

ORIGINAL

BURSOR & FISHER, P.A.

Neal J. Deckant (State Bar No. 322946)
Brittany S. Scott (State Bar No. 327132)
Julia K. Venditti (State Bar No. 332688)
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
Email: ndeckant@bursor.com
bscott@bursor.com
jvenditti@bursor.com

FILED
Superior Court of California
County of Los Angeles

JUL 22 2021

Sherri R. Carter, Executive Officer/Clerk of Court.
By Tanya Herrera Deputy
Tanya Herrera

BURSOR & FISHER, P.A.

Frederick J. Klorczyk III (State Bar No. 320783)
888 Seventh Avenue
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
Email: fklorczyk@bursor.com

Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

FAXED

ARIEL ARMSTRONG individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ZENIMAX MEDIA, INC.,

Defendant.

Case No. **21STCV26988**

CLASS ACTION COMPLAINT FOR

- (1) UNFAIR COMPETITION
- (2) CONVERSION
- (3) FALSE ADVERTISING
- (4) VIOLATION OF CALIFORNIA'S
CONSUMERS LEGAL REMEDIES ACT
- (5) UNJUST ENRICHMENT /
RESTITUTION
- (6) NEGLIGENT MISREPRESENTATION
- (7) FRAUD

DEMAND FOR JURY TRIAL

07/22/2021

1 Plaintiff Ariel Armstrong (“Plaintiff”) brings this action on behalf of herself and all others
 2 similarly situated against Defendant ZeniMax Media, Inc. (“ZeniMax” or “Defendant”). Plaintiff
 3 makes the following allegations pursuant to the investigation of her counsel and based upon
 4 information and belief, except as to allegations specifically pertaining to herself and her counsel,
 5 which are based on personal knowledge.

6 INTRODUCTION

7 1. This is a putative class action lawsuit against Defendant for engaging in an illegal
 8 “automatic renewal” scheme with respect to its subscription plans for ESO Plus-branded products
 9 and services that are available exclusively to consumers who enroll in Defendant’s auto-renewal
 10 membership programs (collectively, the “ESO Plus Subscriptions” or “ESO Plus,” described
 11 below) through its website at <https://www.elderscrollsonline.com/> (the “ESO Website”), or
 12 through third-party video gaming platforms, including but not limited to the PlayStation and Xbox
 13 gaming consoles, as well as Microsoft Windows and MacOS (collectively, the “Gaming
 14 Platforms”). Defendant is an American corporation that owns and operates, among other things,
 15 *The Elder Scrolls Online* (“ESO”). ESO is a Massively Multiplayer Online Role-Playing Game
 16 (“MMORPG”) that can be played across the various Gaming Platforms. Additionally, through the
 17 ESO Website and Gaming Platforms, Defendant markets, advertises, sells, and otherwise provides
 18 paid premium memberships to ESO Plus, an automatically renewing subscription for exclusive
 19 access to “digital goods (such as wallpaper and character outfits), in-Game consumables,
 20 Downloadable Content[,], ... other digital items, [] software, ... and [] related services[.]”¹
 21 Relevant to Plaintiff’s allegations, when consumers sign up for the ESO Plus Subscriptions,
 22 Defendant actually enrolls consumers in a program that automatically renews the ESO Plus
 23 Subscriptions on a recurring basis and results in continuous automatic renewal charges to the
 24 consumer’s credit card, debit card, or third-party payment account (collectively, the “Payment
 25 Methods”). In doing so, Defendant fails to provide the requisite disclosures and authorizations
 26
 27

28 ¹ *ZeniMax Media Terms of Service*, <https://account.elderscrollsonline.com/terms-of-service>.

1 required to be made to California consumers under California's Automatic Renewal Law ("ARL"),
2 Cal. Bus. Prof. Code §§ 17600, *et seq.*

3 2. *The Elder Scrolls Online* is an MMORPG developed by Defendant ZeniMax and
4 published by Bethesda Softworks. It was released for Microsoft Windows and MacOS in April
5 2014. It is a part of *The Elder Scrolls* series, which has sold more than 58 million copies
6 worldwide. In fact, *The Elder Scrolls V: Skyrim* is the best-selling RPG of all time, across all
7 platforms. In *The Elder Scrolls Online*, players assume the role of an adventurer and thereby fight
8 monsters and solve quests in a medieval fantasy setting. For those knowledgeable about *Elder*
9 *Scrolls* lore, *The Elder Scrolls Online* takes place in the Second Era of Tamriel (currently in the
10 Fourth Era), about 800 years before the events of *The Elder Scrolls IV: Oblivion* and 1,000 years
11 before *The Elder Scrolls V: Skyrim*.

12 3. Consumers sign up for Defendant's ESO Plus Subscriptions through the ESO
13 Website or the Gaming Platforms. The membership plans available through ESO Plus are offered
14 in various tiers and at different price points, detailed below. Accordingly, during the enrollment
15 process (*i.e.*, at the point of purchase), a prospective subscriber must select a plan based on
16 variations in length of the renewal period, and the amount to be charged to the subscriber's
17 Payment Method for each renewal period. Once enrolled in ESO Plus, paying subscribers receive
18 exclusive access to ESO-branded downloadable content and in-game benefits, including, among
19 other things, monthly customizable items and a fixed monthly allotment of in-game currency to
20 spend in the in-game store for digital items and other bonuses, in exchange for the renewal fees
21 automatically charged by Defendant to subscribers' Payment Methods each renewal period.²

22 4. Pursuant to the ARL, online retailers who offer automatically renewing
23 subscriptions to California consumers must: (a) obtain affirmative consent prior to the consumer's
24 purchase; (b) provide the complete auto-renewal terms in a clear and conspicuous manner and in
25

26 ² See *Guide To ESO Plus Membership* (last updated Aug. 25, 2020), available at
27 <https://www.elderscrollsonline.com/en-us/guides/esoplusguide> ("ESO Plus™ membership provides
28 The Elder Scrolls Online players with a host of unique in-game benefits and VIP perks, including full access to all DLC game packs in the Crown Store, 1650 monthly crowns, unlimited storage for crafting materials, and more.").

07/22/2021

1 visual proximity to the request for consent prior to the purchase; and (c) provide an
2 acknowledgement identifying an easy and efficient mechanism for consumers to cancel their
3 subscriptions. Those purchasing the ESO Plus Subscriptions do so by choosing a paid monthly
4 subscription (at either the full standard recurring rate that Defendant ordinarily charges or at a
5 promotional or discounted rate that remains static for a limited period and then automatically
6 renews to the full standard rate). In addition, Defendant occasionally offers free or discounted
7 trials to ESO Plus of varying durations, pursuant to which consumers can sign up to try ESO Plus
8 for a limited time before determining whether to commit to a purchase of the paid, recurring
9 version of ESO Plus. As will be discussed below, the enrollment process for the ESO Plus
10 Subscription on the ESO Website and Gaming Platforms uniformly violates each of the core
11 requirements of the ARL. Defendant also makes it exceedingly difficult and unnecessarily
12 confusing for consumers to cancel their ESO Plus Subscriptions.

13 5. Specifically, Defendant systematically violates the ARL by: (i) failing to present
14 the automatic renewal offer terms in a clear and conspicuous manner and in visual proximity to the
15 request for consent to the offer before the subscription or purchasing agreement is fulfilled, in
16 violation of Section 17602(a)(1); (ii) charging consumers' Payment Method without first obtaining
17 their affirmative consent to the agreement containing the automatic renewal offer terms, in
18 violation of Section 17602(a)(2); and (iii) failing to provide an acknowledgment that includes the
19 automatic renewal offer terms, cancellation policy, and information regarding how to cancel in a
20 manner that is capable of being retained by the consumer, in direct violation of Sections
21 17602(a)(3) and 17602(b). Cal. Bus. & Prof. Code §§ 17602(a)(1), (a)(2), (a)(3), (b). As a result,
22 all goods, wares, merchandise, or products sent to Plaintiff and the Class under the automatic
23 renewal of continuous service agreements are deemed to be "unconditional gifts" under the ARL.
24 Cal. Bus. & Prof. Code § 17603.

25 6. For the foregoing reasons, Plaintiff brings this action individually and on behalf of
26 all California purchasers of any of Defendant's ESO Plus Subscriptions from the ESO Website or
27 Gaming Platforms who, within the applicable statute of limitations period up to and including the
28 date of judgment in this action, incurred unauthorized fees for the renewal of their ESO Plus

Subscriptions. Based on Defendant's unlawful conduct, Plaintiff seeks damages, restitution, declaratory relief, injunctive relief, and reasonable attorneys' fees and costs, for: (1) violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) conversion; (3) violation of California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, *et seq.*; (4) violation of California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*; (5) unjust enrichment/restitution; (6) negligent misrepresentation; and (7) fraud.

THE PARTIES

7. Plaintiff Ariel Armstrong ("Plaintiff") is a citizen of California, residing in La Puente, CA. In or around October 2019, Ms. Armstrong signed up for Defendant's monthly ESO Plus Subscription via her Xbox while in California.³ During the enrollment process but before finally consenting to Defendant's subscription offering, thereby completing the checkout process, Ms. Armstrong provided her payment information (specifically, the Cash App Card, a prepaid debit card) directly to Defendant. At the time Ms. Armstrong enrolled in her ESO Plus Subscription program, Defendant did not disclose to Ms. Armstrong all required automatic renewal offer terms associated with the subscription program or obtain Ms. Armstrong's affirmative consent to those terms. Further, after Ms. Armstrong completed her initial order, Ms. Armstrong received an email receipt for her purchase of an ESO Plus Subscription (the "Acknowledgment Email"). However, the Acknowledgment Email, too, failed to provide Ms. Armstrong with the complete automatic renewal terms that applied to Defendant's offer, a description of Defendant's full cancellation policy, or information regarding how to cancel Ms. Armstrong's ESO Plus Subscription in a manner capable of being retained by her. Ms. Armstrong did not receive any other acknowledgement that contained the required information. As a result, Ms. Armstrong was not placed on notice of several material terms associated with her ESO Plus Subscription. For instance, Ms. Armstrong was not made aware of the cancellation policy associated her ESO Plus Subscription, among other things. Relatedly, in or around April 2020, Ms. Armstrong attempted to

³ Specifically, Ms. Armstrong signed up for ESO Plus Subscription through Defendant's console store within or relating to the Xbox Gaming Platform.

1 cancel her ESO Plus Subscription through her Xbox console. Nevertheless, Defendant continued
2 to automatically renew Ms. Armstrong's ESO Plus Subscription and charge recurring renewal fees
3 to Ms. Armstrong's Payment Method in the amount of \$14.99, the full standard monthly rate
4 associated with Ms. Armstrong's ESO Plus Subscription plan, an additional nine times for a total
5 of fourteen unauthorized charges amounting to \$209.86 to Ms. Armstrong's Payment Method.
6 Thus, Ms. Armstrong's April 2020 attempt to cancel her ESO Plus Subscription plan was utterly
7 ineffective, and Ms. Armstrong was unable to terminate her subscription at that time due to
8 Defendant's confusing cancellation policy, the most crucial aspects of which were missing from
9 the Checkout Page and Acknowledgment Email, and because the "mechanism for cancellation"
10 that exists is not one Ms. Armstrong and other reasonable consumers would consider "easy-to-
11 use." As a result, Ms. Armstrong remained subscribed to ESO Plus until Defendant ultimately
12 terminated Ms. Armstrong's ESO Plus Subscription in June of 2021 for reasons entirely unrelated
13 to her cancellation attempt roughly ten months earlier, after Ms. Armstrong's Payment Method
14 was declined. Had Defendant complied with the ARL, Ms. Armstrong would have been able to
15 read and review the auto renewal terms associated with the ESO Plus Subscriptions prior to
16 purchase, and she would not have subscribed to ESO Plus or she would have been able to cancel
17 her ESO Plus Subscription earlier, *i.e.*, prior to the expiration of the subscription period or the end
18 of any subsequent monthly renewal term thereafter before Ms. Armstrong's Payment Method was
19 declined in June 2021, so as to avoid incurring unwanted and unauthorized fees. As a direct result
20 of Defendant's violation of the ARL, Ms. Armstrong suffered, and continues to suffer, economic
21 injury.

