

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

6 Attorneys for Plaintiffs
7

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

11 TERESA McKINNEY, NINO KOLLER, and
MICHELLE BROWN, individually and on
12 behalf of all others similarly situated,

13 Plaintiffs,

14 vs.

15 CONSUMER REPORTS, INC., a New York
16 nonprofit corporation; and DOES 1-50,
17 inclusive,

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/13/2021 at 02:48:00 PM
Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

CASE NO. 37-2020-00046677-CU-BT-CTL

CLASS ACTION

SECOND AMENDED CLASS ACTION
COMPLAINT FOR:

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

(2) VIOLATION OF THE CALIFORNIA
CONSUMER LEGAL REMEDIES ACT; and

(3) VIOLATION OF THE CALIFORNIA
UNFAIR COMPETITION LAW

DEMAND FOR JURY TRIAL

[IMAGED FILE]

1 **INTRODUCTION**

2 1. This class action complaint alleges that defendant Consumer Reports, Inc.
3 (“Consumer Reports”) violates California law in connection with the marketing and sale of
4 subscription programs. Among other things, Consumer Reports enrolls consumers in automatic-
5 renewal or continuous service subscriptions without providing the “clear and conspicuous”
6 disclosures mandated by California law, and posts charges to consumers’ credit or debit cards for
7 purported automatic renewal or continuous service subscriptions without first obtaining the
8 consumers’ affirmative consent to an agreement containing the requisite clear and conspicuous
9 disclosures. This course of conduct violates the California Automatic Renewal Law (Bus. & Prof.
10 Code, § 17600 et seq.) (“ARL”), the Consumers Legal Remedies Act (Civ. Code, § 1750 et seq.)
11 (“CLRA”), and the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) (“UCL”).

12 **THE PARTIES**

13 2. Plaintiff Nino Koller (“Koller”) is an individual residing in San Diego County,
14 California.

15 3. Plaintiff Michelle Brown (“Brown”) is an individual residing in San Diego County,
16 California. Koller and Brown are collectively referred to herein as “Plaintiffs.”¹

17 4. Plaintiffs are informed and believe and thereon allege that Consumer Reports, Inc. is
18 a New York nonprofit corporation that does business in San Diego County, including the marketing
19 of magazine subscriptions.

20 5. Plaintiffs do not know the names of the defendants sued as DOES 1 through 50 but
21 will amend this complaint when that information becomes known. Plaintiffs allege on information
22 and belief that each of the DOE defendants is affiliated with the named defendant in some respect
23 and is in some manner responsible for the wrongdoing alleged herein, either as a direct participant,
24 or as the principal, agent, successor, alter ego, or co-conspirator of or with one or more of the other
25 defendants. For ease of reference, Plaintiffs will refer to the named defendant and the DOE
26 defendants collectively as “Defendants.”

27 _____

28 ¹ Teresa McKinney is omitted as a plaintiff from this Second Amended Complaint because it was
discovered that she is not a member of the Class.

1 6. Venue is proper in this judicial district because the conduct complained of occurred
2 in this judicial district and because Consumer Reports does not reside in California and has not
3 designated a principal office in California, and therefore venue is proper in any county designated
4 by Plaintiffs.

5 BACKGROUND

6 7. Consumer Reports provides consumers with product reviews and other information
7 through print or digital publications that include *Consumer Reports* magazine, *Consumer Reports*
8 *On Health*, *Consumer Reports Online*, and *Consumer Reports All Access*.

9 8. Traditionally, magazine publishers sold subscriptions on the basis of a schedule that
10 reflects a fixed price for a definite term (such as one, two, or three years). Under that arrangement,
11 the consumer selects the desired price/term combination and submits payment. Later, when the end
12 of the term is approaching, the consumer is notified that the subscription will soon come to an end
13 and is provided with a renewal offer. If the consumer wishes to renew, he or she selects the desired
14 price/term combination for the renewal period and submits the corresponding payment.
15 Alternatively, if the consumer does not renew, the subscription comes to an end.

16 9. During the 1990s, some marketers came to view the traditional model as constraint
17 on sales and profits, and advocated instead adoption of a “negative option” model. In a “negative
18 option,” the seller “interpret[s] a customer’s failure to take affirmative action, either to reject an
19 offer or cancel an agreement, as assent to be charged for goods or services.” (See “*Negative*
20 *Options*,” Federal Trade Commission, January 2009, available at
21 [https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-](https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf)
22 [commission-workshop-analyzing-negative-option-marketing-report-](https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf)
23 [staff/p064202negativeoptionreport.pdf](https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf) [last accessed January 6, 2021].) Defendants have
24 implemented a negative option model that does not comply with California law.

