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

10

11 YOLANDA DILORENZO, individually and
12 on behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 BITDEFENDER INC., a Florida
corporation;
16 AVANGATE, INC., a Delaware
corporation;
17 BITDEFENDER S.R.L., a Romanian
corporation;
18 AVANGATE B.V., a Netherlands private
19 limited company;
20 and DOES 3-50, inclusive,

21 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/26/2021 at 02:31:00 PM
Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

CASE NO. 37-2019-00066655-CU-BT-CTL

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

(1) FALSE ADVERTISING - VIOLATION OF
THE CALIFORNIA AUTOMATIC RENEWAL
LAW [Bus. & Prof. Code, § 17600 et seq. and
§ 17535];

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

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

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. This class action complaint alleges that defendants Bitdefender and Avangate violate
3 California law in connection with the sale of computer- and Internet-related software. Defendants
4 solicit orders for computer software and related services that purport to be for a fixed period of time
5 (e.g., one year), whereas upon receipt of an order, Defendants enroll the consumer in a program
6 under which the consumer’s credit card, debit card, or payment account will be charged for
7 subsequent periods. This course of conduct violates the California Automatic Renewal Law (Bus.
8 & Prof. Code, § 17600 et seq.) (“ARL”), which is part of California’s False Advertising Law, which
9 requires companies that make automatic renewal offers to consumers in California first provide
10 “clear and conspicuous” disclosure of the automatic renewal offer terms and which prohibits those
11 companies from posting charges to consumers’ credit or debit cards unless they first obtain the
12 consumers’ affirmative consent to an agreement containing the requisite clear and conspicuous
13 disclosures. Defendants’ conduct also violates the Consumers Legal Remedies Act (Civ. Code,
14 § 1750 et seq.) (“CLRA”) and the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.)
15 (“UCL”).

16 **THE PARTIES**

17 2. Plaintiff Yolanda DiLorenzo (“DiLorenzo” or “Plaintiff”) is an individual residing
18 in San Diego County, California.

19 3. Plaintiff is informed and believes and thereon alleges that defendant Bitdefender Inc.
20 is a Florida corporation that does business in San Diego County, including the marketing and sale
21 of antivirus software and other computer- or Internet-related software.

22 4. Plaintiff is informed and believes and thereon alleges that defendant Bitdefender
23 S.R.L. is a corporation organized under the laws of Romania and is the parent company of
24 Bitdefender Inc. Bitdefender S.R.L. was formerly identified in Plaintiff’s Complaint as fictitious
25 defendant DOE 1. Bitdefender Inc. and Bitdefender S.R.L. are collectively referred to as
26 “Bitdefender.”

27 5. Plaintiff is informed and believes and thereon alleges that defendant Avangate, Inc.
28 is a Delaware corporation that does business under the fictitious business name 2Checkout.com, and

1 that Avangate, Inc. does business in San Diego County, including the marketing and sale of
2 Bitdefender software.

3 6. Plaintiff is informed and believes and thereon alleges that defendant Avangate B.V.
4 is a private limited company organized under the laws of The Netherlands and is the parent company
5 of Avangate, Inc. Avangate B.V. was formerly identified in Plaintiff’s Complaint as fictitious
6 defendant DOE 2. Avangate, Inc. and Avangate B.V. are collectively referred to as “Avangate.”

7 7. Plaintiff does not know the names of the defendants sued as DOES 3 through 50 but
8 will amend this complaint when that information becomes known. Plaintiff alleges on information
9 and belief that each of the DOE defendants is affiliated in some respect with one or more of the
10 named defendants and is in some manner responsible for the wrongdoing alleged herein, either as a
11 direct participant, or as the principal, agent, successor, alter ego, or co-conspirator of or with one or
12 more of the other defendants. For ease of reference, Plaintiff will refer to the named defendants and
13 the DOE defendants collectively as “Defendants.”

14 **VENUE**

15 8. Venue is proper in this judicial district because Defendants do business in this
16 judicial district and a material part of the complained of conduct occurred in this judicial district.