22 8. Defendant ZeniMax Media, Inc. ("ZeniMax" or "Defendant") is a Maryland
23 corporation with its principal place of business at 1370 Piccard Drive, Rockville, Maryland 20850.
24 Defendant has done business throughout California and throughout the United States at all times
25 during the Class Period. At all relevant times, acting alone or in concert with others, Defendant
26 has advertised, marketed, sold, and distributed the ESO Plus Subscriptions and all products and
27 services pertaining thereto, to consumers in California and throughout the United States. At all
28 relevant times, acting alone or in concert with others, Defendant formulated, directed, controlled,

07/21/2021

1 had the authority to control, and/or participated in the acts and practices set forth in this Complaint.
2 Defendant owns and operates the ESO Plus Subscriptions, a membership program which
3 distributes in-game digital products and items to be used in *The Elder Scrolls Online* video game,
4 which it markets through the ESO Website and the Gaming Platforms, among other places.
5 Defendant is also responsible for the promotion, advertisement, and/or marketing of the
6 automatically renewing ESO Plus Subscriptions. Defendant offers access to certain exclusive in-
7 game content on a contract or fee basis to customers who enroll in an ESO Plus Subscription. At
8 all relevant times, Defendant has sold, and continues to sell, its ESO Plus Subscriptions in
9 California and has done business in and throughout California and throughout the United States at
10 all times during the Class Period. In connection with the ESO Plus Subscriptions, Defendant made
11 automatic renewal offers to consumers in California and throughout the United States via the ESO
12 Website and the Gaming Platforms all times during the Class Period.

13 9. Plaintiff reserves the right to amend this Complaint to add different or additional
14 defendants, including without limitation any officer, director, employee, supplier, or distributor of
15 Defendant who has knowingly and willfully aided, abetted, and/or conspired in the false and
16 deceptive conduct alleged herein.

17 JURISDICTION AND VENUE

18 10. This Court has subject matter jurisdiction pursuant to California Business and
19 Professions Code, Sections 17203, 17204, and 17535, and Section 1780 of the Civil Code.

20 11. This Court has personal jurisdiction over the parties because Plaintiff resides in
21 California and submits to the jurisdiction of the Court, and because Defendant, at all times relevant
22 hereto, has systematically and continually conducted, and continues to conduct, business in this
23 State. Moreover, Defendant has purposefully availed itself of the laws and benefits of doing
24 business in this State, and Plaintiff's and Class members' claims arise out of Defendant's forum-
25 related activities. Furthermore, a substantial portion of the events giving rise to Plaintiff's claims
26 occurred in this State, including Plaintiff's and Class members' purchases of the ESO Plus
27 Subscriptions at issue in this case.
28

12. Venue is proper in this Court pursuant to Civil Code § 1780(d) because a substantial part of the events, omissions, and acts giving rise to Plaintiff's and Class members' claims herein occurred in this District. Moreover, Plaintiff resides in this County and purchased Defendant's ESO Plus Subscription in this County.

FACTUAL BACKGROUND

A. Background On The Subscription e-Commerce Industry

13. The e-commerce subscription model is a business model in which retailers provide ongoing goods or services "in exchange for regular payments from the customer."⁴ Given the prevalence of online and e-commerce retailers, subscription e-commerce has grown rapidly in popularity in recent years. Subscription e-commerce services now target a wide range of customers and cater to a variety of specific interests.

14. For background, the MMORPG video game ESO was originally marketed and sold only for play on PC/Mac, and all players were required to pay a monthly subscription fee to participate.⁵ Defendant relaunched ESO in or around March 2015 as part of a game-wide transition by Bethesda, the publisher of ESO and a subsidiary of Defendant ZeniMax, to a "freemium" subscription model. Under this model, the *basic* game play is free, such that players have the option to play ESO via additional or alternative Gaming Platforms (*e.g.*, the Xbox and PlayStation consoles), without being required to enroll in a paid ESO Plus Subscription. However, access to *premium* in-game benefits, such customizable downloadable content and other exclusive digital products to be used within the ESO universe, is reserved for paid subscribers to the ESO Plus Subscriptions, and is provided in exchange for recurring renewal fees.⁶ The ESO Plus

⁴ Core DNA, *How to Run an eCommerce Subscription Service: The Ultimate Guide* (May 19, 2020), <https://www.coredna.com/blogs/ecommerce-subscription-services>.

⁵ ESO Website News, *ESO HEADS TO CONSOLES JUNE 9TH* (Jan. 21, 2015), <https://www.elderscrollsonline.com/en-us/news/post/25029>.

⁶ Polygon, *The Elder Scrolls Online loses subscription in March on PC, June 9 on PS4 and Xbox One (correction)* (Jan. 21, 2015), <https://www.polygon.com/2015/1/21/7865919/the-elder-scrolls-online-release-date-ps4-xbox-one-subscription-free-tamriel-unlimited>.

Subscription program was launched in or around March 2015 in conjunction with this game-wide transition.⁷

15. The production, sale, and distribution of subscription-based products and services is a booming industry that has exploded in popularity over the past few years. According to Forbes, “[t]he subscription e-commerce market has grown by more than 100% percent a year over the past five years, with the largest retailers generating more than \$2.6B in sales in 2016, up from \$57.0M in 2011.”⁸ Further, the COVID-19 pandemic led to subscription growth “across industries and verticals.”⁹

16. However, as *The Washington Post* has noted, there are downsides associated with the subscription-based business model.¹⁰ While the subscription e-commerce market has low barriers and is thus easy to enter, it is considerably more difficult for retailers to dominate the market due to the “highly competitive prices and broad similarities among the leading players.”¹¹ In particular, retailers struggle with the fact that “[c]hurn rates are high, [] and consumers quickly cancel services that don’t deliver superior end-to-end experiences.”¹² Yet, retailers have also recognized that, where the recurring nature of the service, billing practices, or cancellation process is unclear or complicated, “consumers may lose interest but be too harried to take the extra step of

⁷ *Id.*

⁸ Forbes, *The State Of The Subscription Economy, 2018* (Mar. 4, 2018), <https://www.forbes.com/sites/louiscolombus/2018/03/04/the-state-of-the-subscription-economy-2018/#6ad8251a53ef>.

⁹ Forbes, *Retail Subscriptions Thrive During COVID-19* (Jul. 15, 2020), <https://www.forbes.com/sites/kaleighmoore/2020/07/15/retail-subscriptions-thrive-during-covid-19/?sh=7fd32cf42a0b>.

¹⁰ Washington Post, *Little-box retailing: Subscription services offer new possibilities to consumers, major outlets* (Apr. 7, 2014), https://www.washingtonpost.com/business/economy/tktktktk/2014/04/07/f68135b6-a92b-11e3-8d62-419db477a0e6_story.html.

¹¹ McKinsey & Company, *Thinking inside the subscription box: New research on e-commerce consumers* (Feb. 2018), <https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/thinking-inside-the-subscription-box-new-research-on-e-commerce-consumers#0>.

¹² *Id.*

canceling their membership[s].”¹³ As these companies have realized, “[t]he real money is in the inertia.”¹⁴ As a result, “[m]any e-commerce sites work with third-party vendors to implement more manipulative designs.”¹⁵ That is, to facilitate consumer inertia, a number of subscription e-commerce companies, including Defendant, “are now taking advantage of subscriptions in order to trick users into signing up for expensive and recurring plans. They do this by intentionally confusing users with its [website]’s design and flow, by making promises of ‘free trials’ that convert after only a matter of days, and other misleading tactics.”¹⁶

17. Defendant has successfully implemented this tactic. As of March 2020, Defendant’s ESO game had “over 15 million subscribers,”¹⁷ and that number “is likely even higher” following the release of new in-game expansion packs and downloadable content (“DLC”)s.¹⁸ Significantly, Rich Lambert, creative director at ZeniMax Online Studios (another of Defendant’s subsidiaries), confirmed in a March 2020 virtual presentation from ZeniMax Online Studios that the game was “still growing, not slowing down.”¹⁹ Today, ESO averages about 20,000 active players at any given time.²⁰ Moreover, in recent months Defendant has enjoyed particularly rapid growth to its ESO player-base in light of the fact that the video game industry

¹³ Washington Post, *Little-box retailing: Subscription services offer new possibilities to consumers, major outlets* (Apr. 7, 2014), https://www.washingtonpost.com/business/economy/tktktktk/2014/04/07/f68135b6-a92b-11e3-8d62-419db477a0e6_story.html.

¹⁴ *Id.*

¹⁵ Business Insider, *A new study from Princeton reveals how shopping websites use 'dark patterns' to trick you into buying things you didn't actually want* (Jun. 25, 2019), <https://www.businessinsider.com/dark-patterns-online-shopping-princeton-2019-6>.

¹⁶ TechCrunch, *Sneaky subscriptions are plaguing the App Store* (Oct. 15, 2018), <https://techcrunch.com/2018/10/15/sneaky-subscriptions-are-plaguing-the-app-store/>.

¹⁷ Forbes, *‘Elder Scrolls Online’ Is ‘Still Growing, Not Slowing Down’ With Over 15 Million Players* (Mar. 29, 2020), <https://www.forbes.com/sites/davidjagneaux/2020/03/30/elder-scrolls-online-is-still-growing-not-slowing-down-with-over-15-million-players/?sh=137ba80e5ec3>.

¹⁸ Forbes, *‘Elder Scrolls Online’ Is ‘As Popular As It's Ever Been’ Following Greymoor's Return To Skyrim* (Jun. 5, 2020), <https://www.forbes.com/sites/davidjagneaux/2020/06/05/elder-scrolls-online-is-as-popular-as-its-ever-been-following-greymoors-return-to-skyrim/?sh=378a0a0e6211>.

¹⁹ Forbes, *‘Elder Scrolls Online’ Is ‘Still Growing, Not Slowing Down’ With Over 15 Million Players* (Mar. 29, 2020), <https://www.forbes.com/sites/davidjagneaux/2020/03/30/elder-scrolls-online-is-still-growing-not-slowing-down-with-over-15-million-players/?sh=137ba80e5ec3>.

²⁰ Steam Charts, *The Elder Scrolls Online*, <https://steamcharts.com/app/306130#All>.

has enjoyed a “recent surge ... in the conditions created by the pandemic.”²¹ Specifically, ESO players have surged from averaging under 15,000 players at any given time pre-pandemic, to an average closer to 30,000 at the beginning of the pandemic, and finally stabilizing at its current average of a nearly 20,000-player increase at any given time.²² Relevant here, although Defendant does not officially release the number of paid subscribers to the ESO Plus Subscriptions, estimates indicate that the ESO Plus subscriber base is around “2/3rds to 3/4ths of the people you see running around in the game.”²³ Consistently with this approximation, according to a player-run poll on the ESO Website, 71% of players polled answered affirmatively to having an ESO Plus Subscription.²⁴

B. Online Consumer Complaints About The ESO Plus Subscriptions

18. Defendant’s recent growth in revenues and subscriber count with respect to its ESO Plus Subscriptions coincides with a sharp decline in subscriber satisfaction as the ESO Plus Subscriptions and the platforms from which they operate have become riddled with “dark patterns.” A dark pattern is “a user interface carefully crafted to trick users into doing things they might not otherwise do, such as ... signing up for recurring bills.”²⁵ Indeed, as one ESO Website Forum blogger has suggested, Defendant is among the many companies that “have joined this dark shady side of modern gaming.”²⁶ Specifically, Defendant has been using various types of dark

²¹ Washington Post, *The giants of the video game industry have thrived in the pandemic. Can the success continue?* (May 14, 2020), <https://www.washingtonpost.com/video-games/2020/05/12/video-game-industry-coronavirus/>.

²² Steam Charts, *The Elder Scrolls Online*, <https://steamcharts.com/app/306130#All>.

²³ ESO Website Forum, *ESO Plus sub numbers?* (May 9, 2019), <https://forums.elderscrollsonline.com/en/discussion/473136/eso-plus-sub-numbers>.

²⁴ ESO Website Forum, *Are you currently an ESO Plus Subscriber?* (Nov. 12, 2015), <https://forums.elderscrollsonline.com/en/discussion/230701/are-you-currently-an-eso-plus-subscriber>.

²⁵ *Dark patterns in UX: how designers should be responsible for their actions* (Apr. 15, 2018), <https://uxdesign.cc/dark-patterns-in-ux-design-7009a83b233c> (quoting UX designer Harry Brignull, PhD Cognitive Science, who coined the term “Dark Patters” in August 2010).

²⁶ ESO Website Forum, *Interesting Read - MMO Psychology* (Oct. 30, 2017), https://forums.elderscrollsonline.com/en/discussion/comment/4604621#Comment_4604621.