25 10. Defendants have adopted a negative option model in which they solicit orders for
26 subscriptions that purport to be for a fixed period of time (e.g., one year, or two years), whereas
27 upon receipt of an order, Defendants enroll the consumer in a program under which the subscription
28 will be “automatically renewed” for subsequent periods, with corresponding charges posted to the

1 consumer’s credit card, debit card, or other payment account. Defendants enroll consumers in such
2 “automatic renewal” subscriptions without making the clear and conspicuous disclosures required
3 by California law.

4 **THE CALIFORNIA AUTOMATIC RENEWAL LAW**

5 11. In 2009, the California Legislature passed Senate Bill 340, which took effect on
6 December 1, 2010 as Article 9 of Chapter 1 of the False Advertising Law. (Bus. & Prof. Code,
7 § 17600 *et seq.* (the California Automatic Renewal Law or “ARL”).) (Unless otherwise stated, all
8 statutory citations are to the Business & Professions Code). SB 340 was introduced because:

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

13 (See Exhibit 1 at p. 4.)

14 12. The Assembly Committee on Judiciary provided the following background for the
15 legislation:

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

20 (See Exhibit 2 at p. 8.)

21 13. The ARL seeks to ensure that, before there can be a legally-binding automatic
22 renewal or continuous service arrangement, there must first be adequate disclosure of certain terms
23 and conditions and affirmative consent by the consumer. To that end, § 17602(a) makes it unlawful
24 for any business making an automatic renewal offer or a continuous service offer to a consumer in
25 California to do any of the following:

26 (1) Fail to present the automatic renewal offer terms or continuous service offer terms
27 in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and
28 in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the

1 request for consent to the offer. For this purpose, “clear and conspicuous” means “in larger type
2 than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same
3 size, or set off from the surrounding text of the same size by symbols or other marks, in a manner
4 that clearly calls attention to the language.” (§ 17601(c).) In the case of an audio disclosure, ‘clear
5 and conspicuous’ means in a volume and cadence sufficient to be readily audible and
6 understandable.” (*Id.*) The statute defines “automatic renewal offer terms” to mean the “clear and
7 conspicuous” disclosure of the following: (a) that the subscription or purchasing agreement will
8 continue until the consumer cancels; (b) the description of the cancellation policy that applies to the
9 offer; (c) the recurring charges that will be charged to the consumer’s credit or debit card or payment
10 account with a third party as part of the automatic renewal plan or arrangement, and that the amount
11 of the charge may change, if that is the case, and the amount to which the charge will change, if
12 known; (d) the length of the automatic renewal term or that the service is continuous, unless the
13 length of the term is chosen by the consumer; and (e) the minimum purchase obligation, if any.
14 (§ 17601(b).)

15 (2) Charge the consumer’s credit or debit card, or the consumer’s account with a
16 third party, for an automatic renewal or continuous service without first obtaining the consumer’s
17 affirmative consent to the agreement containing the automatic renewal offer terms or continuous
18 service offer terms, including the terms of an automatic renewal offer or continuous service offer
19 that is made at a promotional or discounted price for a limited period of time. (§ 17602(a)(2).)

20 (3) Fail to provide an acknowledgment that includes the automatic renewal or
21 continuous service offer terms, cancellation policy, and information regarding how to cancel in a
22 manner that is capable of being retained by the consumer. (§ 17602(a)(3).)

23 14. If a business sends any goods to a consumer under a purported automatic renewal or
24 continuous service arrangement without first obtaining the consumer’s affirmative consent to an
25 agreement containing the “clear and conspicuous” disclosures as specified in the ARL, the goods
26 are deemed to be an unconditional gift to the consumer, who may use or dispose of them without
27 any obligation whatsoever. (§ 17603.) In addition, violation of the ARL gives rise to restitution
28 and injunctive relief under the general remedies provision of the False Advertising Law, Bus. &

1 Prof. Code § 17535. (§ 17604, subd. (a).)

2 **FACTS GIVING RISE TO PLAINTIFFS' CLAIMS**

3 **Nino Koller's Transaction**

4 15. In October 2018, Plaintiff Koller downloaded a Consumer Reports app on his iPhone
5 and submitted an order for a one-year subscription to *Consumer Reports*. Koller paid \$55.00 for
6 that one-year subscription (print and digital), which amount was paid with Koller's credit card.
7 Koller believes that the online checkout screens were similar to what is depicted in Exhibit 3. On
8 that basis, Koller alleges that the checkout screen through which he submitted the order and made
9 the payment did not contain clear and conspicuous disclosure of automatic renewal offer terms as
10 required by Bus. & Prof. Code § 17601(b) and (c) and § 17602(a)(1) and (a)(2).

