2018, a charge of \$6.40
2 appeared on plaintiff James-Ward's credit card statement, which reflected that it was a charge by
3 the Disney Movie Club.

4 19. Plaintiff James-Ward did not order or request the DVDs from Defendants; she did
5 not authorize the \$6.40 charge to her credit card; and she did not consent to be enrolled in the Disney
6 Movie Club or to be billed for any movies. Plaintiff James-Ward is informed and believes and
7 thereon alleges that Defendants enrolled her in the Disney Movie Club, even though she never
8 requested to be enrolled.

9 **LaRay Peterson**

10 20. In or about December 2018, Peterson saw an online advertisement by DMC that
11 offered a holiday promotion of five Disney movies for \$1.00. In connection with that offer, Peterson
12 paid the amount of \$1.00 with his debit card.

13 21. At the time Peterson paid the \$1.00, he was unaware that Defendants would treat his
14 purchase as enrollment in a continuous service program called the "Disney Movie Club" and that
15 Defendants thereafter were going to post subsequent charges to his debit card.

16 22. On December 31, 2018, without Peterson's authorization, Defendants posted a
17 charge to Peterson's debit card in the amount of \$33.11 for the Disney Movie Club.

18 23. In or about January 2019, Peterson called Disney and spoke with a DMC
19 representative. At the conclusion of that call, Peterson believed that Disney had cancelled his DMC
20 "membership" and that he would not be subjected to any additional charges.

21 24. On July 1, 2019, without Peterson's authorization, Defendants posted a charge to
22 Peterson's debit card in the amount of \$43.52 for the Disney Movie Club.

23 25. If Peterson had known that Defendants were going to enroll him in a program under
24 which Defendants would post subsequent charges to his debit card, Peterson would not have
25 purchased any movies from Defendants and would not have paid any money to Defendants.

26 **Anthony Gonzalez**

27 26. In February 2020, Gonzalez made what he believed to be a one-time movie purchase
28 from the Disney Movie Club, for which Gonzalez paid a total of \$6.54 with a debit card.

1 27. At the time Gonzalez made that purchase, he was not aware that Defendants would
2 treat the purchase as enrollment in a continuous service program and that Defendants thereafter were
3 going to ship additional movies and post subsequent charges to his debit card.

4 28. On April 15, 2020, without Gonzalez's authorization, Defendants posted a charge to
5 Gonzalez's debit card in the amount of \$31.86 for the Disney Movie Club.

6 29. After Gonzalez noticed that charge, he called DMC to inquire why he had been
7 charged. Gonzalez was told by a DMC supervisor that Gonzalez would need to pay additional
8 money in order to cancel his DMC subscription. Believing that he had no alternative, Gonzalez
9 agreed that DMC could charge \$59.40 to his debit card so that the account could be cancelled.

10 30. If Gonzalez had known that Defendants were going to enroll him in a program under
11 which Defendants would ship additional movies without his request and post charges to his debit
12 card, Gonzalez would not have made any purchase from Defendants in February 2020 and he would
13 not have paid any money to Defendants.

14 **Henry De leon**

15 31. In late 2019, De leon made what he believed to be a one-time movie purchase from
16 the Disney Movie Club, for which De leon paid with a debit card.

17 32. At the time De leon made that purchase, he was not aware that Defendants would
18 treat the purchase as enrollment in a continuous service program and that Defendants thereafter were
19 going to ship additional movies and post subsequent charges to his debit card.

20 33. Thereafter, De leon began to receive DVDs from Defendants that he did not request
21 or order, and Defendants began to post charges to De leon's debit card including, without limitation:
22 \$31.42 (December 5, 2019); \$31.43 (March 22, 2020); \$28.17 (April 3, 2020); \$43.92 (May 9,
23 2020); and \$31.43 (May 9, 2020). De leon did not authorize or consent to any of those charges.
24 De leon sent emails to DMC requesting that no further charges be made, but the charges continued.

25 34. If De leon had known that Defendants were going to enroll him in a program under
26 which Defendants would ship additional movies without his request and post charges to his debit
27 card, De leon would not have made any purchase from Defendants and would not have paid any
28 money to Defendants.