1 patterns, including but not limited to “roach motel,”²⁷ “misdirection,”²⁸ and “forced continuity,”²⁹
 2 in order to prevent user unsubscription from the ESO Plus Subscriptions by adopting complex
 3 cancellation procedures to increase the friction in the subscription cancellation process.
 4 Defendant’s utilization of these dark patterns – especially in conjunction with its failure to fully
 5 disclose the terms of its automatic-renewal programs (discussed further below) – has led to a
 6 reduction in churn rates by making it next to impossible for subscribers to cancel their ESO Plus
 7 Subscriptions. It has further led to an increase in accidental or unintentional sign-ups by
 8 consumers for paid ESO Plus Subscriptions plans, in effect increasing subscriber count and, thus,
 9 Defendant’s overall revenues from renewal fees.


10 19. Defendant’s conduct has drawn the attention and ire of customers across the
 11 country, with countless angry customers taking to the Internet to voice their discontent over
 12 Defendant’s broken promises. For instance, numerous subscribers have left scathing reviews
 13 directly on the ESO Website Forum page (<https://forums.elderscrollsonline.com/en/>), in various
 14 conversation threads, complaining of the unclear billing practices and confusing cancellation
 15 policy associated with the ESO Plus Subscriptions:³⁰

16
 17 ²⁷ “Roach motel” refers to a “design [that] makes it very easy for [consumers] to get into a certain
 18 situation, but then makes it hard for [consumers] to get out of it (e.g. a subscription).”
<https://www.darkpatterns.org/types-of-dark-pattern/roach-motel>.


19 ²⁸ “Misdirection” is a type of dark pattern where a website’s “design purposefully focuses
 20 [customers’] attention on one thing in order to distract [them] attention from another.” In many
 21 cases, “[w]hat’s deceptive is the way [the website] presents [purchase] options: it uses misdirection
 to hide what is actually happening[.]” [https://www.darkpatterns.org/types-of-dark-](https://www.darkpatterns.org/types-of-dark-pattern/misdirection)
[pattern/misdirection](https://www.darkpatterns.org/types-of-dark-pattern/misdirection).

22 ²⁹ One example of “forced continuity,” another type of dark pattern, is where customers’ sign up
 23 for a “free trial with a service[that] comes to an end and [their] credit card silently starts getting
 charged without any warning. [The subscriber is] are then not given an easy way to cancel the
 automatic renewal.” <https://www.darkpatterns.org/types-of-dark-pattern/forced-continuity>.

24 ³⁰ See <https://forums.elderscrollsonline.com/en/discussion/546235/eso-plus-cancellation-issue> (Sep.
 25 2020); [https://forums.elderscrollsonline.com/en/discussion/527699/option-to-cancel-eso-plus-on-](https://forums.elderscrollsonline.com/en/discussion/527699/option-to-cancel-eso-plus-on-your-website-is-just-not-there)
[yourwebsite-is-just-not-there](https://forums.elderscrollsonline.com/en/discussion/527699/option-to-cancel-eso-plus-on-your-website-is-just-not-there) (May 2020);
 26 <https://forums.elderscrollsonline.com/en/discussion/475804/cancelling-your-subscription> (May
 2019); https://forums.elderscrollsonline.com/en/discussion/comment/4913880#Comment_4913880
 (Mar. 2018); [https://forums.elderscrollsonline.com/en/discussion/375741/charged-for-eso-plus-](https://forums.elderscrollsonline.com/en/discussion/375741/charged-for-eso-plus-membership)
 27 [membership](https://forums.elderscrollsonline.com/en/discussion/375741/charged-for-eso-plus-membership) (Oct. 2017);
 28 https://forums.elderscrollsonline.com/en/discussion/comment/4490822#Comment_4490822 (Sep.
 2017); <https://forums.elderscrollsonline.com/en/discussion/372841/i-just-want-to-cancel-my->



Redenator
Soul Shiven




#1
September 2020

G'day all, as title states I've had some issues with cancelling my ESO Plus subscription. I decided about a month(?) ago I wanted to take a break from ESO, completely forgot to cancel my subscription to ESO Plus. A couple days back, I received an email telling me my subscription was renewed. I thought 'ah that's right, I've gotta cancel that', no biggie, just me being forgetful.

Opened up my ESO Account Management screen, and the above image is what I see under the tab "Manage Membership". There is no option to cancel... it told me that my membership expired, and there is a button to renew my membership, and yet, they took money out of my account. Even stranger, is that (again in the image) it says "Active - ESO Plus Recurring".

So on the one website, I am being informed that my membership both is, and is not running...

Needless to say, I am very confused. I never tried to end my membership, so it should not have cancelled automatically (and clearly it did not cancel automatically, as I was charged 15 dollars).




GargOysteinYlkemes
Soul Shiven

I've even found some screenshot somewhere with cancel button, but all I see is "prolong subscription. Maybe this is due to combining my steam account?"

All in all, I want eso plus cancelled for renewal

#1
May 2020



Pwoo

I can't cancel or pause mine either, just change my recurring membership... I opened a support ticket and it's been thrown around for a week between different employees who don't know how to help me lol. Well at least you're not alone.

PC EU - @Pwoo in game - Twitch

#7
May 2020

account (Sep. 2017); <https://forums.elderscrollsonline.com/en/discussion/362860/cant-cancel-my-account-cant-find-a-way-to-contact-customer-support> (Jul. 2017); <https://forums.elderscrollsonline.com/en/discussion/307498/cant-cancel-my-eso-plus-subscription> ("Cant cancel my ESO plus Subscription") (Dec. 2016); https://forums.elderscrollsonline.com/en/discussion/comment/3462077#Comment_3462077 (Oct. 2016); <https://forums.elderscrollsonline.com/en/discussion/284332/help-i-cant-cancel-my-subscription-or-email-support> (Aug. 2016); <https://forums.elderscrollsonline.com/en/discussion/240363/i-cancelled-my-eso-plus-membership-however-payment-still-taken> (Jan. 2016); https://forums.elderscrollsonline.com/en/discussion/comment/2279968#Comment_2279968 ("the insane process of cancelling your ESO+ membership on xbox one") (Sep. 2015); <https://forums.elderscrollsonline.com/en/discussion/209777/how-do-i-cancel-my-eso-plus-sub-ps4> (Aug. 2015); <https://forums.elderscrollsonline.com/en/discussion/195086/eso-billed-me-without-my-permission> ("Eso billed me without my permission") (Jul. 2015).



Donatello

So I have basically stopped playing ESO and decided to cancel my sub. This I have found to be impossible. I don't know if ESO is just making this as hard as possible or if they have created a process that will allow them to continue billing people for an extra month or more?

#1
May 2019

So after digging around in the support area of the ESO site I found this:

PC/Mac accounts

To cancel your ESO Plus membership on a PC/Mac account you should follow these steps:

Log into the ESO account here: account.elderscrollsonline.com.

Select **Manage Membership** under the "My Account" section at the left-hand side.

Select Cancel Membership and confirm by clicking Please cancel my membership.

A banner will appear at the top of the page to confirm that the recurring membership is no longer active.

Note that the Account ESO Plus status changed to "Cancelled."

When completed, an e-mail from The Elder Scrolls Online will arrive, confirming the cancellation..

So then I go to the account link. I log in and surprise surprise there is no Manage Membership link to select!

These are the links available:

My Account

Edit Account Info

Marketing Preferences

Change Password

Update Security Question

Linked Accounts

Billing History

Redeem Code

NO MANAGE MEMBERSHIP LINK!!!!

I was reduced to putting in a support ticket explaining why I want to cancel my subscription. Disgusting to say the least.

I am calling out ESO and Bethesda for this soft scam. It is making what should be an easy process into an impossible one. I have submitted a ticket and I await your reply. If another payment is removed from my account please realise that this is being done without my permission.



Sinfulbeing
*

My ESO Plus membership is renewing tomorrow and I have attempted multiple times to cancel. It should have been canceled like 2 months ago but I just got an email stating I was charged for the next month. Please get in touch with me and fix this.

#1
March 2018

66 Quote



hightowermusic
**

hello, My wife's account was just charged for an eso plus membership. we DO NOT play eso and haven't in about 6 months. We both made sure our eso plus memberships were canceled when we stopped playing. Which wasn't very easy to do. I am assuming this is a mistake and the charges will be reversed immediately. My wife's account name is SamanthaDear

#1
October 2017




ArchMikem

I haven't been logging in lately and don't really plan on until Clockwork City is released, so I decided to stop paying \$15 a month for no reason. Thing is, there is NO way I can Cancel my ESO Plus Sub by any direct means. It doesn't give the option through Console. There is no option to through my Account on Xbox Live's website, and ZOS' Support page just says to go through Microsoft or Sony if you're on Console. Why is this? I can easily Cancel my Xbox Live Gold membership easy but you have to jump through hoops to get out of ESO Plus?

#1
September 2017


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

 **TigerSeptim**
**

#1
September 2017

Hello- I'm trying to cancel my game account with *The Elder Scrolls Online*. I've tried emailing both support and accounts @elderscrollsonline.com with the result, "Google couldn't send your message." So I hopped over to Support, which lists plenty of articles on how to cancel one's *ESO Plus* subscription but it seems info on canceling one's account is scarce. I tried the support portal, but it has nothing on the subject.

Zenimax, it is very simple. You put me in touch with a *real human being* or I will ACT as if my account were deleted and not visit this site or play the game again. I.e. you'll have lost a customer.

 **Twilanthe**


#1
July 2017

I thought I had cancelled my account but my bank just got charged for ESO plus today.
I have 2 accounts that I can log into, and one says "active" but also says expired, and one doesn't have anything.

I may have made a 3rd account but I don't remember, and I am fairly sure I never signed up for ESO plus on any but my main one.

Customer support for this game is horrible. I go to the support page and no matter where I go all I get is redirected to the FAQ or the Forums, I can't find any place with an email, or phone number, or any method to contact customer support to try and get help to cancel whatever account is still charging me.


Any help would be greatly appreciated.

 **Libonotus**

#1
December 2016

On xbox one.
I go to subscriptions, click ESO plus and there is no option under payment and billing to remove
I go to my payment options and try to remove the payment option linked to my acc, it says I have to turn off auto renewal for subscriptions before I can remove payment option.
Help


I feel like this is an elaborate ESO, Xbox one ruse

 **willodark**
Soul Shriven

#1
October 2016

this is getting very old ESO I got another charge from you guys on 10-19-16 again for 39.99 I better be getting my money back.


my bank has already taken action now.

 **laura1392**
*

#1
August 2016


Don't play the game as much as I used to, and I'm stop paying out a tenner ever month for plus. I canceled it a while back through PS4 subscription page on the settings on my console, but I went back onto it to do the same, and it's gone.

Has it changed in order to cancel the subscription, or am I missing something? I checked in game to see if there was an option there, but I can't seem to find anything.

 **snostorm85b16_ESO**
**

#1
January 2016

I cancelled my ESO plus membership, however a payment has just been taken from my account, furthermore I checked my account and the ESO plus membership is still active.
What is going on, this is massively unacceptable.

 **Noomfy-Mop**
**








#1
August 2015


So I got ESO plus when I first bought ESO and found it to be not that great (bonus XP and gold is kinda meh and bonus crowns is just pointless for me since there's nothing in the crown store that interests me) so I figured I'd just let it expire.

Until I got an email from PlayStation thanking me for my purchase and I thought "what? I didn't purchase anything.. Sony's trippin hard"..

As it turns out (and obviously I didn't realise this) the ESO plus sub is an automatic renewal service. so I had money removed from my bank to add credits to my ps store wallet because I didn't have enough to buy the renewal that I didn't want.. Not to pleased with ZOS and Sony right now.

