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15 CONOR WOULFE, an individual, and PETER  
16 MICHAEL ROSZA, an individual

17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 CONOR WOULFE, an individual, and  
20 PETER MICHAEL ROSZA, an  
21 individual,

22 Plaintiff,

23 v.

24 UNIVERSAL CITY STUDIOS LLC,  
25 d.b.a., UNIVERSAL PICTURES, a  
26 California limited liability company; and  
27 DOES 1-20, inclusive,

28 Defendant,

CASE NO.: 2:22-cv-00459-SVW-AGR

**THIRD AMENDED CLASS ACTION  
COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Conor Woulfe and Peter Michael Rosza (“Plaintiffs”) bring this class  
2 action complaint against Defendant Universal City Studios LLC, doing-business-as  
3 Universal Pictures (“Defendant”), individually and on behalf of all others similarly  
4 situated, and allege upon personal knowledge as to Plaintiffs’ acts and experiences, and,  
5 as to all other matters, upon information and belief, including investigation conducted by  
6 Plaintiffs’ attorneys.

7  
8 **NATURE OF THE ACTION**

9 1. This is a consumer protection class action arising out of Defendant’s false,  
10 deceptive, and misleading advertising of the 2019 movie *Yesterday*.

11 2. Defendant is an American film production and distribution company that  
12 advertises, sells, broadcasts, licenses, and distributes feature films, including a movie  
13 released in the year 2019 entitled *Yesterday*.

14 3. Among other deceptions, Defendant’s nationwide advertising and promotion  
15 of the movie *Yesterday*, and key word linking of Ana De Armas’ name to the movie on  
16 digital movie platforms, represented and currently represents to prospective movie viewers  
17 that the world famous actress Ana De Armas has a substantial character role in the film.

18 4. Defendant’s movie *Yesterday*, however, fails to include any appearance of  
19 Ana De Armas whatsoever. Accordingly, Defendant’s advertising and promotion of the  
20 movie *Yesterday* is false, misleading, deceitful, unfair, fraudulent, and deceptive.

21 5. Plaintiffs bring this action individually and on behalf of all other similarly  
22 situated consumers to halt the dissemination of Defendant’s false, misleading,  
23 deceitful, unfair, fraudulent, and deceptive representations, to correct the false and  
24 misleading perception Defendant’s representations have created in the minds of  
25

1 consumers, and to obtain redress for those who have purchased, rented, licensed, or  
2 otherwise paid for attending showings of the movie *Yesterday*.

3  
4 **PARTIES**

5 6. Plaintiff Peter Michael Rosza (“Plaintiff Rosza”) is a forty-four year-old  
6 citizen of the State of California, and, at all times relevant to this action, resided in San  
7 Diego County, California.

8 7. On or about October 31, 2021, Plaintiff Rosza watched Defendant’s  
9 advertisement of the movie *Yesterday*, in the form of a movie trailer accessed and viewed  
10 using Amazon.com’s internet movie streaming service. The movie trailer which Plaintiff  
11 Rosza viewed was false, misleading, deceitful, unfair, fraudulent, and deceptive. Among  
12 other false representations, the trailer promoted Ana De Armas as an actress that would  
13 appear in the film. Plaintiff Rosza viewed the movie trailer at his home in San Diego  
14 County, California. Persuaded by the movie trailer to view the film *Yesterday* because of  
15 its false representations, Plaintiff Rosza rented the movie. Upon watching the rented movie,  
16 Plaintiff Rosza discovered that, among other deceptions, Ana De Armas does not appear  
17 in the film. Plaintiff Rosza is a frequent movie consumer with experience watching movie  
18 trailer advertisements. Prior to his experience with the *Yesterday* trailer and movie, Plaintiff  
19 Rosza had never seen a movie trailer that featured an actor or actress that didn’t also appear  
20 in the film being advertised. For these and other reasons, Plaintiff Rosza interpreted the  
21 movie trailer for *Yesterday* as representing that Ana De Armas would appear in the actual  
22 movie.