1 **Kyle Lanesev**

2 35. In or about March 2020, Lanesev made what he believed to be a one-time movie
3 purchase from the Disney Movie Club, for which Lanesev paid a total of \$6.54 with a debit card.

4 36. At the time Lanesev made that purchase, he was not aware that Defendants would
5 treat the purchase as enrollment in a continuous service program and that Defendants thereafter were
6 going to ship additional movies and post subsequent charges to his debit card.

7 37. On May 6, 2020, without Lanesev's authorization, Defendants posted a charge to his
8 debit card in the amount of \$31.65 for the Disney Movie Club.

9 38. If Lanesev had known that Defendants were going to enroll him in a program under
10 which Defendants would ship additional movies without his request and post charges to his debit
11 card, Lanesev would not have purchased any movies from Defendants and would not have paid any
12 money to Defendants for the Disney Movie Club.

13 **DISNEY'S BUSINESS PRACTICES**

14 39. As noted above, one of the ways in which Disney generates DVD sales is by offering
15 consumers the opportunity to buy multiple movies for a nominal sum, such as the "4 MOVIES FOR
16 \$1" offer on <<https://disneymovieclub.go.com/magic>> [as of January 28, 2020]. That offer can be
17 used to illustrate Disney's violation of California law. During the relevant period, when a consumer
18 was attracted by that offer and selected movies for purchase, the website walked the consumer
19 through a four-step purchase sequence.

20 40. Step 1 is to set up an account by submitting the consumer's email address and
21 creating a password, as shown below:

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Disney **Movie Club**

1
Account Setup

2
Shipping

3
Payment

4
Confirm

Great movies are only 4 steps away

Email*

Please complete this mandatory field

Password*



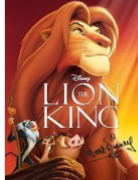

☐ Show Password

Password must be 6-12 characters

CONTINUE

Back

ORDER SUMMARY



Total : \$1.00
Shipping : FREE

41. Step 2 is to fill in the “Shipping” page with the consumer’s name and address information:

Disney **Movie Club**

1
Account Setup

2
Shipping

3
Payment

4
Confirm

Your movies delivered straight to your door

First Name*

Last Name*

Address*

City*

State*



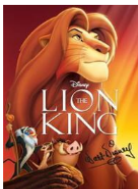

Please Select ▼

ZIP Code*

CONTINUE

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ORDER SUMMARY



Total : \$1.00
Shipping : FREE

42. Step 3 is to complete the “Payment” page by submitting credit card information, including name, credit card number, and expiration date:

Disney Movie Club

①
Account Setup

②
Shipping

③
Payment

④
Confirm

Now we'll need your payment information

Name as it appears on your credit card*

Credit Card Number*

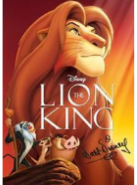

Expiration*
MM YY



☒ Billing Same As Shipping

CONTINUE

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ORDER SUMMARY





Total : \$1.00
Shipping : FREE

43. The fourth and final step of the purchase sequence is to submit the order on the “Confirm” page, shown below. The consumer is told this is the “Last step, and your movies will be on their way!”

Disney Movie Club

①
Account Setup

②
Shipping

③
Payment

④
Confirm

Last step, and your movies will be on the way!

Join now to get 4 movies for \$1.00. As a member, I need to buy 5 movies within the next two years at \$19.95 per movie, plus shipping & processing. About every 4 weeks (up to 13 times a year) we'll announce our hand-picked Featured Title. Plus, you may also receive up to 2 more seasonal Featured Title announcements a year. If you want the Featured Title, do nothing – it will be sent to you automatically. If you want a different movie, or nothing at all, simply provide your instructions by the date indicated. You may cancel your membership any time after fulfilling your purchase commitment.

When you join the Disney Movie Club, you may provide us with your credit card information. You will be charged only for the movies that you order.



☐ By checking this box and clicking Confirm My Order, you agree to the Disney Movie Club [Membership Details](#).



☒ Yes, I would like to receive information, including exciting special promotions and offers from Disney Movie Club and the Walt Disney Family of Companies!