So does anyone know how to cancel the automatic renewal so I can let my ESO plus run out?
Edited by Noomfy-Mop on August 22, 2015 12:55PM

1		Twilanthé ***	I followed the instructions here: https://help.elderscrollsonline.com/app/answers/detail/a_id/27718/~/_/how-do-i-cancel-my-eso-plus-membership?	#1 August 2016
2			When I get to my Manage Account page there is nothing there. No button to cancel, no way to edit my payment method or change my billing address or anything. It just says:	
3			ELDER SCROLLS ONLINE	
4			Member Since November 20, 2013	
5			ACCOUNT STATUS	
6			Active - ESO Plus™ Recurring	
7			I've done everything I can think of the cancel my subscription, there is nothing here. I've scoured the page for a button or link, I've googled how to cancel, and I've tried to email support, but when I click the button to send my email nothing happens! My account is set to renew on the 14th, I DO NOT want to renew for another month.	
8			Please, how can I cancel my account if there is no button to cancel and no way to email the company to cancel?	
9			Lüc - Argonian Necromancer Healer PC-NA	
10		Ignotus ***	I just discovered the same thing. Maybe they are hard up and disabled the cancel button... ☹ Mine renews in two days and I cannot cancel it. I'm not concerned though, my prepaid card will decline the charge and I won't be billed for anything. If some people DO get billed and cannot cancel, I think there may be some trouble brewing. Anyway, here is what I see on the account page when I press the MANAGE MEMBERSHIP button. NO CANCEL BUTTON!	#2 August 2016
11				
12				
13		Twilanthé ***	I tried calling two of their "support" numbers and got an automated response saying I've called a "former support number" and to go to the site for help.....wtf.	#3 August 2016
14			Cancel doesn't work	
15			their email form doesn't work	
16			their phone line doesn't work	
17			Ignotus, I see the same thing, it looks exactly like that.	
18			Edited by Twilanthé on August 11, 2016 10:58AM	
19			Lüc - Argonian Necromancer Healer PC-NA	
20		Ignotus ***	I'm on Windows 10 build 10586. I am using Firefox 47, but I also tried Edge and got the exact same page without a cancel button. I tried IE 11 but the account page won't even open in that.	#4 August 2016
21				
22		Twilanthé ***	I've tried chrome, IE and Edge. I've tried on my cell phone and android tablet, I've tried clearing my cache, and I've tried on a friends computer running windows 8 and a work computer running XP. If its the same on all those browsers/devices, I think its a site issue and not on our end.	#5 August 2016
23			Lüc - Argonian Necromancer Healer PC-NA	
24				
25		Ciovala ***	I have the same problem!	#6 August 2016
26			Looking for a mature and helpful social guild - play PvE, PvP, and like crafting.	
27		evacsdb14_ESO ★	I'm having the same issue the option to cancel membership is missing from the Manage Membership page. I've even tried to call them but all I get is a recording the number is no longer valid.	#7 August 2016
28				




LrdRahvin
★★★★★

ZOS_JessicaFolsom wrote: »
We're looking into this, everyone. There should be a button there that isn't. Thanks for bringing it to our attention.

#11
August 2016

This is a novel form of customer retention. 😞

<https://imgflip.com/u/nvvt2>




LrdRahvin
★★★★★

ZOS_JessicaFolsom wrote: »
We're looking into this, everyone. There should be a button there that isn't. Thanks for bringing it to our attention.

#11
August 2016

This is a novel form of customer retention. 😞


<https://imgflip.com/u/nvvt2>



Clovata
★★★

Yes, please let us know when it's fixed, please. Not cool to be renewing us when such a bug exists.
Looking for a mature and helpful social guild - play PvE, PvP, and like crafting.

#12
August 2016




ZOS_JessicaFolsom
Community Manager

Small update on this for everyone: It looks like the "Cancel" button went missing off the page within the last 24 hours. This is a bug and should be fixed within a day. In the meantime, if you have an immediate need to cancel your recurring ESO Plus membership, please contact our [Support team](#).

Jessica Folsom
Senior Community Manager (English) - The Elder Scrolls Online
Facebook | Twitter | Twitch | Tumblr | Instagram | YouTube | Support

#13
August 2016
< [Z] >



Pewpewcannon
*

Most...if not all games that have a subscription model for customers, have an easy way of cancelling your account if you so wish.

This is not the case for Elder Scrolls Online on Xbox One.

There is zero ways to cancel your account from the actual xbox. You cant do it in game. It doesnt even MENTION it in game. No help topics, nothing. I find that absolutely ludicrous for anyone who doesnt have a computer.

You can try to pull up the "subscriptions" tab under the xbox one settings menu, but there is nothing there either to cancel it. It just shows you the details behind the actual sub.

So any disgruntled person would say hey....its a pain, but let me go log into the ESO website and get it cancelled that way.

NOPE. You cant even cancel your sub on THE OFFICIAL GAME SITE. It tells you to go to the Xbox support page.

WHICH HAS NOTHING AT ALL LISTED ANYWHERE ABOUT HOW TO CANCEL YOUR SUBSCRIPTION.

After a day of figuring this out, it was too late. I got charged for another month today. Another month that I wont even play.

Xbox support says they cant refund the charge since it was an automatic charge, they could only stop future payments.

To say I have been disappointed in the lack of customer service I have received so far from ZoS is an understatement...this is the final nail in the coffin. Officially done with this game.

#1
September 2015

07/22/2021

	Gambs_20 *	I purchased ESO plus and received all of the goodies but now I'd like to cancel it. I went to my Xbox account and under subscriptions it says nothing about ESO. Does it not recur or do I have to go about getting rid of it somewhere else? I've had it for almost a month now.	#1 July 2015
Quote			
	HisShadowX **	I bought eso plus last month on the ps4 I went ahead and subbed but since you all use the ps store I went looking around to try a place to cancel on the psn but I am only given an option to extend my eso plus account.	#1 July 2015
	Reyli Soul Shiven	I bought a month of ESO Plus on my PS4, and since I didn't see any other threads on the subject, does ESO Plus automatically renew at the end of the month on the consoles or do you just buy a month at a time? After I bought a month, the "Buy" option became an "Extend" button. I also didn't see any place on the account page or in the Playstation store where you could cancel it if it was automatic renewal, so I am just looking for a bit of clarification. 😊 thank you!	#1 June 2015

20. The above reviews are just a sampling of numerous negative reviews consumers have left regarding Defendant's ESO Plus Subscriptions and the unclear cancellations policy and confusing billing associated with the ESO Plus Subscriptions. As discussed below, these consumer complaints reveal a widespread pattern of uniform unlawful conduct by Defendant, underscoring the artifice devised and employed by Defendant to lure and deceive millions of consumers into enrolling, and remaining enrolled, in its paid ESO Plus Subscription programs.

C. California's Automatic Renewal Law

21. In 2010, the California Legislature enacted the Automatic Renewal Law ("ARL"), Cal. Bus. & Prof. Code §§ 17600, *et seq.*, with the intent to "end the practice of ongoing charging of consumer credit or debit cards or third party payment accounts without the consumers' explicit consent for ongoing shipments of a product or ongoing deliveries of service." Cal. Bus. & Prof. Code § 17600 (statement of legislative intent). More recently, in 2018, California's Senate Bill 313 amended Section 17602 of the ARL, adding new requirements meant to increase consumer protections for, among other things, orders that contain free trial and promotional pricing, and subscription agreements entered into online.

22. The ARL makes it "unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state to do any of the following:"

- (1) Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer. If the offer also

1 includes a free gift or trial, the offer shall include a clear and
 2 conspicuous explanation of the price that will be charged after the
 3 trial ends or the manner in which the subscription or purchasing
 4 agreement pricing will change upon conclusion of the trial.

5 (2) Charge the consumer's credit or debit card, or the consumer's
 6 account with a third party, for an automatic renewal or continuous
 7 service without first obtaining the consumer's affirmative consent to
 8 the agreement containing the automatic renewal offer terms or
 9 continuous service offer terms, including the terms of an automatic
 10 renewal offer or continuous service offer that is made at a
 11 promotional or discounted price for a limited period of time.

12 (3) Fail to provide an acknowledgment that includes the automatic
 13 renewal offer terms or continuous service offer terms, cancellation
 14 policy, and information regarding how to cancel in a manner that is
 15 capable of being retained by the consumer. If the automatic renewal
 16 offer or continuous service offer includes a free gift or trial, the
 17 business shall also disclose in the acknowledgment how to cancel,
 18 and allow the consumer to cancel, the automatic renewal or
 19 continuous service before the consumer pays for the goods or
 20 services.

21 Cal. Bus. & Prof. Code §§ 17602(a)(1)-(3).

22 23. Section 17602(b) of the ARL further provides:

23 A business that makes an automatic renewal offer or continuous
 24 service offer shall provide another cost-effective, timely, and easy-to-
 25 use mechanism for cancellation that shall be described in the
 26 acknowledgment specified in paragraph (3) of subdivision (a).

27 Cal. Bus. & Prof. Code § 17602(b).

28 24. Additionally, following the 2018 amendment to the ARL, the updated law requires
 e-commerce sellers, doing business in California, to allow online cancellation of auto-renewing
 memberships or recurring purchases that were initiated online. Specifically, Section 17602(c)
 provides:

[A] consumer who accepts an automatic renewal or continuous
 service offer online shall be allowed to terminate the automatic
 renewal or continuous service *exclusively online*, which may include
 a termination email formatted and provided by the business that a
 consumer can send to the business without additional information.

Cal. Bus. & Prof. Code § 17602(c) (emphasis added). The updated ARL also requires a seller who
 provides an automatic offer that includes a free gift, trial, or promotional pricing to notify
 consumers about how to cancel the auto-renewal before they are charged. Sellers must also

1 explain the price to be charged when the promotion or free trial ends. If the initial offer is at a
2 promotional price that is only for a limited time and will increase later, the seller must obtain
3 consumer consent to the non-discounted price prior to billing. *Id.*

4 25. Section 17601(a) of the ARL defines the term “Automatic renewal” as a “plan or
5 arrangement in which a paid subscription or purchasing agreement is automatically renewed at the
6 end of a definite term for a subsequent term.” Cal. Bus. & Prof. Code § 17601(a).

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

16 27. Pursuant to Section 17601(c) of the ARL, “clear and conspicuous” or “clearly and
17 conspicuously” means “in larger type than the surrounding text, or in contrasting type, font, or
18 color to the surrounding text of the same size, or set off from the surrounding text of the same size
19 by symbol ls or other marks, in a manner that clearly calls attention to the language.” Cal. Bus. &
20 Prof. Code § 17601(c).

21 28. Finally, Section 17603 of the ARL provides that where a “business sends any
22 goods, wares, merchandise, or products to a consumer, under a continuous service agreement or
23 automatic renewal of a purchase, without first obtaining the consumer’s affirmative consent[.]” the
24 material sent will be deemed “an unconditional gift to the consumer, who may use or dispose of
25 the same in any manner he or she sees fit without any obligation whatsoever on the consumer’s
26 part to the business[.]” Cal. Bus. & Prof. Code § 17603.

27 29. As alleged below, Defendant’s practices on the ESO Website and Console Stores
28 systematically violate Sections 17602(a)(1), 17602(a)(2), and 17602(a)(3) of the ARL.

D. Defendant's Business: The ESO Plus Subscription Enrollment Process

30. At all relevant times herein, Defendant has offered, via the ESO Website and Gaming Platforms, various ESO Plus Subscriptions for premium benefits, including exclusive access to digital in-game products and customizable and downloadable content on a contract or fee basis. The ESO Plus Subscriptions are offered on a recurring basis for renewal terms of varying lengths³¹, and all plans automatically renew at the end of the defined renewal term unless the subscriber cancels. For example, when customers sign up for a 30-day ESO Plus Subscription for PC, at the end of the initial monthly renewal period, their subscriptions are automatically renewed and their Payment Methods are charged the full standard monthly rate of \$14.99 for the subsequent month, and every month thereafter if they do not cancel.³² Defendant's ESO Plus Subscriptions constitute automatic renewal and/or continuous service plans or arrangements for the purposes of Cal. Bus. & Prof. Code § 17601.

31. To sign up for Defendant's ESO Plus Subscriptions, the consumer must first select a program. From a single webpage of the ESO Website, prospective subscribers can review and compare the features of – and can find links to the individual enrollment webpages for – each of Defendant's paid subscription plan offerings, including the ESO Plus Subscriptions at issue.

32. Consumers can sign up for one of Defendant's ESO Plus Subscription plans through the ESO Website, or through console stores within the Gaming Platforms. Customers who purchase an ESO Plus Subscription via the ESO Plus Website and/or Gaming Platforms are automatically enrolled by Defendant in their chosen ESO Plus Subscription plan going forward, by default. In addition to paid memberships, customers may also often sign up for the ESO Plus Subscriptions on a free-trial or discounted promotional basis. Nevertheless, customers that enroll in a free trial or at a discounted rate, like those that sign up for a paid subscription, must enroll in

³¹ Currently, the ESO Website offers ESO Plus Subscription options at the following price points and renewal terms: \$14.99 per month for the monthly automatic renewal plan; \$13.99 per month for the 3-month automatic renewal plan (at a purported total cost of \$41.97); \$12.99 per month for the 6-month automatic renewal plan (at a purported total cost of \$77.94); and \$11.67 per month for an annual automatic renewal plan (at a purported total cost of \$139.00). See <https://www.elderscrollsonline.com/en-us/esoplus>.