17 **SUMMARY OF APPLICABLE LAW**

18 9. In 2009, the California Legislature passed Senate Bill 340, which took effect on
19 December 1, 2010 as Article 9 of Chapter 1 of the False Advertising Law. (Bus. & Prof. Code,
20 § 17600 *et seq.* (the California Automatic Renewal Law or “ARL”).) (Unless otherwise stated, all
21 statutory references are to the Business & Professions Code). SB 340 was introduced because:

22 It has become increasingly common for consumers to complain about unwanted
23 charges on their credit cards for products or services that the consumer did not
24 explicitly request or know they were agreeing to. Consumers report they believed
25 they were making a one-time purchase of a product, only to receive continued
shipments of the product and charges on their credit card. These unforeseen charges
are often the result of agreements enumerated in the “fine print” on an order or
advertisement that the consumer responded to.

26 (See Exhibit 1 at p. 7.)

27 10. The Assembly Committee on Judiciary provided the following background for the
28 legislation:

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

5 (See Exhibit 2 at p. 11.)

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

11 a. Fail to present the automatic renewal offer terms or continuous service offer
12 terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled
13 and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the
14 request for consent to the offer. For this purpose, “clear and conspicuous” means “in larger type
15 than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same
16 size, or set off from the surrounding text of the same size by symbols or other marks, in a manner
17 that clearly calls attention to the language.” (§ 17601(c).) “In the case of an audio disclosure, ‘clear
18 and conspicuous’ ... means in a volume and cadence sufficient to be readily audible and
19 understandable.” (*Ibid.*) The statute defines “automatic renewal offer terms” to mean the “clear
20 and conspicuous” disclosure of the following: (a) that the subscription or purchasing agreement will
21 continue until the consumer cancels; (b) the description of the cancellation policy that applies to the
22 offer; (c) the recurring charges that will be charged to the consumer’s credit or debit card or payment
23 account with a third party as part of the automatic renewal plan or arrangement, and that the amount
24 of the charge may change, if that is the case, and the amount to which the charge will change, if
25 known; (d) the length of the automatic renewal term or that the service is continuous, unless the
26 length of the term is chosen by the consumer; and (e) the minimum purchase obligation, if any.
27 (Bus. & Prof. Code, § 17601(b).)

28 b. Charge the consumer’s credit or debit card or the consumer’s account with a

1 third party for an automatic renewal or continuous service without first obtaining the consumer's
2 affirmative consent to the agreement containing the automatic renewal offer terms or continuous
3 service offer terms, including the terms of an automatic renewal offer or continuous service offer
4 that is made at a promotional or discounted price for a limited period of time. (Bus. & Prof. Code,
5 § 17602(a)(2).)

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

12 12. If a business sends any products to a consumer under a purported automatic renewal
13 or continuous service arrangement without first obtaining the consumer's affirmative consent to an
14 agreement containing the "clear and conspicuous" disclosures as specified in the ARL, the products
15 are deemed to be an unconditional gift to the consumer, who may use or dispose of them without
16 any obligation whatsoever. (Bus. & Prof. Code, § 17603.) Violation of the ARL gives rise to
17 restitution and injunctive relief under the general remedies provision of the False Advertising Law,
18 Bus. & Prof. Code § 17535. (Bus. & Prof. Code, § 17604(a).) As well, violation of the ARL gives
19 rise to restitution and injunctive relief under the UCL.

20 **FACTS GIVING RISE TO THIS ACTION**

21 13. Defendants operate a negative option model in which they "automatically renew"
22 purchases of their products, and they do so in a way that violates California law. Under the guise
23 that the consumer is providing a one-time payment for a fixed term, Defendants actually enroll
24 consumers into an automatic renewal program under which Defendants post charges to the
25 consumer's credit card, debit card, or third-party payment account for subsequent periods.

26 14. In or about July 2017, Plaintiff purchased one of Bitdefender's antivirus software
27 offerings for her home computer, paying \$29.99 for a one-year term. Before the end of that one-
28

1 year term, Defendants offered Plaintiff the opportunity to purchase another one-year term for
2 \$29.99. Plaintiff accepted that offer and paid the \$29.99 with her credit card in July 2018.