23 8. Relying on the Defendant’s false, misleading, deceitful, unfair, fraudulent, and  
24 deceptive representations, Plaintiff Rosza purchased rights to view the movie *Yesterday* for  
25 approximately \$3.99. By paying to view the falsely advertised movie, Plaintiff suffered  
26 injury-in-fact and lost money.

1           9. Plaintiff Conor Woulfe (“Plaintiff Woulfe”) is a thirty-eight year-old citizen  
2 of the State of Maryland, and, at all times relevant to this action, resided in Howard County,  
3 Maryland.

4           10. On or about July 12, 2021, Plaintiff Woulfe watched Defendant’s  
5 advertisement of the movie *Yesterday*, in the form of a movie trailer accessed and viewed  
6 using Amazon.com’s internet movie streaming service. The movie trailer which Plaintiff  
7 Woulfe viewed was false, misleading, deceitful, unfair, fraudulent, and deceptive. Among  
8 other false representations, the trailer promoted Ana De Armas as an actress that would  
9 appear in the film. Plaintiff Woulfe viewed the movie trailer at his home in Howard County,  
10 Maryland. Persuaded by the movie trailer to view the film *Yesterday* because of its false  
11 representations, Plaintiff Woulfe rented the movie. Upon watching the rented movie,  
12 Plaintiff Woulfe discovered that, among other deceptions, Ana De Armas does not appear  
13 in the film. Plaintiff Woulfe is a frequent movie consumer with experience watching movie  
14 trailer advertisements. Prior to his experience with the *Yesterday* trailer and movie, Plaintiff  
15 Woulfe had never seen a movie trailer that featured an actor or actress that didn’t also  
16 appear in the film being advertised. For these and other reasons, Plaintiff Woulfe  
17 interpreted the movie trailer for *Yesterday* as representing that Ana De Armas would appear  
18 in the actual movie.

19           11. Relying on the Defendant’s false, misleading, deceitful, unfair, fraudulent, and  
20 deceptive representations, Plaintiff Woulfe purchased rights to view the movie *Yesterday*  
21 for approximately \$3.99. By paying to view the falsely advertised movie, Plaintiff suffered  
22 injury-in-fact and lost money.

23           12. But for Defendant’s false and misleading representations and unfair,  
24 fraudulent, and/or deceptive conduct promoting the movie, Plaintiffs would not have paid  
25 to view the movie *Yesterday*.

1 13. Defendant is a limited liability company with a principal place of business at  
2 100 Universal City Plaza, Universal City, California 91608.

3 14. Defendant is owned by Comcast Corporation (“Comcast”), by way of  
4 Comcast’s ownership of NBCUniversal. As a related and jointly controlled entity, which  
5 acts in concert with Defendant, digital video store VUDU is also owned by NBCUniversal  
6 by way of NBCUniversal’s 75% ownership of Fandango Media (“Fandango”). VUDU sells  
7 and rents Defendant’s movies for play in consumer’s homes, and Fandango sells tickets for  
8 movie theater showings of Defendant’s motion pictures. VUDU and Fandango each  
9 promote and sell Defendant’s movies in concert with and under the direction and control  
10 of Defendant and for Defendant’s financial benefit. In some cases, for example, Fandango  
11 sold movie tickets for *Yesterday* on Defendant’s website [www.universalpictures.com](http://www.universalpictures.com).  
12 Additionally, Defendant utilizes a website [www.uphe.com](http://www.uphe.com) which it uses to sell DVD copies  
13 of movies directly to consumers, including the movie *Yesterday*.

14 15. Defendant acquired rights to the movie *Yesterday* from production company,  
15 Working Title Films Limited. In other words, the movie *Yesterday* is the creation of a third-  
16 party other than Defendant. Defendant thereafter marketed, advertised, screened,  
17 promoted, distributed, licensed, rented, and sold the movie to hundreds of thousands, if not  
18 millions, of consumers in California and Maryland, knowingly utilizing false advertising  
19 to do so. Likewise, and more specifically, Defendant’s false, deceptive, unfair, fraudulent,  
20 and misleading advertisements were shown and distributed in California and Maryland.