³² *Id.*

1 the ESO Plus Subscription through the ESO Website or Gaming Platforms and provide Defendant
 2 with their payment information at the time of enrollment. Customers' free-trial and time-limited
 3 promotional ESO Plus Subscriptions automatically convert to paid monthly subscriptions at the
 4 end of the trial or promotional period, at which point those users are also automatically enrolled by
 5 Defendant in a paid ESO Plus Subscription program and their Payment Methods are automatically
 6 charged by Defendant on a recurring, monthly basis in the amount of the full standard rate
 7 associated with a given ESO Plus Subscription plan, continuing indefinitely until the customer
 8 takes affirmative steps to cancel.

9 33. The enrollment process for the ESO Plus Subscriptions is substantially the same,
 10 regardless of the medium used. After selecting one of the ESO Plus Subscription plans, those
 11 navigating the enrollment process on the ESO Website or through the Gaming Platforms are
 12 directed to a final webpage (the "Checkout Page"), where prospective subscribers are prompted to
 13 input their payment information and then invited to complete their purchase. For the purposes of
 14 the ARL and this Complaint, the "relevant portion of the Checkout Page" refers to the text of that
 15 portion of the Checkout Page that appears "in visual proximity to the request for consent to the
 16 offer[.]" which in this case pertains to the text in the immediate vicinity of, but *before*³³, the final
 17 button that customers must press in order to complete the checkout process.

18 34. By way of example, when a consumer signs up for a ESO Plus Subscription for PC
 19 through the desktop version of the ESO Website—specifically, for the plan that automatically
 20 renews at the standard rate of \$41.97 every 90 days³⁴—the "relevant portion of the Checkout
 21 Page" refers to the disclosures in the block of text in visual proximity to, and more specifically,
 22 *above* the red "I AGREE" button (*i.e.*, the "request for consent"):³⁵

23
 24 ³³ See *infra* ¶ 33 n.40.

25 ³⁴ The corresponding screen shot below was captured from the ESO Website on February 20, 2021.

26 ³⁵ That the requisite terms must be presented *above* the final red checkout button, and not below it,
 27 is logically proceeds from the ARL's explicit requirement that Defendant's Checkout Page
 28 disclosures concerning the "automatic renewal offer terms" associated with the ESO Plus
 Subscriptions precede fulfillment of the purchasing agreement, which occurs the moment a
prospective client submits to the final "request for consent" on that page (*i.e.*, by clicking the final
 "I AGREE" button thereon). See Cal. Bus. & Prof. Code § 17602(a)(1) (requiring that businesses
 "present the automatic renewal offer terms ... before the subscription or purchasing agreement is

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Payment And Review Confirmation

YOUR ORDER

The Elder Scrolls® Online
ESO PLUS MEMBERSHIP
90 DAY MEMBERSHIP

Recurring*

CARDHOLDER NAME

BILLING ADDRESS

PLEASE SELECT YOUR PREFERRED PAYMENT METHOD. YOUR EPIC ADVENTURE AWAITS!

☐ VISA ☐ MASTERCARD ☐ AMERICAN EXPRESS ☐ PAYPAL ☐ DISCOVER ☐ SIGNATURE CARD

MM YY 123 ?

John Doe ?

I AGREE

CANCEL

YOUR ORDER

ESO PLUS MEMBERSHIP

Character Bonuses

DLC Access

In-game Crowns

Deals & Exclusives

90 DAY MEMBERSHIP

Recurring*

Total **\$0.00**
A confirmation email will be sent when your purchase is complete.

* You have selected a membership that will bill you \$41.97 + applicable taxes, if any, every 90 days in accordance with the plan selected above. By selecting a membership, you understand and agree that we will save your payment information in order to process your recurring membership.

If you are purchasing the digital version of The Elder Scrolls® Online (ESO), by clicking "I agree" on the Payment and Review page, you agree that we are providing you immediate access to the digital content so your purchase is final.

If you are purchasing an ESO Plus™ membership, you agree to be charged immediately for your membership as set forth above and because we are providing immediate access to membership privileges, your purchase is final. If you are purchasing a one-time ESO Plus™ membership, you will need to renew by purchasing another membership or your privileges will expire. If you are purchasing a recurring ESO Plus™ membership, you further understand and agree that we will save your payment information for subsequent membership renewals and that you authorize the recurring payment now. We will not charge you for any subsequent membership period until after your membership time has expired, subject to cancellation by you at any time. You may update or cancel your membership at any time by going to the "Manage Membership" page on your Elder Scrolls Online account. Any cancellation will be effective at the end of your then-current membership term. ZeniMax® reserves the right to change the fees or billing methods at any time upon notice to you through your Account. If you pay a periodic (e.g., monthly) subscription or membership fee for a Service, ZeniMax® will provide you with at least thirty five (35) days advance notice of any such changes. You can view the remaining time left on your current membership term by going to the account summary page on your Elder Scrolls Online account.

If you are purchasing Crowns, by clicking "I agree" on the Payment and Review page, you agree that we are providing you immediate access to the digital content so your purchase is final. By purchasing Crowns, you are receiving a license to use or obtain certain features of ESO under the terms and conditions of the game and service. Crowns have no value outside of ESO, are non-transferable, cannot be redeemed for cash, and are subject to the Terms of Service.

If you are redeeming a Game Time Card, you agree to be charged immediately for your membership as set forth above and because we are providing immediate access to membership privileges, your purchase is final.

GAME INFO SYSTEM REQUIREMENTS ADDITIONAL REQUIREMENTS

fulfilled and in visual proximity[] ... to the request for consent to the offer”) (emphasis added). This requirement is responsive to the risk that consumers will furnish consent to the subscription agreement by clicking the final checkout button before they have the opportunity to scroll far enough down the webpage to notice additional relevant and material disclosures embedded in a visually exhausting sea of fine print near the bottom of the webpage. Accordingly, to the extent that any “automatic renewal offer terms” are disclosed beneath the final red checkout button on the Checkout Page pictured on the next page, such terms lack the requisite “visual proximity” and conspicuousness and therefore cannot satisfy the requirements of Section 17602(a)(1) of the ARL.

35. Likewise, when a consumer signs up for a monthly ESO Plus Subscription for Xbox, accessible through a hyperlink on the ESO Website, the “relevant portion of the Checkout Page” refers to the disclosures in the block of text above the blue “Subscribe” button (*i.e.*, the “request for consent”), as shown in the red box affixed for emphasis to the screen shot below:³⁶

ESO Plus 1 Month

\$14.99 plus applicable taxes every month

By selecting Subscribe, you agree to the [Store Terms of Sale](#). Starting today, we'll charge you \$14.99 plus applicable taxes every month. You'll be notified before any price changes. Cancel [More](#)

VISA [Masked Card Number] [Change](#)

Cancel Subscribe

³⁶ This screen shot was captured on July 13, 2021.

Of note, prospective subscribers must click the “More” hyperlink in order to see the expanded or full text of the disclosure, which is, by default, shown abridged on the Checkout Page as pictured above. However, consumers are not required to click the “More” hyperlink and reveal or read the expanded text in order to fulfill the subscription or purchasing agreement within the meaning of Section 17602(a)(1) of the ARL (*i.e.*, by clicking the final blue “Subscribe” button, *see supra* ¶ 33 n.40), nor does Defendant prompt consumers to do so at any point during the checkout process. Accordingly, any hidden text not appearing in the screen shot above that may be revealed

1
2 36. Regardless of how the consumer subscribes (via the ESO Website or the Gaming
3 Platforms), and irrespective of which ESO Plus Subscription the subscriber selects (whether for a
4 1-month, 3-month, 6-month, or 12-month renewal term), Defendant fails to disclose the full terms
5 of its auto-renewal program either before or after checkout, and it never requires the individual
6 consumer to read or affirmatively agree to any terms of service, *i.e.*, by requiring consumers to
7 click a checkbox next to the automatic renewal offer terms before consumers complete the
8 checkout process and submit their orders for their ESO Plus Subscriptions. Consequently,
9 Defendant uniformly fails to obtain any form of consent from – or even provide effective notice to
10 – its subscribers before charging consumers' Payment Methods on a recurring basis.

11 **E. Defendant Violates California's Automatic Renewal Law**

12 37. At all relevant times, Defendant failed to comply with the ARL in three ways: (i)
13 Defendant failed to present the automatic renewal offer terms in a clear and conspicuous manner
14 and in visual proximity to the request for consent to the offer before the subscription or purchasing
15 agreement was fulfilled, in violation of Cal. Bus. & Prof. Code § 17602(a)(1); (ii) Defendant
16 charged Plaintiff's and Class members' Payment Methods without first obtaining their affirmative
17 consent to the agreement containing the automatic renewal offer terms, in violation of Cal. Bus. &
18 Prof. Code § 17602(a)(2); and (iii) Defendant failed to provide an acknowledgment that included
19 the automatic renewal offer terms, cancellation policy, and information regarding how to cancel in
20 a manner that is capable of being retained by the consumer, in violation of Cal. Bus. & Prof. Code
21 §§ 17602(a)(3).

22 i. **Defendant Fails To Clearly And Conspicuously Present The ESO**
23 **Plus Subscription Terms Before The Subscription Agreement Is**
24 **Fulfilled And In Visual Proximity To The Request For Consent To**
The Offer.

25 38. First, the relevant portion of the Checkout Page for ESO Plus does not contain
26 "clear and conspicuous" disclosures relating to the "automatic renewal offer terms[.]" as that term
27 _____
28 after clicking of the "More" hyperlink is not presented with the requisite visual proximity or
conspicuousness under the ARL.

1 is defined by Cal. Bus. & Prof. Code § 17601(b)(1)-(5), in violation of Section 17602(a)(1) of the
 2 ARL. Specifically, using the pictured Checkout Pages for Xbox and PC depicted above
 3 (collectively, the “Checkout Pages”) as examples, Defendant fails to present a complete
 4 “description of the cancellation policy that applies to the offer.” Cal. Bus. & Prof. Code §
 5 17601(b)(2). For instance, with respect to cancellation, the relevant portion of the Checkout Page
 6 for the ESO Plus Subscription for Xbox (the “Xbox Checkout Page”) merely states: “Cancel”.
 7 Prospective subscribers must further click the “More” hyperlink to reveal the rest of the sentence
 8 that states: “Cancel any time to stop future charges by visiting your Microsoft account.” However,
 9 this expanded statement is not disclosed in the relevant portion of the Xbox Checkout Page, and it
 10 is therefore not adequately presented on the Xbox Checkout Page, as the ARL requires. Since the
 11 word “cancel,” on its own, cannot be a cancellation *policy*, Defendant has failed to disclose such
 12 automatic renewal offer term in the matter required by statute. *See* Cal. Bus. & Prof. Code §§
 13 17601(b)(2), § 17602(a)(1).

14 39. Moreover, assuming *arguendo* that the hidden text cited above *is* presented on the
 15 Xbox Checkout Page and with the requisite visual proximity (Defendant has done neither),
 16 Defendant still fails to present a complete “description of the cancellation policy that applies to the
 17 offer[.]” Cal. Bus. & Prof. Code § 17601(b)(2). Significantly, the relevant portion of the Xbox
 18 Checkout Page is utterly silent as to *when* cancellation must be affected, and it provides no
 19 explanation whatsoever regarding *how* to cancel. For example, the Xbox Checkout Page does not
 20 mention that subscribers can “view the remaining time left on [their] current membership term by
 21 going to the account summary page on [their] Elder Scrolls Online account,” or that “ESO Plus
 22 membership begins when [they] select [their] preferred membership plan on
 23 store.elderscrollsonline.com, at which time [they] will be charged[.]” as is set forth in other pages
 24 of the ESO Website and Gaming Platforms.³⁷ Yet, prior to checkout, Defendant was obligated by
 25 law to place consumers on notice of these aspects of its cancellation policy, in accordance with the
 26 ARL.

27 ³⁷ *ESO Plus Membership Product: Overview: Additional Requirements*,
 28 https://account.elderscrollsonline.com/store/product/eso_plus.