3 15. In or about July 2019, without Plaintiff's authorization, Defendants posted a charge
4 to Plaintiff's credit card in the amount of \$59.99, supposedly for a new three-year term.

5 16. If Plaintiff had known that Defendants were going to enroll her in a program under
6 which Defendants would automatically renew her purchase for a subsequent term and post
7 associated charges to her credit card without authorization, Plaintiff would not have purchased
8 Defendants' product and would not have paid any money to Defendants.

9 **DEFENDANTS' OFFERS TO CONSUMERS**

10 17. The process by which consumers can purchase Defendants' software is illustrated in
11 the screenshots set forth in Exhibits 3-5. Step 1 is for the consumer to select a product for purchase,
12 as shown in Exhibit 3. The consumer is then presented with a screen that displays various add-on
13 that the consumer may also wish to purchase, as shown in Exhibit 4.

14 18. The consumer is then presented a "Billing and payment" page, as shown in Exhibit
15 5. On this page, the consumer enters name and contact information, as well as credit card details or
16 other payment account information. At the bottom of the "Billing and payment" page is an orange
17 "CONFIRM ORDER" button that submits the order.

18 19. As is evident in the screenshots, Exhibits 3-5, Defendants do not disclose the
19 "automatic renewal offer terms" required by California law, nor is there any such disclosure that
20 would qualify as "clear and conspicuous."

21 20. Plaintiff is not the only consumer to be charged without consent by Defendants in
22 connection with automatic renewals. Customer reviews of Bitdefender posted on the Better
23 Business Bureau ("BBB") website (and other consumer websites) illustrate that Defendants'
24 business practices alleged herein have affected many consumers. Consumer complaints of
25 Bitdefender are illustrated below:

26 **Problems with Product/Service (June 10, 2019).** I am trying to get a refund for an
27 unauthorized renewal. I turned off the automatic renewal and somehow it was
28 reactivated and I was charged for it. I am trying to get a refund for a service that I
do not want. They automatically renewed when the option was deactivated. I can

1 not get any one to reply to me [sic] online requests. I am looking for a full refund
2 returned to my credit card.

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

4 **Billing/Collection Issues (April 29, 2019)**. Renewal without my authorization. I
5 was notified by email that my bitdefender order has been renewed. I have not used
6 this product since 2015 and turned off auto-renewal. No renewal notices till email
7 of 4/26/19. I did not renew or authorize anything! They charge \$89.95 through
8 PayPal account which I disputed. I'm still not sure if I will be charged anyway as
9 PayPal said that I had an agreement with the vendor but I did not purchase anything
10 since 2015 and have not seen a charge from them since that time! Why now???

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

12 **Problems with Product/Service (April 12, 2019)**. Auto renewal for VPN was
13 turned OFF. They say it was on and they billed me \$49.99. That is a lie. It was
14 turned OFF and this is fraudulent. I received an auto renewal notice for Bitdefender
15 Premium VPN at \$49.99. I followed the link in the email to turn off autorenewal. I
16 was not able to turn it off because the website reported to me that auto-renewal was
17 already turned OFF. A week later I get a congratulations that they've billed my
18 \$49.99 and renewed it. This action was fraudulent. I did not authorize the renewal
19 and payment of this useless product and I want an immediate and 100% refund.

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

21 **Billing/Collection Issues (February 5, 2019)**. I used their product one time 2 years
22 ago. This is second time I have had to cancel "auto-renewal" via telephone. Can't
23 complete on line. I called 2nd year in [a] row for cancellation of an "auto-renewal"
24 that I never wanted. They tripled original cost. They didn't take me off auto-renew.
25 They made it impossible to cancel the renewal on line. They send an email giving
26 less than 3 days to cancel. I think this is a borderline if not outright scam.