CONFIRM MY ORDER

[Back](#)

ORDER SUMMARY





Total : \$1.00
Shipping : FREE

1 44. When a consumer purchased movies through the sequence depicted above, or
2 through any similar sequence, Defendants enrolled the consumer in a continuous service program
3 called the “Disney Movie Club” and purported to impose on the consumer an obligation to buy
4 additional movies at much higher prices. Thereafter, Defendants send the consumer additional
5 movies on a recurring basis, typically monthly (the “Featured Title”) and post a corresponding
6 charge to the consumer’s credit or debit card, unless the consumer has earlier instructed Defendants
7 to not ship the Featured Title for that particular month.

8 45. When consumers complain that they have received unordered movies and that they
9 have been subjected to unauthorized credit card or debit card charges, Defendants justify their
10 actions with the explanation that the monthly shipments and the corresponding credit or debit card
11 charges are terms to which the consumer agreed when making the initial purchase. For that
12 argument, Defendants rely on the faint text in tiny font contained in the scroll box on the “Confirm”
13 page. In its entirety (after scrolling), that text states as follows:

14 Join now to get 4 movies for \$1.00. As a member, I need to buy 5 movies within the next two years at \$19.95 per movie, plus
15 shipping & processing. About every 4 weeks (up to 13 times a year) we'll announce our hand-picked Featured Title. Plus, you
16 may also receive up to 2 more seasonal Featured Title announcements a year. If you want the Featured Title, do nothing – it
17 will be sent to you automatically. If you want a different movie, or nothing at all, simply provide your instructions by the date
18 indicated. You may cancel your membership any time after fulfilling your purchase commitment.

19 When you join the Disney Movie Club, you may provide us with your credit card information. You will be charged only for
20 the movies that you order (including Featured Title shipments) plus shipping and processing. We will not charge your credit
21 card until the date of shipment. If you are unable to meet your commitment within your commitment period, your credit card
22 may be charged for the value of the 4 reduced-priced titles you have received. This amount is dependent upon your initial sign
23 up offer and the price of your introductory movies.

24 Your satisfaction is 100% guaranteed! If you are not completely satisfied with your introductory titles, simply return them
25 within 10 days of receipt along with written notice informing us that you want to cancel your membership. We will refund any
26 money you might have sent, including shipping and processing costs, as part of our no-risk guarantee.

27 This offer is limited to customers residing in the contiguous United States and may be withdrawn at any time. Disney Movie
28 Club cannot ship to APOs or FPOs. Limit: one membership per household. Must be 18 years of age or older to join. Applicable
sales tax will be applied to orders shipped to select states.

This offer may not be combined with any other promotional offer, including coupons and rebates.

All applications to join the Disney Movie Club are subject to review. We reserve the right to request additional information, to
reject any application, or to cancel any membership. We reserve the right to alter or end this offer at any time.

All titles are subject to availability.

46. When Disney enrolls a consumer in the Disney Movie Club, Disney thereafter
proceeds on the basis that the consumer has agreed to all of the provisions set forth in that scroll
box, including a minimum purchase obligation, recurring shipments, credit (or debit) card charges,
and that such agreement continues until the consumer cancels.

1 47. For the reasons explained below, the purported agreement to purchase additional
2 movies and the purported right for Disney to post charges to the consumer's credit or debit card as
3 payment for such additional movies are invalid and unenforceable under California law.
4 Furthermore, under California law, all movies subsequently shipped are deemed to be a "free gift"
5 to the consumer, without any obligation to return them or pay for them. In addition, during the
6 relevant period, Defendants have violated consumers' rights by shipping DVDs to consumers who
7 did not order them, along with a statement or invoice stating that the consumer owes money to the
8 Disney Movie Club.

9 48. This action seeks monetary remedies on behalf of affected California consumers, and
10 injunctive relief.