11 16. On October 8, 2018, Koller received an email from Defendants confirming that his
12 subscription was active, with a "Start Date" of October 8, 2018 and an "End Date" of October 7,
13 2019. A true and correct copy of that email is attached hereto as Exhibit 4. That email does not
14 contain clear and conspicuous disclosure of automatic renewal offer terms as required by Bus. &
15 Prof. Code § 17601(b) and (c) and § 17602(a)(3).

16 17. In October 2019, without Koller's authorization or consent, Defendants posted a
17 charge of \$59.00 to Koller's credit card, purportedly for renewal of *Consumer Reports*.

18 18. When Koller submitted the order for the one-year subscription to *Consumer Reports*,
19 he was not aware that Defendants were going to enroll him in a program under which the
20 subscription would automatically renew for subsequent periods, and he did not consent to be
21 enrolled in such a program. If Koller had known that Defendants were going to enroll him in an
22 automatically renewing subscription program, Koller would not have submitted the order for
23 *Consumer Reports* and would not have paid any money to Defendants.

24 **Michelle Brown's Transaction**

25 19. In March 2017, Plaintiff Brown responded to an offer from Defendants to receive
26 *Consumer Reports* for ten months at a discounted rate of \$20.00. Brown accepted the offer and
27 provided Defendants with her credit card information in order to complete the purchase.

28

1 20. When Brown submitted the order form and when she made the \$20.00 credit card
2 payment, she was not aware that Defendants were going to enroll her in a program under which the
3 subscription would automatically renew for subsequent periods, and she did not consent to be
4 enrolled in such a program. On that basis, Brown is informed and believes that the
5 advertisement/order form to which she responded and the payment form through which the credit
6 card payment was submitted did not contain clear and conspicuous disclosure of automatic renewal
7 offer terms as required by Bus. & Prof. Code § 17601(b) and (c) and § 17602(a)(1) and (a)(2).

8 21. In July 2017, without Brown’s authorization or consent, Defendants posted a charge
9 to Brown’s credit card in the amount of \$26.00. Subsequently, without Brown’s authorization or
10 consent, Defendants posted additional charges to Brown’s credit card in the amount of \$26.00 in
11 July 2018 and again in July 2019.

12 22. In or about December 2019, Brown realized for the first time that her credit card had
13 been charged by Defendants for purported renewal of *Consumer Reports*. Upon discovering that
14 fact, Brown called to cancel her subscription. Defendants cancelled her subscription and refunded
15 her \$16.00.

16 23. If Brown had known that Defendants were going to enroll her in an automatically
17 renewing magazine subscription program, Brown would not have submitted the order for *Consumer*
18 *Reports* and would not have paid any money to Defendants.

19 **DEFENDANTS’ ENROLLMENT OF OTHER CONSUMERS**

20 24. Plaintiffs are not the only consumers to be enrolled by Defendants in an automatic
21 renewal or continuous service program without having received the clear and conspicuous
22 disclosures required by California law. There are complaints about similar experiences of other
23 California consumers posted on a variety of websites.

24 **CLASS ACTION ALLEGATIONS**

25 25. Plaintiffs bring this lawsuit as class action under Code of Civil Procedure § 382 on
26 behalf of the following Class: “All individuals in California who, between March 2, 2016 and
27 November 5, 2020, (i) enrolled in an automatic renewal or continuous service program through
28 Consumer Reports for *Consumer Reports* magazine, *Consumer Reports On Health*, *Consumer*

1 *Reports Online, and/or Consumer Reports All Access, and (ii) were charged for an automatic*
2 *renewal of such subscription. Excluded from the Class are the judicial officers to whom this case*
3 *is assigned.”*

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

7 27. Common Questions of Fact or Law. There are questions of fact or law that are
8 common to the members of the Class, which predominate over individual issues. Common
9 questions regarding the Class include, without limitation: (1) Whether Defendants present the
10 required automatic renewal offer terms in a manner that is “clear and conspicuous” within the
11 meaning of California law and in “visual proximity” to a request for consent to the offer (or in the
12 case of an offer conveyed by voice, in temporal proximity to a request for consent to the offer);
13 (2) Defendants’ policies, practices, and procedures for obtaining affirmative consent from
14 customers before charging a credit card, debit card, or third-party payment account; (3) whether
15 Defendants provide consumers with an acknowledgment that includes “clear and conspicuous”
16 disclosure of all automatic renewal offer terms, the cancellation policy, and information regarding
17 how to cancel; (4) Defendants’ record-keeping practices; and (5) the appropriate remedies for
18 Defendants’ conduct.