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

28 **Christine K. (July 13, 2018)**. So, start off by saying that I used their security product
for about two years with no complaint. 2nd year renewal I opted to renew early and
got about \$30 discount. This year, last week, got a notice FROM A THIRD PARTY
PAYMENT PROCESSOR that an automatic payment would be processed in five
days. I never signed up for auto renew. Went to the website, no place to review billing
information AT ALL, much less turn off autorenew.. Opened tickets, with
BitDefender and the third party biller, and asked them for information on how to turn
off autorenew. Response I received was we'll give you three years for the price of
one. I would probably have bitten on that offer, except I asked again about turning
off auto renew and received no further response. Received a response from the third
party biller 2checkout.com, and they said I would no longer be billed, but offered no
assurance that my payment info had been removed from their system, so I wrote
back, and was told, even though I never signed up with them directly, I would now
have to sacrifice FURTHER personal information to create an account so I could
CANCEL MY ACCOUNT!? I reviewed my payment receipts and, saw that I had
paid with PAYPAL, and very VERY easily canceled my subscription by going to
paypal site and searching on cancel subscription. Three clicks and done. So the
company I put my trust in for the security of my computer passed ** personally
identifiable and payment information over to [a] third party. Activated an autorenew
feature I did not sign up for and could not turn off, except through paypal. And was

1 going to autorenew me at full price instead of the discounted price I had enjoyed
2 when I renewed EARLY the last time. Then they changed my subscription in their
3 system to expire two months early, even though I provided receipts and proof of the
4 expiraton date. Very Very shady operation, with horrendous support. Completely
uninstalled software and deleted every reference to bitdefender from my registry.
Seems to truly be gone, thank goodness.

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

6 **Scott C. (February 9, 2018)**. My son purchased this software with my card, and I
7 immediately uninstalled it. I logged in and verified that the auto renewal was not
8 enabled. Today I got a charge for \$89.99, which is more than twice the cost of the
original software. Customer support says that a ‘colleague’ will call me back within
24-48 hours. Based on reviews I am now going to have to initiate a
chargeback/dispute with my bank.

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

10 **Billing/Collection Issues (October 30, 2017)**. I keep canceling my subscription and
11 they keep renewing it on there own without permission. On 07/25/20017 they
12 charged \$89.95 to my paypal account. A couple of months went by before I noticed
it. They don’t even have a number so you can call and get a refund.
Product_Or_Service: Bidfender virus program Order_Number: *****

13 A true and correct printout of that complaint is attached as Exhibit 12.

14 **CLASS ACTION ALLEGATIONS**

15 21. Plaintiff brings this lawsuit as a class action under Code of Civil Procedure § 382 on
16 behalf of the following Class: “All individuals in California who, between December 16, 2015 and
17 September 16, 2020, purchased software or another product from Defendants and to whom
18 Defendants made an automatic renewal offer or continuous service offer. Excluded from the Class
19 are all employees of Defendants, all employees of Plaintiff’s counsel, and the judicial officers to
20 whom this case is assigned.”

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

24 23. Common Questions of Fact or Law. There are questions of fact or law that are
25 common to the members of the Class, which predominate over individual issues. Common
26 questions regarding the Class include, without limitation: (1) Whether Defendants present all
27 statutorily-mandated automatic renewal offer terms in a manner that is clear and conspicuous within
28

1 the meaning of California law and in visual proximity to a request for consent to the offer (or in the
2 case of an offer conveyed by voice, in temporal proximity to a request for consent to the offer); (2)
3 Defendants' policies, practices and procedures for obtaining affirmative consent from customers
4 before charging a credit card, debit card, or third-party payment account; (3) whether Defendants
5 provide consumers with an acknowledgment that includes clear and conspicuous disclosure of all
6 automatic renewal offer terms, the cancellation policy, and information regarding how to cancel; (4)
7 Defendants' record-keeping practices; and (5) the appropriate remedies for Defendants' conduct.

8 24. Numerosity. The Class is so numerous that joinder of all Class members would be
9 impracticable. Plaintiff is informed and believes and thereon alleges that the Class consists of at
10 least 100 members.

11 25. Typicality and Adequacy. Plaintiff's claims are typical of the claims of the Class
12 members. Plaintiff alleges on information and belief that Defendants enrolled her and other Class
13 members in automatic renewal or continuous service programs without disclosing all automatic
14 renewal offer terms required by law, and without presenting such terms in the requisite clear and
15 conspicuous manner; charged Plaintiff's and Class members' credit cards, debit cards, or third-party
16 accounts without first obtaining affirmative consent to an agreement containing clear and
17 conspicuous disclosure of all automatic renewal offer terms; and failed to provide the requisite
18 acknowledgment with the required disclosures and information. Plaintiff has no interests that are
19 adverse to those of the other Class members. Plaintiff will fairly and adequately protect the interests
20 of the Class members.