11 **SUMMARY OF PERTINENT CALIFORNIA LAW**

12 49. The California Automatic Renewal Law ("ARL") is codified at Business and
13 Professions Code § 17600 et seq., as part of the False Advertising Law. (Unless otherwise indicated,
14 all further statutory references are to the Business and Professions Code.) The ARL seeks to ensure
15 that, before there can be a legally-binding automatic renewal or continuous service arrangement,
16 there must first be clear and conspicuous disclosure of certain terms and conditions and affirmative
17 consent by the consumer. To that end, § 17602(a) makes it unlawful for any business making an
18 automatic renewal offer or a continuous service offer to a consumer in California to do any of the
19 following:

20 a. Fail to present the automatic renewal offer terms or continuous service offer
21 terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled
22 and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the
23 request for consent to the offer. (§ 17602(a)(1).) For this purpose, "clear and conspicuous" means
24 "in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text
25 of the same size, or set off from the surrounding text of the same size by symbols or other marks, in
26 a manner that clearly calls attention to the language." (§ 17601(c).) "In the case of an audio
27 disclosure, 'clear and conspicuous' ... means in a volume and cadence sufficient to be readily
28 audible and understandable." (*Ibid.*) The terms that are required to be disclosed in the "clear and

1 conspicuous” manner include: (1) that the subscription or purchasing arrangement will continue
2 until the consumer cancels, (2) a description of the cancellation policy that applies to the offer,
3 (3) the recurring charges that will be charged to the consumer’s credit or debit card or payment
4 account, (4) the length of the automatic renewal term or that the service is continuous, and (5) the
5 minimum purchase obligation, if any. (§ 17601(b).) “Continuous service” is defined to mean “a
6 plan or arrangement in which a subscription or purchasing arrangement continues until the consumer
7 cancels the service.” (§ 17601(e).)

8 b. Charge the consumer’s credit or debit card or the consumer’s account with a
9 third party for an automatic renewal or continuous service without first obtaining the consumer’s
10 affirmative consent to the agreement containing clear and conspicuous disclosure of the automatic
11 renewal offer terms or continuous service offer terms. (§ 17602(a)(2).)

12 c. Fail to provide an acknowledgment that includes clear and conspicuous
13 disclosure of the automatic renewal or continuous service offer terms, cancellation policy, and
14 information regarding how to cancel in a manner that is capable of being retained by the consumer.
15 (§ 17602(a)(3).) Section 17602(b) requires that the acknowledgment specified in § 17602(a)(3)
16 include a toll-free telephone number, electronic mail address, or other mechanism for cancellation
17 that is “cost-effective, timely, and easy-to-use.”

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

27 51. Civil Code § 1716 sets forth California’s statutory prohibition of the practice of
28 soliciting payment of money by means of a written statement or invoice for goods that were not

1 ordered.

2 52. The Consumers Legal Remedies Act, Civil Code § 1750 et seq., enumerates specific
3 business practices that are deemed to be unfair.

4 53. The Unfair Competition Law, Bus. & Prof. Code § 17200 et seq., proscribes business
5 practices that are unlawful, unfair, fraudulent, or that constitute false or misleading advertising.

6 **CLASS ACTION ALLEGATIONS**

7 54. Plaintiffs bring this lawsuit as a class action under Code of Civil Procedure § 382 on
8 behalf of the following Class: “All California residents who, between July 30, 2015 and December
9 4, 2020, were enrolled by Disney in the Disney Movie Club. Excluded from the Class are all
10 employees of Disney, all employees of Plaintiffs’ counsel, and the judicial officers to whom this
11 case is assigned.”

12 55. Ascertainability. The members of the Class may be ascertained by reviewing records
13 in the possession of Defendants, their subsidiaries or affiliated entities, and/or third parties,
14 including without limitation Defendants’ marketing, promotion, customer, order, and billing
15 records.

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

1 regarding a mechanism for cancellation that is cost-effective, timely, and easy to use; (5) whether
2 Defendants solicit payment of money for goods not ordered by means of a written statement,
3 invoice, or other writing that reasonably could be considered a bill, invoice, or statement of account;
4 (6) Defendants' record-keeping practices; (7) the appropriate remedies for Defendants' conduct; and
5 (8) the appropriate terms of an injunction.