1 40. Likewise, the relevant portion of the Checkout Page for the ESO Plus Subscription
 2 for PC (the “PC Checkout Page”) altogether fails to present a “description of the cancellation
 3 policy that applies to the offer[.]” *see* Cal. Bus. & Prof. Code § 17601(b)(2). Notably, the PC
 4 Checkout Page does not contain the word or root “cancel” anywhere above the red “I AGREE”
 5 button on that page. And to the extent that the PC Checkout Page contains any relevant disclosure
 6 regarding Defendant’s cancellation policy that is presented *below* this final checkout button, such
 7 disclosure nevertheless fails to comply with the ARL because it is not “in visual proximity to the
 8 request for consent” to the automatic renewal offer.³⁸ Moreover, the text presented beneath the red
 9 checkout button on the PC Checkout Page is presented in the same size and font as that of the
 10 surrounding block of text, and it is placed alongside other, unrelated disclosures without
 11 distinction from the surrounding text of the same size in any manner that calls attention to the
 12 language. In other words, any disclosures related to relevant automatic renewal offer terms that
 13 may be embedded in this large block of text below the final checkout button is presented in such a
 14 way that it could be, and in fact was, easily overlooked. It is therefore not “clear and conspicuous”
 15 as defined by Cal. Bus. & Prof. Code § 17601(c). Given such inconspicuousness, Defendant fails
 16 to disclose “[t]hat the subscription or purchasing agreement will continue until the consumer
 17 cancels” in the manner required by statute. Cal. Bus. & Prof. Code §§ 17601(b)(1), 17602(a)(1).

18 41. Even more crucially, the Checkout Pages fail to disclose that the method of
 19 cancellation available to a particular consumer varies depending on the medium through which
 20 that consumer initially purchased and/or enrolled in her ESO Plus Subscription. For instance, the
 21 Checkout Pages do not disclose that those who purchased their ESO Plus Subscription directly
 22 through the ESO Website can go “to the account summary page on [their] Elder Scrolls Online
 23 account,” while subscribers who signed up through the Gaming Platforms must cancel “by
 24 accessing [their] applicable account or membership page or contact[] ZeniMax’s Customer
 25 Service,” which they can do by accessing a completely different webpage (help.bethesda.net).³⁹

26
 27 ³⁸ *See supra* ¶ 33 n.40.

28 ³⁹ *ZeniMax Media Terms of Service* (last updated June 17, 2019),
<https://account.elderscrollsonline.com/terms-of-service>.

1 42. It is not enough that the cancellation policy associated with Defendant's ESO Plus
2 Subscriptions may be set forth on the webpages located elsewhere on the ESO Website or Gaming
3 Platforms, or that such relevant information might be hiding behind an optional drop-down menu
4 within the Checkout Page itself; the ARL requires that Defendant present such terms as
5 Defendant's full cancellation policy on the Checkout Page – and it must further do so clearly,
6 conspicuously, and with the requisite proximity – so as to allow the consumer to read and review
7 immediately prior to purchase. Defendant therefore failed, and continues to fail, to present
8 pertinent information regarding cancellation “before the subscription or purchasing agreement is
9 fulfilled and in visual proximity[] ... to the request for consent to the offer,” as the ARL requires.
10 Cal. Eus. & Prof. Code § 17602(a)(1).

11 43. Additionally, although the Xbox Checkout Page states, “[s]tarting today, we’ll
12 charge you \$14.99 plus applicable taxes every month,” a reasonable consumer would find that
13 statement unclear in regard to whether formal cancellation is required in order to stop Defendant
14 from automatically charging renewal fees to customers’ Payment Methods on a recurring basis.
15 Moreover, the relevant portion of the Xbox Checkout Page merely explains that, by clicking the
16 blue button that reads “Subscribe,” the customer “agree[s] to Store Terms of Sale.” It is not at all
17 clear based on this statement that customers who enroll in an ESO Plus Subscription for Xbox are
18 agreeing to recurring monthly payments that will continue indefinitely until the subscription is
19 cancelled. Even worse, the relevant portion of the PC Checkout Page fails to disclose this
20 information whatsoever. And to the extent that the recurring nature of the purchasing agreement is
21 disclosed in the fine print beneath the final red “I AGREE” button on that page, such information
22 is not clear and conspicuous as the ARL requires⁴⁰, nor is it presented with the requisite visual
23 proximity required by statute. This material information regarding the fact of automatic renewal is
24 similarly omitted from the Checkout Pages for the ESO Plus Subscription for PlayStation and any
25 other Gaming Platform through which consumers can enroll in Defendant's ESO Plus
26 Subscriptions. As such, with respect to each of the ESO Plus Subscriptions, Defendant fails to
27

28 ⁴⁰ See *supra* ¶ 43.

disclose “[t]hat the subscription or purchasing agreement will continue until the consumer cancels” in the manner required by statute. Cal. Bus. & Prof. Code §§ 17601(b)(1), 17602(a)(1).

44. In sum, Defendant has failed to place consumers on notice of the above-mentioned automatic renewal offer terms associated with their ESO Plus Subscriptions in accordance with the ARL. See Cal. Bus. & Prof. Code § 17602(a)(1).

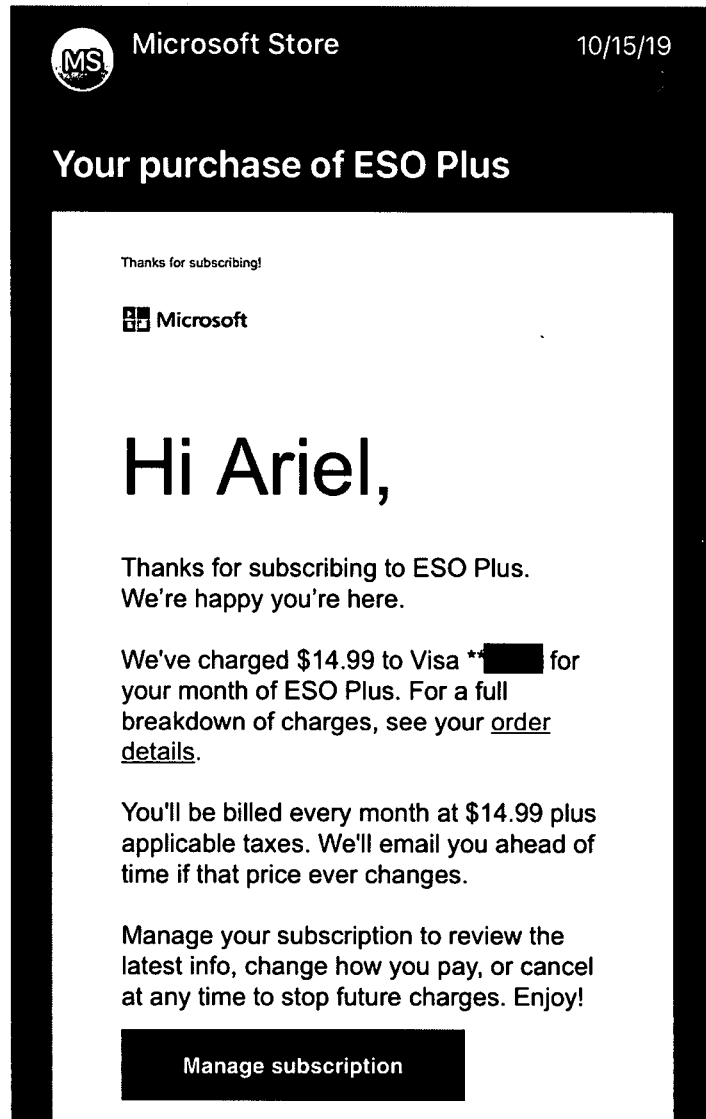
ii. **Defendant Fails To Obtain Consumers’ Affirmative Consent To The Automatic Renewal Terms Associated With The ESO Plus Subscriptions.**

45. Second, at no point during the checkout process does Defendant require consumers to read or affirmatively agree to any terms associated with their ESO Plus Subscriptions, *i.e.*, by requiring consumers to select or click a “checkbox” next to the automatic renewal offer terms to complete the checkout process. Accordingly, when Defendant automatically renews customers’ ESO Plus Subscriptions, Defendant charges consumers’ Payment Methods without first obtaining their affirmative consent to the agreement containing the automatic renewal offer terms, in violation of Cal. Bus. & Prof. Code § 17602(a)(2).

iii. **Defendant Fails To Provide A Post-Checkout Acknowledgment That Clearly And Conspicuously Discloses The Required ESO Plus Subscription Offer Terms.**

46. Finally, after Plaintiff and the members of the Class subscribed to one of Defendant’s ESO Plus Subscriptions, Plaintiff and similarly situated Class members received email follow-ups regarding their purchases (the “Acknowledgment Emails”).

47. By way of example, at least as of October 15, 2019, the subject line of the Acknowledgment Email that ESO Plus subscribers received as a purchase confirmation stated: “Your Purchase of ESO Plus.” The body of the Acknowledgment Email contained, in relevant part, the following text and images:



48. As with the Checkout Pages, the Acknowledgment Email failed to provide Plaintiff and members of the Class with the complete automatic renewal or continuous service terms that applied to the offer, a description of the full cancellation policy, or any specific information regarding how to cancel. Namely, the purchase confirmation does not clearly and conspicuously provide that the ESO Plus Subscription “will continue until the consumer cancels,” Cal. Bus. & Prof. Code § 17602(b)(1), and it fails to provide a complete “description of the cancellation policy that applies to the offer,” Cal. Bus. & Prof. Code § 17602(b)(2). Nor does it include any clear and conspicuous information regarding how to cancel the ESO Plus Subscriptions. As such, the

1 Acknowledgment Email fails to disclose “the automatic renewal offer terms[,] ... cancellation
2 policy, and information regarding how to cancel in a manner that is capable of being retained by
3 the consumer,” in violation of Section 17602(a)(3)

4 49. By and through these actions, Defendant has charged Plaintiff’s and Class
5 members’ Payment Methods in direct violation of the ARL. As a result, all goods, wares,
6 merchandise, and/or products sent to Plaintiff and the Class upon the automatic renewal of their
7 continuous service agreements are deemed to be “unconditional gifts” pursuant to Cal. Bus. &
8 Prof. Code § 17603.

9 50. Plaintiff brings this action individually and on behalf of similarly situated
10 individuals against Defendant for conversion, unjust enrichment, negligent misrepresentation, and
11 fraud. Plaintiff also brings this action against Defendant for violations of California’s Unfair
12 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, among other consumer
13 protection statutes and common laws. As set forth in detail below, Plaintiff’s claims, which are
14 based on Defendant’s failure to comply with the ARL, arise under the “unlawful” prong of the
15 UCL.

16 **PLAINTIFF’S INDIVIDUAL ALLEGATIONS**

17 51. Plaintiff Ariel Armstrong is an individual consumer who signed up for a monthly
18 ESO Plus Subscription for Xbox from Defendant while in California on or around October 15,
19 2019. At the time Ms. Armstrong signed up for her ESO Plus Subscription, she provided her
20 prepaid debit card information to Defendant.

21 52. Before Ms. Armstrong purchased her ESO Plus Subscription, Defendant did not
22 disclose to Ms. Armstrong all required automatic renewal offer terms associated with the
23 subscription program. Additionally, although the Checkout Page from which Ms. Armstrong made
24 her purchase included some relevant information regarding automatic renewal, the manner in
25 which this information was presented was insufficient to put Ms. Armstrong on notice of such
26 material information, which Defendant was and is statutorily required to disclose in the precise
27 manner specified by the ARL. Yet, Defendant failed to satisfy this statutory obligation of
28 disclosure before charging Ms. Armstrong’s Payment Method in connection with her ESO Plus

Subscription. Specifically, prior to completing her initial ESO Plus Subscription order, the relevant screens and buttons presented to Ms. Armstrong did not clearly and conspicuously state that her ESO Plus Subscription would automatically renew every month until she cancelled; it did not state the recurring charges that would be charged to Ms. Armstrong's credit card as part of the automatic renewal plan, explain that the amount of the charge would change, or disclose the amount to which the charge would change; and it did not describe the full cancellation policy that applied to her purchase.

53. At no point prior to completing her initial purchase did Defendant obtain Ms. Armstrong's affirmative consent to an agreement containing the automatic renewal offer terms.

54. After Ms. Armstrong completed her initial order, Ms. Armstrong received an Acknowledgment Email stating that her ESO Plus Subscription had been activated. However, as with the Checkout Page, the Acknowledgment Email, too, failed to provide Ms. Armstrong with the complete automatic renewal terms that applied to Defendant's offer, a description of Defendant's full cancellation policy, or information regarding how to cancel Ms. Armstrong's ESO Plus Subscription in a manner capable of being retained by her. Ms. Armstrong did not receive any other acknowledgements that contain the required information.