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

28

1 27. Risk of Inconsistent or Varying Adjudications. Prosecuting separate actions by
2 individual Class members would create a risk of inconsistent or varying adjudications with respect
3 to individual Class members that would establish incompatible standards of conduct for Defendants.
4 As a practical matter, adjudication with respect to individual Class members would be also
5 dispositive of the interests of others not parties to the individual adjudications or would substantially
6 impair or impede their ability to protect their interests.

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

10 **FIRST CAUSE OF ACTION**

11 False Advertising - Violation of the California Automatic Renewal Law

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

13 29. Plaintiff incorporates the previous allegations as though fully set forth herein.

14 30. Plaintiff is informed and believes and thereon alleges that, during the applicable
15 statute of limitations period, Defendants have enrolled consumers, including Plaintiff and Class
16 members, in an automatic renewal program and have violated the ARL by, among other things,
17 (a) failing to present automatic renewal offer terms in a clear and conspicuous manner before a
18 selection, subscription, or purchasing agreement is fulfilled and in visual proximity, or in the case
19 of an offer conveyed by voice, in temporal proximity, to a request for consent to the offer;
20 (b) charging the consumer's credit card, debit card, or third-party payment account for an automatic
21 renewal without first obtaining the consumer's affirmative consent to an agreement containing clear
22 and conspicuous disclosure of all automatic renewal offer terms; and (c) failing to provide an
23 acknowledgment that includes clear and conspicuous disclosure of all automatic renewal offer
24 terms, the cancellation policy, and information regarding how to cancel in a manner that is capable
25 of being retained by the consumer, all in violation of § 17602(a) and (b).

26 31. Plaintiff has suffered injury in fact and lost money as a result of Defendants'
27 violations of the ARL.

28 32. Pursuant to Bus. & Prof. Code § 17603, all products received by Plaintiff and Class

1 members are deemed to be an unconditional gift.

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

6 34. Unless enjoined and restrained by this Court, Defendants will continue to commit
7 the violations alleged herein. Pursuant to § 17535, on behalf of herself, the Class members, and for
8 the benefit of the general public of the State of California, Plaintiff seeks an injunction prohibiting
9 Defendants from continuing their unlawful practices as alleged herein.

10 **SECOND CAUSE OF ACTION**

11 Violation of the California Consumers Legal Remedies Act

12 (Civ. Code, § 1750 et seq.)

13 35. Plaintiff incorporates the previous allegations as though fully set forth herein.

14 36. Plaintiff is a "consumer" within the meaning of Civil Code § 1761(d) in that Plaintiff
15 sought or acquired Defendants' goods and/or services for personal, family, or household purposes.

16 37. Defendants' computer software and other products are "goods" or "services" within
17 the meaning of Civil Code § 1761, subdivisions (a) and (b).

18 38. The purchase by Plaintiff, and similar activities respecting Class members, are
19 "transactions" within the meaning of Civil Code § 1761(e).

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

28 40. On December 20, 2019, Plaintiff's counsel sent letters to the attention of Bitdefender

1 and Avangate, addressed to their respective agents for service of process, pursuant to Civil Code
2 § 1782(a) (each, a “CLRA Letter”). The CLRA Letters provided notice to Defendants of the CLRA
3 violations alleged herein and requested that Defendants take steps to cure the alleged practices.
4 Defendants did not comply with the CLRA Letters within the statutory 30-day period.

5 41. Pursuant to Civil Code § 1780(a)(1) and (a)(3), Plaintiff, on behalf of herself and all
6 Class members, seeks monetary damages and restitution.

7 42. Unless enjoined and restrained by this Court, Defendants will continue to commit
8 the violations alleged herein. Pursuant to Civil Code § 1780(a)(2), on behalf of the Class and also
9 for the benefit of the general public of the State of California, Plaintiff seeks an injunction
10 prohibiting Defendants from continuing their unlawful practices as alleged herein.