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

9 58. Typicality and Adequacy. Plaintiffs' claims are typical of the claims of the Class
10 members. Plaintiffs allege on information and belief that Defendants enrolled Plaintiffs and Class
11 members in an automatic renewal or continuous service program without disclosing all terms
12 required by law, and without presenting such terms in the requisite "clear and conspicuous" manner;
13 charged Class members' credit cards, debit cards, or third-party accounts without first obtaining the
14 Class members' affirmative consent to an agreement containing clear and conspicuous disclosure
15 of automatic renewal or continuous service offer terms in the manner required by California law;
16 failed to provide the requisite acknowledgment; and solicited money by means of bills or invoices
17 for good that were not ordered. Plaintiffs have no interests that are adverse to those of the other
18 Class members, and Plaintiffs will fairly and adequately protect the interests of the Class members.

19 59. Superiority. A class action is superior to other methods for resolving this
20 controversy. Because the amount of restitution to which each Class member may be entitled is low
21 in comparison to the expense and burden of individual litigation, it would be impracticable for Class
22 members to redress the wrongs done to them without a class action forum. Furthermore, on
23 information and belief, Class members do not know that their legal rights have been violated. If
24 Defendants are not enjoined from continuing their business practices as alleged herein, they will
25 continue to violate the rights of California consumers. Class certification would also conserve
26 judicial resources and avoid the possibility of inconsistent judgments.

27 60. Defendants Have Acted on Grounds Generally Applicable to the Class. Defendants
28 have acted on grounds that are generally applicable to the members of the Class, thereby making

1 appropriate final injunctive relief and/or declaratory relief with respect to the Class as a whole.

2 **FIRST CAUSE OF ACTION**

3 False Advertising - Violation of the California Automatic Renewal Law

4 (Bus. & Prof. Code, §§ 17600 et seq. and 17535)

5 61. Plaintiffs incorporate the allegations of paragraphs 1-60 as though set forth herein.

6 62. Plaintiffs are informed and believe and thereon allege that, during the applicable
7 statute of limitations period, Defendants have enrolled consumers, including Plaintiffs and Class
8 members, in an automatic renewal or continuous service program and have violated the ARL by,
9 among other things, (a) failing to present automatic renewal or continuous service offer terms in a
10 clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in
11 visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to a request
12 for consent to the offer; (b) charging the consumer's credit card, debit card, or third-party payment
13 account for an automatic renewal or continuous service without first obtaining the consumer's
14 affirmative consent to an agreement containing clear and conspicuous disclosure of automatic
15 renewal offer terms or continuous service offer terms; and (c) failing to provide an acknowledgment
16 that includes clear and conspicuous disclosure of automatic renewal or continuous service offer
17 terms, cancellation policy, and information regarding a method of cancellation that is cost-effective,
18 timely, and easy to use, all in violation of § 17602(a) and (b).

19 63. As a result of Defendants' statutory violations, any automatic renewal or continuous
20 service offers made or attempted to be made by Defendants to Plaintiffs and Class members were
21 in violation of law and, therefore, such offers or attempted offers were not accepted by Plaintiffs or
22 Class members and could not and did not give rise to an agreement for automatic renewal or
23 continuous service regarding Disney DVDs or the Disney Movie Club.

24 64. As a result of Defendants' conduct, pursuant to §§ 17535 and 17603, Plaintiffs and
25 Class members are entitled to restitution of all amounts paid to Defendants during the relevant period
26 in connection with the Disney Movie Club.

65. Pursuant to § 17535, on behalf of themselves, the Class, and for the benefit of the general public of the State of California, Plaintiffs seek an injunction that prohibits Defendants from violating the ARL.

SECOND CAUSE OF ACTION

Solicitation of Payment for Unordered Goods

(Civ. Code, § 1716)

66. Plaintiffs incorporate the allegations of paragraphs 1-60 as though set forth herein.

67. Plaintiffs are informed and believe and thereon allege that, in connection with the Disney Movie Club, Defendants sent to Plaintiffs and Class members invoices, bills, or other written statements for goods that were not ordered, in violation of Civil Code § 1716(b).

68. Plaintiffs and Class members have been damaged as a result of Defendants' violation of Civil Code § 1716.

THIRD CAUSE OF ACTION

Violation of the California Consumers Legal Remedies Act

(Civ. Code, § 1750 et seq.)

69. Plaintiffs incorporate the allegations of paragraphs 1-60 as though set forth herein.

70. Plaintiffs and Class members are “consumers” within the meaning of Civil Code § 1761(d) in that they sought or acquired Defendants’ goods and/or services for personal, family, or household purposes.