55. As a result of Defendant's missing and otherwise deficient disclosures, when Ms. Armstrong attempted to cancel her ESO Plus subscription in or around April 2020 (discussed further below), she was unable to cancel the "automatic renewal" program. Nevertheless, following Ms. Armstrong's April 2020 attempt to cancel, Defendant continued to automatically renew Ms. Armstrong's ESO Plus Subscription and charge Ms. Armstrong's Payment Method an additional *nine times*, for a total of *fourteen* unauthorized renewal charges amounting to \$209.86 to Ms. Armstrong's Payment Method without her knowing consent.

Defendant's Inconsistent Billing Practices

56. During the course of her ESO Plus Subscription, Ms. Armstrong found Defendant billing practices confusing and unpredictable. As shown by the table below, the monthly renewal fees that Defendant charged to Ms. Armstrong's Payment Method from October 2019 to March

2021 posted to her Payment Method at different points each month, which came as a surprise to Ms. Armstrong:

Billing Date	Amount
10/15/2019	\$14.99
11/22/2019	\$14.99
12/18/2019	\$14.99
02/08/2020	\$14.99
04/07/2020	\$14.99
05/14/2020	\$14.99
06/20/2020	\$14.99
07/12/2020	\$14.99
09/19/2020	\$14.99
11/09/2020	\$14.99
12/06/2020	\$14.99
01/17/2021	\$14.99
02/26/2021	\$14.99
03/27/2021	\$14.99
Total: \$209.86	

57. Throughout the life of Ms. Armstrong's ESO Plus Subscription, Defendant's practices with respect to billing date varied widely from month-to-month and were therefore a source of continual frustration for Ms. Armstrong. Because Defendant tended to charge Ms. Armstrong's Payment Method at different points of each month, Ms. Armstrong could not discern any regular monthly billing schedule. Defendant's erratic and unpredictable billing schedule frustrated Ms. Armstrong, prompting her to cancel her ESO Plus Subscription prior to automatic renewal and avoid being billed for the subsequent billing period (while still avoid doing so mid-renewal period, so as not to lose access to exclusive subscription benefits for which she already paid through the end of the month).

58. Ms. Armstrong's confusion and surprise with respect to Defendant's billing practices is the direct result of Defendant's failure to place Ms. Armstrong on notice of the

1 recurring nature of her ESO Plus Subscription and other pertinent automatic renewal offer terms.
 2 Because Defendant failed to disclose this material information in the manner required by statute,
 3 Ms. Armstrong was unable at the point of sale to accept Defendant's offer or knowingly enter into
 4 the purchase agreement.

5 **Defendant's Undisclosed Cancellation Policy**

6 59. Frustrated with Defendant's confusing billing practices and other hidden automatic
 7 renewal terms, Ms. Armstrong finally attempted to cancel her ESO Plus Subscription in or around
 8 April 2020, via her Xbox console. However, finding no useful guidance in the vague and
 9 incomplete terms that were presented to her at the point of sale on the Checkout Page or later in the
 10 Acknowledgment Email, and no assistance in the opaque directions set forth on other pages of the
 11 ESO Website, Ms. Armstrong struggled immensely with the cancellation process. Ultimately, Ms.
 12 Armstrong was not able to affect cancellation through her attempted means, which she learned
 13 upon incurred additional renewal charges for subsequent months notwithstanding her attempt on
 14 April 2020, among other occasions. The renewal charges continued until Ms. Armstrong received
 15 an email from Defendant on June 4, 2021, stating that her Payment Method was declined and, as a
 16 result, her ESO Plus Subscription had been cancelled.

17 60. Ms. Armstrong was not previously aware of any of the aspects of Defendant's
 18 cancellation policy discussed above, *see supra*. At no point during her ESO Plus Subscription was
 19 Ms. Armstrong required or even prompted to navigate to or otherwise examine any of the terms
 20 disclosed on any other page of the ESO Website aside from the Checkout Page. Further,
 21 Defendant neglected to disclose this information to Ms. Armstrong on the Checkout Page at the
 22 point of purchase or in the Acknowledgment Email that Ms. Armstrong received concerning the
 23 ESO Plus Subscriptions after she completed the checkout process. Accordingly, Defendant failed
 24 to place Ms. Armstrong on notice of its cancellation policy or provide Ms. Armstrong information
 25 regarding how to cancel in a manner that is capable of being retained by her, in violation of Cal.
 26 Bus. & Prof. Code §§ 17602(a)(1)-(3).

27 61. Moreover, even if the acknowledgment email *had* contained Defendant's complete
 28 cancellation policy (it did not), for the reasons stated above the "mechanism for cancellation" that

1 exists is not one Ms. Armstrong and other reasonable consumers would consider “easy-to-use.”
 2 Defendant therefore failed to provide Ms. Armstrong with an “easy-to-use mechanism for
 3 cancellation” or describe any such mechanism in an acknowledgment email, in violation of Cal.
 4 Bus. & Prof. Code § 17602(b).

5 62. Defendant’s pre- and post-checkout disclosures therefore fail to comply with the
 6 ARL, which deems products provided in violation of the statute to be unconditional gifts to
 7 consumers. Cal. Bus. & Prof. Code § 17603.

8 63. As a direct result of Defendant’s unlawful conduct described above, Ms. Armstrong
 9 suffered economic injury. Had Defendant complied with the ARL by adequately disclosing the
 10 terms associated with Ms. Armstrong’s ESO Plus Subscription purchase, Ms. Armstrong would
 11 have been able to read and review the auto renewal terms prior to purchase, and she would have
 12 not subscribed to ESO Plus or she would have cancelled her ESO Plus Subscription earlier, *i.e.*,
 13 prior to her card being declined and her membership being cancelled by Defendant.

14 64. The facts giving rise to Ms. Armstrong’s claims are materially the same as the Class
 15 she seeks to represent.

16 CLASS ACTION ALLEGATIONS

17 65. **Class Definition:** Plaintiff brings this action pursuant to Code of Civil Procedure §
 18 382 and Civil Code § 1781 on behalf of a class of similarly situated individuals, defined as follows
 19 (the “Class”):

20 All persons in California who, within the applicable statute of
 21 limitations period, up to and including the date of final judgment in
 22 this action, incurred renewal fee(s) in connection with Defendant’s
 ESO Plus subscription offerings.

23 66. Specifically excluded from the Class are Defendant and any entities in which
 24 Defendant has a controlling interest, Defendant’s agents and employees, the judge to whom this
 25 action is assigned, members of the judge’s staff, and the judge’s immediate family.

26 67. Plaintiff reserves the right to amend the definition of the Class if discovery or
 27 further investigation reveals that the Class should be expanded or otherwise modified.
 28

1 68. **Numerosity.** Members of the Class are so numerous that their individual joinder
 2 herein is impracticable. On information and belief, the Class comprises at least millions of
 3 consumers throughout California. The precise number of Class members and their identities are
 4 unknown to Plaintiff at this time but may be determined through discovery. Class members may
 5 be notified of the pendency of this action by mail and/or publication through the distribution
 6 records of Defendant.

7 69. **Commonality and Predominance.** Common questions of law and fact exist as to
 8 all Class members and predominate over questions affecting only individual Class members.
 9 Common legal and factual questions include, but are not limited, to: (a) whether Defendant's ESO
 10 Plus Subscriptions constitute "Automatic renewal[s]" within the meaning of Cal. Bus. & Prof.
 11 Code § 17601(a); (b) whether Defendant failed to present the automatic renewal offer terms, or
 12 continuous service offer terms, in a clear and conspicuous manner before the subscription or
 13 purchasing agreement was fulfilled and in visual proximity to the request for consent to the offer,
 14 in violation of Cal. Bus. & Prof. Code § 17602(a)(1); (c) whether Defendant charged Plaintiff's and
 15 Class members' Payment Method for an automatic renewal or continuous service without first
 16 obtaining their affirmative consent to the automatic renewal offer terms or continuous service offer
 17 terms in violation of Cal. Bus. & Prof. Code § 17602(a)(2); (d) whether Defendant failed to
 18 provide an acknowledgement that included the automatic renewal or continuous service offer
 19 terms, cancellation policy, and information on how to cancel in a manner that is capable of being
 20 retained by Plaintiff and the Class, in violation of Cal. Bus. & Prof. Code § 17602(a)(3); (e)
 21 whether the goods and services provided by Defendant are deemed an "unconditional gift" in
 22 accordance with Cal. Bus. & Prof. Code § 17603; (f) whether Defendant's conduct alleged herein
 23 violated California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, *et seq.*,
 24 California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*, and/or
 25 California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (g)
 26 whether Defendant's conduct alleged herein constitutes conversion and/or unjust enrichment; (h)
 27 whether Plaintiff and the Class are entitled to damages and/or restitution; (i) whether Defendant
 28 should be enjoined from further engaging in the misconduct alleged herein; and (j) whether

1 Plaintiff and the Class are entitled to attorneys' fees and costs under California Code of Civil
2 Procedure § 1021.5.

3 70. *Typicality*. The claims of Plaintiff Armstrong are typical of the claims of the Class
4 in that Plaintiff Armstrong and the Class sustained damages as a result of Defendant's uniform
5 wrongful conduct, based upon Defendant's failure to obtain Plaintiff's and the Class's affirmative
6 consent to the automatic renewal offer terms or continuous service offer terms associated with the
7 ESO Plus Subscriptions before charging their Payment Methods.

8 71. *Adequacy*. Plaintiff will fairly and adequately protect Class members' interests.
9 Plaintiff has no interests antagonistic to Class members' interests, and Plaintiff has retained
10 counsel that have considerable experience and success in prosecuting complex class-actions and
11 consumer-protection cases.

12 72. *Superiority*. A class action is superior to all other available methods for the fair and
13 efficient adjudication of this controversy for, *inter alia*, the following reasons: prosecutions of
14 individual actions are economically impractical for members of the Class; the Class is readily
15 definable; prosecution as a class action avoids repetitious litigation and duplicative litigation costs,
16 conserves judicial resources, and ensures uniformity of decisions; and prosecution as a class action
17 permits claims to be handled in an orderly and expeditious manner.

18 73. Defendant has acted or failed to act on grounds generally applicable to the Class,
19 thereby making appropriate final injunctive relief with respect to the Class as a whole.

20 74. Without a class action, Defendant will continue a course of action that will result in
21 further damages to Plaintiff and members of the Class and will likely retain the benefits of its
22 wrongdoing.

23 75. Based on the foregoing allegations, Plaintiff's claims for relief include those set
24 forth below.

25 **FIRST CAUSE OF ACTION**
26 **Violations of California's Unfair Competition Law ("UCL"),**
27 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

28 76. Plaintiff re-alleges and incorporates by reference every allegation set forth in the
preceding paragraphs as though alleged in this Count.

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

3 78. The UCL prohibits unfair competition in the form of “any unlawful, unfair, or
4 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any
5 act[.]” Cal. Bus. & Prof. Code § 17200. The UCL allows “a person who has suffered injury in
6 fact and has lost money or property” to prosecute a civil action for violation of the UCL. Cal. Bus.
7 & Prof. Code § 17204. Such a person may bring such an action on behalf of himself or herself and
8 others similarly situated who are affected by the unlawful and/or unfair business practice or act.

9 79. As alleged below, Defendant has committed unlawful and/or unfair business
10 practices under the UCL by: (a) representing that Defendant’s goods and services have certain
11 characteristics that they do not, in violation of Cal. Civil Code § 1770(a)(5); (b) advertising goods
12 and services with the intent not to sell them as advertised, in violation of Cal. Civil Code §
13 1770(a)(9); and (c) converting to Defendant’s own use and benefit money that rightfully belongs to
14 Plaintiff and the Class.

15 80. Additionally, at all relevant times, Defendant has violated, and continues to violate,
16 the UCL’s proscription against engaging in unlawful and/or unfair conduct as a result of its
17 violations of the ARL, Cal. Bus. & Prof. Code §§ 17600, *et seq.* Specifically, Defendant failed,
18 and continues to fail, to: (a) provide the auto-renewal terms associated with its ESO Plus
19 Subscription “in a clear and conspicuous manner before the subscription or purchasing agreement
20 is fulfilled and in visual proximity[] ... to the request for consent to the offer,” in violation of Cal.
21 Bus. & Prof. Code § 17602(a)(1); (b) obtain the affirmative consent of Plaintiff and the Class to
22 those terms before charging their Payment Methods, in violation of Cal. Bus. & Prof. Code §
23 17602(a)(2); and (c) provide an acknowledgment that includes the automatic renewal or
24 continuous service offer terms, cancellation policy, and information regarding how to cancel in a
25 manner that is capable of being retained by the consumer, in violation of Cal. Bus. & Prof. Code
26 §§ 17502(a)(3). Defendant also makes it exceedingly difficult and unnecessarily confusing for
27 consumers to cancel its ESO Plus Subscriptions, in violation of Cal. Bus. & Prof. Code § 17602(b).