11 **THIRD CAUSE OF ACTION**

12 Violation of the California Unfair Competition Law

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

14 43. Plaintiff incorporates the previous allegations as though fully set forth herein.

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

18 45. In the course of conducting business in California within the applicable limitations
19 period, Defendants committed unlawful, unfair, and/or fraudulent business practices, and engaged
20 in unfair, deceptive, untrue, or misleading advertising, by, inter alia and without limitation:
21 (a) failing to present automatic renewal offer terms in a clear and conspicuous manner before a
22 subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer
23 conveyed by voice, in temporal proximity, to a request for consent to the offer, in violation of
24 § 17602(a)(1); (b) charging the consumer’s credit card, debit card, or third-party payment account
25 in connection with an automatic renewal without first obtaining the consumer’s affirmative consent
26 to an agreement containing clear and conspicuous disclosures of all automatic renewal offer terms,
27 in violation of § 17602(a)(2); (c) failing to provide an acknowledgment that includes clear and
28 conspicuous disclosure of all required automatic renewal offer terms, the cancellation policy, and

1 information regarding a cancellation mechanism that is cost-effective, timely, and easy-to-use, and
2 failing to provide such an acknowledgment in a manner capable of being retained by the consumer,
3 in violation of § 17602(a)(3); (d) representing that Defendants' goods or services have certain
4 characteristics that they do not have, in violation of Civil Code § 1770(a)(5); (e) advertising goods
5 and services with the intent not to sell them as advertised, in violation of Civil Code § 1770(a)(9);
6 (f) making false and misleading statements of fact concerning the reasons for, existence of and
7 amounts of price reductions, in violation of Civil Code § 1770(a)(13); (g) representing that a
8 transaction confers or involves rights, remedies, or obligations that it does not have or involve, or
9 that are prohibited by law, in violation of Civil Code § 1770(a)(14); and (h) representing that the
10 consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is
11 contingent on an event to occur subsequent to the consummation of the transaction, in violation of
12 Civil Code § 1770(a)(17). Plaintiff reserves the right to identify other acts or omissions that
13 constitute unlawful, unfair or fraudulent business acts or practices, unfair, deceptive, untrue or
14 misleading advertising, and/or other prohibited acts.

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

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

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

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

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

28

1 51. Unless enjoined and restrained by this Court, Defendants will continue to commit
2 the violations alleged herein. Pursuant to § 17203, on behalf of the Class, and also for the benefit
3 of the general public of the State of California, Plaintiff seek an injunction prohibiting Defendants
4 from continuing their unlawful practices as alleged herein.

5 **PRAYER**

6 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

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

8 1. For restitution;

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

11 On the Second Cause of Action (Violation of the CLRA):

12 3. For monetary damages and restitution, pursuant to Civil Code § 1780(a)(1) and
13 (a)(3);

14 4. For injunctive relief, including a public injunction for the benefit of the People of the
15 State of California, pursuant to Civil Code § 1780(a)(2);

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

17 On the Third Cause of Action (Unfair Competition):

18 6. For restitution;

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

21 On All Causes of Action:

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

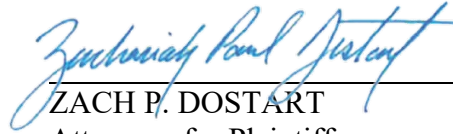
23 9. For costs of suit;

24 10. For pre-judgment interest; and

25 11. For such other relief as the Court may deem just and proper.
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1 Dated: February 26, 2021

DOSTART HANNINK & COVENEY LLP

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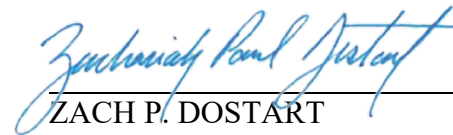
4 ZACH P. DOSTART
Attorneys for Plaintiff

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6 **DEMAND FOR JURY TRIAL**

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

8 Dated: February 26, 2021

DOSTART HANNINK & COVENEY LLP

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11 ZACH P. DOSTART
Attorneys for Plaintiff

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