71. Defendants' movie subscriptions and DVDs are "goods" or "services" within the meaning of Civil Code § 1761, subdivisions (a) and (b).

72. The purchase or receipt of movies by Plaintiffs and Class members are “transactions” within the meaning of Civil Code section 1761(e).

73. Defendants have violated Civil Code § 1770, subdivisions (a)(5), (9), (13), (14) and (17), by representing that Defendants' goods or services have certain characteristics that they do not have; advertising goods and services with the intent not to sell them as advertised; making false and misleading statements of fact concerning the reasons for, existence of and amounts of price reductions; representing that a transaction confers or involves rights, remedies, or obligations that it

1 does not have or involve, or that are prohibited by law; and by representing that the consumer will
2 receive a discount or other economic benefit, if the earning of the benefit is contingent on an event
3 to occur subsequent to the consummation of the transaction.

4 74. Defendants' conduct alleged herein was undertaken knowingly, willfully, and with
5 oppression, fraud, and/or malice, within the meaning of Civil Code § 3294(c).

6 75. Pursuant to Civil Code § 1780(a)(2), on behalf of the Class and also for the benefit
7 of the general public of the State of California, Plaintiffs seek an injunction that prohibits Defendants
8 from violating the CLRA.

9 76. On August 8, 2019, Plaintiffs' counsel sent a letter pursuant to Civil Code § 1782(a)
10 to Disney through its agent for service of process (the "CLRA Letter"). The CLRA Letter provided
11 notice of Disney's alleged violations of the CLRA and demanded that within 30 days Disney take
12 steps to cure its improper automatic-renewal and continuous service subscription practices. Disney
13 did not comply with the CLRA Letter within the statutory 30-day period. Accordingly, pursuant to
14 Civil Code § 1780(a)(3), Plaintiffs have fulfilled the statutory prerequisite to seek monetary
15 damages for violations of the CLRA.

16 **FOURTH CAUSE OF ACTION**

17 Violation of the California Unfair Competition Law

18 (Bus. & Prof. Code, § 17200 et seq.)

19 77. Plaintiffs incorporate the foregoing allegations as though set forth herein.

20 78. The Unfair Competition Law defines unfair competition as including any unlawful,
21 unfair, or fraudulent business act or practice; any unfair, deceptive, untrue, or misleading
22 advertising; and any act of false advertising under § 17500. (Bus. & Prof. Code, § 17200.)

23 79. In the course of conducting business in California within the applicable limitations
24 period, Defendants committed unlawful, unfair, and/or fraudulent business practices, and engaged
25 in unfair, deceptive, untrue, or misleading advertising, by, inter alia and without limitation:
26 (a) failing to present the terms of automatic renewal or continuous service offers in a clear and
27 conspicuous manner before a subscription or purchasing agreement is fulfilled and in visual
28 proximity, or in the case of an offer conveyed by voice, in temporal proximity, to a request for

1 consent to the offer, in violation of § 17602(a)(1); (b) charging the consumer's credit card, debit
2 card, or third-party payment account in connection with an automatic renewal or continuous service
3 without first obtaining the consumer's affirmative consent to an agreement containing clear and
4 conspicuous disclosures of automatic renewal offer terms or continuous service offer terms, in
5 violation of § 17602(a)(2); (c) failing to provide an acknowledgment that includes clear and
6 conspicuous disclosure of all required automatic renewal or continuous service offer terms, the
7 cancellation policy, and information regarding a cancellation mechanism that is cost-effective,
8 timely, and easy-to-use, in violation of § 17602(a)(3) and § 17602(b); (d) representing that
9 Defendants' goods or services have certain characteristics that they do not have, in violation of Civil
10 Code § 1770(a)(5); (e) advertising goods and services with the intent not to sell them as advertised,
11 in violation of Civil Code § 1770(a)(9); (f) making false and misleading statements of fact
12 concerning the reasons for, existence of and amounts of price reductions, in violation of Civil Code
13 § 1770(a)(13); (g) representing that a transaction confers or involves rights, remedies, or obligations
14 that it does not have or involve, or that are prohibited by law, in violation of Civil Code
15 § 1770(a)(14); (h) representing that the consumer will receive a rebate, discount, or other economic
16 benefit, if the earning of the benefit is contingent on an event to occur subsequent to the
17 consummation of the transaction, in violation of Civil Code § 1770(a)(17); and/or (i) soliciting
18 payment of money for goods that were not ordered, by means of a written statement, invoice, or
19 other writing that reasonably could be considered a bill, invoice, or statement of account due.
20 Plaintiffs reserve the right to identify other acts or omissions that constitute unlawful, unfair or
21 fraudulent business acts or practices, unfair, deceptive, untrue or misleading advertising, and/or
22 other prohibited acts.