19 28. Numerosity. The Class is so numerous that joinder of all Class members would be
20 impracticable. Plaintiffs are informed and believe and thereon allege that the Class consists of at
21 least 100 members.

22 29. Typicality and Adequacy. Plaintiffs’ claims are typical of the claims of the Class
23 members. Plaintiffs allege on information and belief that Defendants enrolled Plaintiffs and Class
24 members in automatic renewal or continuous service programs without disclosing all automatic
25 renewal offer terms required by law, and without presenting such terms in the requisite “clear and
26 conspicuous” manner; charged Class members’ credit cards, debit cards, or third-party accounts
27 without first obtaining Class members’ affirmative consent to an agreement containing clear and
28 conspicuous disclosure of all automatic renewal offer terms in the manner required by California

1 law; and failed to provide the requisite acknowledgment with the required disclosures and
2 information. Plaintiffs have no interests that are adverse to those of the other Class members.
3 Plaintiffs will fairly and adequately protect the interests of the Class members.

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

11 31. Risk of Inconsistent or Varying Adjudications. Prosecuting separate actions by
12 individual Class members would create a risk of inconsistent or varying adjudications with respect
13 to individual Class members that would establish incompatible standards of conduct for Defendants.
14 As a practical matter, adjudication with respect to individual Class members would be also
15 dispositive of the interests of others not parties to the individual adjudications or would substantially
16 impair or impede their ability to protect their interests.

17 32. Defendants Have Acted on Grounds Generally Applicable to the Class. Defendants
18 have acted on grounds that are generally applicable to the Class, thereby making appropriate final
19 injunctive relief and/or declaratory relief with respect to the Class as a whole.

20 **FIRST CAUSE OF ACTION**

21 False Advertising - Violation of the Automatic Renewal Law

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

23 33. Plaintiffs incorporate the previous allegations as though fully set forth herein.

24 34. Plaintiffs are informed and believe and thereon allege that, during the applicable
25 limitations period, Defendants enrolled Plaintiffs and other consumers in automatic renewal or
26 continuous service programs and (a) failed to present the automatic renewal or continuous service
27 offer in a clear and conspicuous manner before the subscription or purchasing agreeing is fulfilled
28 and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the

1 request for consent to the offer; (b) charged the consumer’s credit or debit card or the consumer’s
2 third-party payment account for an automatic renewal or continuous service without first obtaining
3 the consumer’s affirmative consent to an agreement containing clear and conspicuous disclosure of
4 the automatic renewal or continuous service offer terms; and (c) failed to provide an
5 acknowledgment that includes clear and conspicuous disclosure of all automatic renewal or
6 continuous service offer terms, the cancellation policy, and information regarding how to cancel.

7 35. Plaintiffs have suffered injury in fact and lost money as a result of Defendants’
8 business practices alleged herein.

9 36. Pursuant to Bus. & Prof. Code §§ 17603 and 17535, Plaintiffs and Class members
10 are entitled to restitution of all amounts that Defendants charged to Plaintiffs’ and Class members’
11 credit cards, debit cards, or third-party payment accounts during the four years preceding the filing
12 of this Complaint and continuing until Defendants’ statutory violations cease.

13 37. Pursuant to Bus. & Prof. Code § 17535, Plaintiffs and Class members are entitled to
14 an injunction enjoining Defendants from making automatic renewal or continuous service offers to
15 California consumers that do not comply in all respects with California law, and enjoining
16 Defendants from charging California consumers’ credit cards, debit cards, and/or third party
17 payment accounts until such time as Defendants obtain the consumer’s affirmative consent to an
18 agreement that contains clear and conspicuous disclosure of all automatic renewal or continuous
19 service offer terms.

20 **SECOND CAUSE OF ACTION**

21 Violation of the Consumers Legal Remedies Act

22 (Cal. Civ. Code, § 1750 et seq.)

23 38. Plaintiffs incorporate the allegations of paragraphs 1-32 as though set forth herein.

24 39. Plaintiffs and the Class members are “consumers” within the meaning of Civil Code
25 § 1761(d) in that Plaintiffs and the goods and/or services sought or acquired were for personal,
26 family, or household purposes.

27 40. Defendants’ offers and the publications pertaining thereto are “goods” and/or
28 “services” within the meaning of Civil Code § 1761(a) and (b).