1 81. Each of these acts and practices constitutes an independent violation of the ARL,
2 and thus an independent violation of the UCL.

3 82. All products received from Defendant in violation of the ARL, Cal. Bus. Prof. Code
4 §§ 17602, *et seq.*, constitute “unconditional gifts.” *See* Cal. Bus. Prof. Code § 17603. As a direct
5 and proximate result of Defendant’s unlawful and/or unfair practices described herein, Defendant
6 has received, and continues to hold, unlawfully obtained property and money belonging to Plaintiff
7 and the Class in the form of payments made by Plaintiff and the Class for their ESO Plus
8 Subscriptions. Defendant has profited from its unlawful and/or unfair acts and practices in the
9 amount of those business expenses and interest accrued thereon.

10 83. Defendant’s acts and omissions as alleged herein violate obligations imposed by
11 statute, are substantially injurious to consumers, offend public policy, and are immoral, unethical,
12 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits
13 attributable to such conduct.

14 84. There were reasonably available alternatives to further Defendant’s legitimate
15 business interests, other than the conduct described herein.

16 85. Defendant’s acts, omissions, nondisclosures, and misleading statements as alleged
17 herein were and are false, misleading, and/or likely to deceive the consuming public.

18 86. Plaintiff and the members of the Class have suffered a substantial injury in fact and
19 lost money by virtue Defendant’s acts of unfair competition, which caused them to purchase the
20 ESO Plus Subscriptions. Had Defendant complied with its disclosure obligations under the ARL,
21 Plaintiff and members of the Class would not have purchased their ESO Plus Subscriptions or
22 would have cancelled their ESO Plus Subscriptions prior to the renewal of the subscriptions, so as
23 not to incur additional fees. Thus, Plaintiff and members of the Class were damaged and have
24 suffered economic injuries as a direct and proximate result of Defendant’s unlawful and/or unfair
25 business practices.

26 87. Defendant’s violations have continuing and adverse effects because Defendant’s
27 unlawful conduct is continuing, with no indication that Defendant intends to cease this unlawful
28 course of conduct. The public and the Class are subject to ongoing harm because the unlawful

1 and/or unfair business practices associated with the ESO Plus Subscriptions are still used by
2 Defendant today.

3 88. Plaintiff and the Class seek restitution pursuant to Cal. Bus. & Prof. Code § 17203
4 of all amounts that Defendant charged or caused to be charged to Plaintiff's and the Class's
5 Payment Method in connection with their ESO Plus Subscriptions during the four years preceding
6 the filing of this Complaint. Defendant should be required to disgorge all the profits and gains
7 they have reaped and restore such profits and gains to Plaintiff and the Class, from whom they
8 were unlawfully taken.

9 89. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff and members of the Class
10 seek a court order enjoining Defendant from such future misconduct, and any other such orders
11 that may be necessary to rectify the unlawful business practices of Defendant.

12 90. Plaintiff Armstrong brings this action as private attorneys general and to vindicate
13 and enforce an important right affecting the public interest. Plaintiff and the Class are therefore
14 entitled to an award of attorneys' fees under Code of Civil Proc. § 1021.5 for bringing this action.

15 **SECOND CAUSE OF ACTION**
16 **Conversion**

17 91. Plaintiff re-alleges and incorporates by reference every allegation set forth in the
18 preceding paragraphs as though alleged in this Count.

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

21 93. As a result of charges made by Defendant to Plaintiff's and Class members'
22 Payment Methods without authorization and in violation of California law, Defendant has taken
23 money that belongs to Plaintiff and the Class.

24 94. The amount of money wrongfully taken by Defendant is capable of identification.

25 95. Defendant engaged in this conduct knowingly, willfully, and with oppression,
26 fraud, and/or malice within the meaning of Cal. Civil Code § 3294(c).

27 96. As a result of Defendant's actions, Plaintiff and the Class have suffered damages.
28

THIRD CAUSE OF ACTION
Violations of California's False Advertising Law ("FAL"),
Cal. Bus. & Prof. Code §§ 17500, *et seq.*

97. Plaintiff re-alleges and incorporates by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

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

99. 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."

100. Defendant committed acts of false advertising, as defined by § 17500, by intentionally making and disseminating statements to consumers in California and the general public concerning Defendant's products and services, as well as circumstances and facts connected to such products and services, which are untrue and misleading on their face and by omission, and which are known (or which by the exercise of reasonable care should be known) by Defendant to be untrue or misleading. Defendant has also intentionally made or disseminated such untrue or misleading statements and material omissions to consumers in California and to the public as part of a plan or scheme with intent not to sell those services as advertised.

101. Defendant's statements include but are not limited to representations and omissions made to consumers before and after enrollment in Defendant's ESO Plus Subscriptions regarding the terms of payment for and cancellation of a consumer's automatic payments. Such representations and omissions on the Checkout Pages constitute false and deceptive advertisements.

102. Defendant's actions in violation of § 17500, as described herein, were false and misleading such that the general public is and was likely to be deceived.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

9
10
11
12

13
14
15
16
17
18

19

20

21

22

23

24

25
26
27
28

1 109. Defendant's selection and/or subscription offers and the video, music, and other
2 products pertaining thereto are "goods" and/or "services" within the meaning of Cal. Civil Code §
3 1761(a) and (b). The purchases by Plaintiff and the Class are "transactions" within the meaning of
4 Cal. Civil Code § 1761(e).

5 110. The acts and practices of Defendant as described above were intended to deceive
6 Plaintiff and the Class as described herein, and have resulted, and will result, in damages to
7 Plaintiff and the Class. These actions violated, and continue to violate, the CLRA in at least the
8 following respects: (a) Defendant's acts and practices constitute representations or omissions
9 deceiving that the ESO Plus Subscriptions have characteristics, uses, and/or benefits, which they
10 do not, in violation of Cal. Civil Code §1770(a)(5); and (b) Defendant's acts and practices
11 constitute the advertisement of the goods in question without the intent to sell them as advertised,
12 in violation of Cal. Civil Code § 1770(a)(9).

13 111. Plaintiff and the Class suffered economic injury as a direct result of Defendant's
14 misrepresentations and/or omissions because they were induced to purchase ESO Plus
15 Subscriptions and/or pay renewal fees they would not have otherwise purchased and/or paid. Had
16 Defendant fully and clearly disclosed the terms associated with the ESO Plus Subscriptions,
17 Plaintiff and the Class would have not subscribed to the ESO Plus Subscriptions, or they would
18 have cancelled their ESO Plus Subscriptions earlier, *i.e.*, prior to the expiration of the initial
19 subscription period.

20 112. Plaintiff Armstrong, on behalf of herself and all other members the Class, seeks an
21 injunction prohibiting Defendant from continuing its unlawful practices in violation of the CLRA.

22 113. In compliance with the provisions of California Civil Code § 1782, Plaintiff sent
23 written notice to Defendant ZeniMax Media, Inc., on June 9, 2021, informing Defendant of her
24 intention to seek damages under California Civil Code § 1750. The letter expressly stated that it
25 was sent on behalf of Plaintiff and "all other persons similarly situated." Accordingly, Plaintiff
26 Armstrong, individually and on behalf of the proposed Class, seeks damages from Defendant as
27 permitted by Civil Code § 1782(d) for Defendant's violations of the CLRA.
28

FIFTH CAUSE OF ACTION
Unjust Enrichment / Restitution

114. Plaintiff re-alleges and incorporates by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

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

116. Plaintiff and the Class conferred benefits on Defendant by purchasing the ESO Plus Subscriptions.

117. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff and the Class's purchases of the ESO Plus Subscriptions. Retention of those moneys under these circumstances is unjust and inequitable because Defendant's failure to disclose material terms of the purchase agreement, in violation of California law, induced Plaintiff and the Class to purchase the ESO Plus Subscriptions. These omissions caused injuries to Plaintiff and the Class because they would not have purchased the ESO Plus Subscriptions at all, or on the same terms, if the true facts were known.

118. Because Defendant's retention of the non-gratuitous benefits conferred on them by Plaintiff and the Class is unjust and inequitable, Defendant must pay restitution to Plaintiff and the Class for its unjust enrichment, as ordered by the Court.

SIXTH CAUSE OF ACTION
Negligent Misrepresentation

119. Plaintiff hereby re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

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

121. As discussed above, Defendant misrepresented the automatic renewal offer terms associated with its automatic renewal offerings in its advertisements and related statements made in connection with the sign-up and purchase processes for the ESO Plus Subscriptions. Specifically, Defendant omitted, failed to disclose, and intentionally concealed from such

1 advertisements and related statements material facts concerning billing, cancellation, and
2 automatic payment terms, policies, and requirements.

3 122. At the time Defendant made these representations, Defendant knew or should have
4 known that these representations were false or made them without knowledge of their truth or
5 veracity.

6 123. At an absolute minimum, Defendant negligently misrepresented and/or negligently
7 omitted material facts about the ESO Plus Subscriptions and their associated terms.

8 124. The negligent misrepresentations and omissions made by Defendant, upon which
9 Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually
10 induced Plaintiff and Class members to purchase and enroll in Defendant's ESO Plus Subscription
11 program.

12 125. Plaintiff and Class members would not have purchased the ESO Plus Subscriptions
13 if the true facts had been known.

14 126. The negligent actions of Defendant caused damage to Plaintiff and Class members,
15 who are entitled to damages and other legal and equitable relief as a result.

16 **SEVENTH CAUSE OF ACTION**

17 **Fraud**

18 127. Plaintiff hereby re-alleges and incorporates by reference the allegations contained in
19 all preceding paragraphs of this complaint.

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

22 129. As discussed above, Defendant provided Plaintiff and Class members with false or
23 misleading material information and failed to disclose material facts about the ESO Plus
24 Subscriptions and their associated automatic renewal terms, including terms regarding Defendant's
25 cancellation policy and billing practices and policies. These misrepresentations and omissions
26 were made by Defendant with knowledge of their falsehood.
27
28

1 130. The misrepresentations and omissions made by Defendant, upon which Plaintiff and
2 Class members reasonably and justifiably relied, were intended to induce, and actually induced
3 Plaintiff and Class members to purchase the ESO Plus Subscriptions.

4 131. The fraudulent actions of Defendant caused damage to Plaintiff and the members of
5 the Class, who are entitled to damages and other legal and equitable relief as a result.

6 **PRAYER FOR RELIEF**

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

- 9 a. For an order certifying the Class and naming Plaintiff as a representative of the
10 Class and Plaintiff's attorneys as Class Counsel to represent the Class;
11 b. For an order declaring Defendant's conduct violates the statutes referenced herein;
12 c. For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
13 d. For actual, compensatory, statutory, and/or punitive damages in amounts to be
14 determined by the Court and/or jury;
15 e. For prejudgment interest on all amounts awarded;
16 f. For an order of restitution and all other forms of equitable monetary relief;
17 g. For injunctive relief as pleaded or as the Court may deem proper; and
18 h. For an order awarding Plaintiff and the Class their reasonable attorneys' fees,
19 expenses, and costs of suit.

20 **JURY DEMAND**

21 Plaintiff demands a trial by jury on all causes of action and issues so triable.
22
23
24
25
26
27
28

07/22/2021

1 Dated: July 22, 2021

Respectfully submitted,

2 **BURSOR & FISHER, P.A.**

3
4 By: Julia Venditti
5 Julia K. Venditti

6 Neal J. Deckant (State Bar No. 322946)
7 Brittany S. Scott (State Bar No. 327132)
8 Julia K. Venditti (State Bar No. 332688)
9 1990 North California Boulevard, Suite 940
10 Walnut Creek, CA 94596
11 Telephone: (925) 300-4455
12 Facsimile: (925) 407-2700
13 Email: ndeckant@bursor.com
14 bscott@bursor.com
15 jvenditti@bursor.com

12 **BURSOR & FISHER, P.A.**

13 Frederick J. Klorczyk III (State Bar No. 320783)
14 888 Seventh Avenue
15 New York, NY 10019
16 Telephone: (646) 837-7150
17 Facsimile: (212) 989-9163
18 Email: fklorczyk@bursor.com

19 *Attorneys for Plaintiff and the Putative Class*

07/22/2021