23 80. Defendants' acts and omissions as alleged herein violate obligations imposed by
24 statute, are substantially injurious to consumers, offend public policy, and are immoral, unethical,
25 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits
26 attributable to such conduct.

27 81. There were reasonably available alternatives to further Defendants' legitimate
28 business interests, other than the conduct described herein.

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

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

84. Pursuant to § 17203, Plaintiffs and the members of the Class are entitled to restitution of all amounts paid to Defendants during the relevant period in connection with the Disney Movie Club.

85. Pursuant to § 17203, on behalf of the Class, and also for the benefit of the general public of the State of California, Plaintiffs seek an injunction that prohibits Defendants from violating the UCL.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

On the First Cause of Action (False Advertising - Violation of the ARL):

1. For restitution;
2. For injunctive relief, including a public injunction for the benefit of the People of the State of California;

On the Second Cause of Action (Solicitation of Payment for Unordered Goods):

3. For monetary damages;

On the Third Cause of Action (Violation of the CLRA):

4. For restitution;
5. For monetary damages;
6. For punitive damages;
7. For injunctive relief, including a public injunction for the benefit of the People of the State of California;

8. For reasonable attorneys' fees, pursuant to Civil Code § 1780(e);

On the Fourth Cause of Action (Unfair Competition):

9. For restitution;

10. For injunctive relief, including a public injunction for the benefit of the People of the State of California;

On All Causes of Action:

11. For reasonable attorneys' fees, pursuant to Code of Civil Procedure § 1021.5;

12. For costs of suit;

13. For pre-judgment interest; and

14. For such other relief as the Court may deem just and proper.

Dated: December 7, 2020

DOSTART HANNINK & COVENEY LLP


ZACH P. DOSTART
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

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

Dated: December 7, 2020

DOSTART HANNINK & COVENEY LLP


ZACH P. DOSTART
Attorneys for Plaintiffs

932001.2

1 **PROOF OF SERVICE**

2 ***Moreno, et al. v. Disney Interactive Studios, Inc., Case No. 37-2019-00039785-CU-BT-CTL***

3 **STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

4 At the time of service, I was over 18 years of age and **not a party to this action**. I am
5 employed in the County of San Diego, State of California. My business address is 4180 La Jolla
6 Village Drive, Suite 530, La Jolla, CA 92037-1474.

7 On December 7, 2020, I served true copies of the following document described as

8 **SECOND AMENDED COMPLAINT**

9 on the interested parties in this action as follows:

10 Amy P. Lally
11 alally@sidley.com
12 SIDLEY AUSTIN LLP
13 1999 Avenue of the Stars, 17th Floor
14 Los Angeles, CA 90067
15 Tel: (310) 595-9500
16 Fax: (310) 595-9501


Celia Spalding
cspalding@sidley.com
SIDLEY AUSTIN LLP
555 West Fifth Avenue
Los Angeles, CA 90013
Tel: (213) 896-6000
Fax: (213) 896-6600

14 *Counsel for Defendant*

Counsel for Defendant

15 **BY E-MAIL:** Based on a court order or an agreement of the parties to accept service by e-
16 mail or electronic transmission, I caused the document to be sent from e-mail address
17 ldozier@sdlaw.com to the persons at the e-mail addresses listed above. I did not receive, within a
18 reasonable time after the transmission, any electronic message or other indication that the
19 transmission was unsuccessful.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct. Executed on December 7, 2020, at La Jolla, California.

22
23 
24 Lisa A. Dozier