1 41. The purchases, payments, and/or orders by Plaintiffs and Class members are
2 “transactions” within the meaning of Civil Code § 1761(e).

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

11 43. More than 30 days before the filing of this Complaint, Plaintiffs’ counsel sent to
12 Consumer Reports written notice of the alleged violations of Civil Code § 1770 and requested that
13 Consumer Reports rectify the alleged violations. The written notice was sent by certified mail,
14 return receipt requested, and was delivered to Consumer Reports’ agent for service of process in
15 California. Consumer Reports did not respond to the written notice. Accordingly, pursuant to Civil
16 Code § 1782, Plaintiffs may seek monetary damages for violation of the CLRA.

17 44. On behalf of themselves, all Class members, and the general public of the State of
18 California, Plaintiffs seek an injunction prohibiting Defendants from continuing their unlawful
19 practices in violation of the Consumers Legal Remedies Act, as described above.

20 45. Pursuant to Civil Code § 1780(e), Plaintiffs are entitled to an award of reasonable
21 attorneys’ fees and costs.

22 **THIRD CAUSE OF ACTION**

23 Violation of the California Unfair Competition Law

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

25 46. Plaintiffs incorporate the previous allegations as though set forth herein.

26 47. The California Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*, defines
27 unfair competition as including any unlawful, unfair or fraudulent business act or practice.

28

1 48. In the course of conducting business within the applicable limitations period,
2 Defendants committed “unlawful,” “unfair,” and/or “fraudulent” business practices by, inter alia
3 and without limitation: (a) failing to present all automatic renewal or continuous service offers terms
4 in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in
5 visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to a request
6 for consent to the offer, in violation of § 17602(a)(1); (b) charging the consumer’s credit card, debit
7 card, or third-party payment account for an automatic renewal or continuous service without first
8 obtaining the consumer’s affirmative consent to an agreement containing clear and conspicuous
9 disclosure of all automatic renewal or continuous service offer terms, in violation of § 17602(a)(2);
10 (c) failing to provide an acknowledgment that includes clear and conspicuous disclosure of all
11 automatic renewal or continuous service offer terms, the cancellation policy, and information
12 regarding how to cancel, in violation of § 17602(a)(3); (d) representing that Defendants’ goods and
13 services have certain characteristics that they do not, in violation of Civil Code § 1770(a)(5);
14 (e) advertising goods or services with the intent not to sell them as advertised, in violation of Civil
15 Code § 1770(a)(9); (f) making false and misleading statements of fact concerning the reasons for,
16 existence of and amounts of price reductions, in violation of Civil Code § 1770(a)(13);
17 (g) representing that a transaction confers or involves rights, remedies, or obligations that it does
18 not have or involve, or that are prohibited by law; and (h) representing that the consumer will receive
19 a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event
20 to occur subsequent to the consummation of the transaction, in violation of Civil Code
21 § 1770(a)(17). Plaintiffs reserve the right to allege other violations of law that constitute unlawful
22 or unfair business acts or practices.

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

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

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

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

5 53. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs and the Class members are entitled
6 to an order: (1) requiring Defendants to make restitution to Plaintiffs and Class members;
7 (2) enjoining Defendants from making automatic renewal or continuous service offers in the State
8 of California that do not comply in all respects with the California law; and (3) enjoining Defendants
9 from charging California consumers' credit cards, debit cards, and/or third party payment accounts
10 until such time as Defendants obtain the consumer's affirmative consent to an agreement that
11 contains clear and conspicuous disclosure of all automatic renewal or continuous service offer terms.

12 **PRAYER**

13 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

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

- 15 1. For restitution;
16 2. For a public injunction for the benefit of the People of the State of California;

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

- 18 3. For restitution;
19 4. For damages;
20 5. For a public injunction for the benefit of the People of the State of California;
21 6. For reasonable attorneys' fees and costs, pursuant to Civil Code § 1780(e);

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

- 23 7. For restitution;
24 8. For a public injunction for the benefit of the People of the State of California;

25 On all Causes of Action:

- 26 9. For reasonable attorneys' fees pursuant to Cal. Code Civ. Proc. § 1021.5;
27 10. For costs of suit;
28 11. For pre-judgment interest; and

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

12. For such other relief that the Court deems just and proper.

DATED: January 13, 2021

DOSTART HANNINK & COVENEY LLP


ZACH P. DOSTART
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

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

Dated: January 13, 2021

DOSTART HANNINK & COVENEY LLP


ZACH P. DOSTART
Attorneys for Plaintiffs

937527.1