21  
22 **JURISDICTION AND VENUE**

23 16. The Court has original jurisdiction under 28 U.S.C. § 1332(d)(2) (“Class  
24 Action Fairness Act” or “CAFA”) because the matter in controversy, exclusive of interest  
25 and costs, exceeds the sum or value of \$5,000,000 and is a class action in which there are  
26

1 in excess of 100 class members, and some of the members of the class are citizens of states  
2 different from Defendant, thus satisfying the minimal diversity requirement.

3 17. This Court has personal jurisdiction over Defendant because Defendant  
4 conducts business in California. Defendant marketed, advertised, screened, promoted,  
5 distributed, licensed, rented, and sold the movie *Yesterday* in and from California,  
6 rendering exercise of jurisdiction by California courts permissible.

7 18. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b)  
8 because a substantial part of the events and omissions giving rise to Plaintiffs' claims  
9 occurred in this district. Venue also is proper under 18 U.S.C. § 1965(a) because  
10 Defendant transacts substantial business in this district.

11  
12 **FACTUAL ALLEGATIONS**

13 **Introductory Background**

14  
15 19. As the original format for motion pictures (or movies), some movies are  
16 filmed using cameras that record movie scenes on physical film reels, typically in 35mm  
17 or 70mm formats. After such a movie is completed (e.g., post editing, color correction,  
18 etc.), the physical film is duplicated onto additional film reels (often two reels, for longer  
19 length movies), and the physical film reels are delivered in protective cannisters to movie  
20 theaters around the country for play on film projectors at the respective theaters. Movie  
21 consumers (persons that pay to watch or buy movies) which view such a conventional  
22 format movie today thereafter buy tickets which are issued in physical form at a theater or  
23 digitally online. Moreover, often digital tickets are formatted for physical printing onto  
24 paper so that the digital purchase could be proven at the movie theater entrance (by turning  
25 in the printed digital ticket). In other words, for movies which are recorded on conventional  
26 film, movie consumers purchase tickets for the right to view (and hear) the display of a

1 movie which is accomplished by operating a physical film projector playing one or more  
2 physical film reels. At a modern movie theater, luxury seating and food and beverages are  
3 often supplied with the play of the movie, and a technician actively monitors the play of  
4 the movie to adjust the volume or to correct projection (or similar) issues during movie  
5 play.

6 20. Although conventional film reels are still used today, it is more common  
7 now for movies to be recorded with digital cameras. Like film reels, however, a digitally  
8 shot film is recorded using a camera that writes the imagery and sound onto a digital  
9 file recorded onto a physical digital recording medium. Also like a film-shot movie,  
10 once the digital movie is edited and otherwise completed, the movie is copied in  
11 physical form, and the physical movie copies are loaded into protective plastic cases  
12 (e.g., often with cables and adaptors) – collectively termed Digital Cinema Packages  
13 (“DCPs”) – which are then shipped to movie theaters around the country for display at  
14 movie theaters with digital film projection capabilities. At such theaters, movie  
15 consumers are once again paying to view and hear the operation of the physical DCPs  
16 which play the movies as tangible sight and sound. When paying to view the movie,  
17 like with a film-shot movie, the consumers buy physical or digital tickets. Alternatively,  
18 for some movies, the contents of physical digital film packages are transmitted by  
19 satellite to movie theaters which then store the movies on physical storage platforms for  
20 display to consumers as tangible imagery and sound. Often license keys are required,  
21 sold by the movie distributor, which “open” access to the satellite transmitted movie for  
22 display to movie patrons.

23 21. In addition to shipping physical movie copies (as sales or rentals or leases)  
24 to movie theaters, motion pictures are often also reproduced by movie studios (e.g.,  
25 Defendant Universal) onto Digital Video Discs (“DVDs”), which are typically  
26 comprised of layers of aluminum and reflective gold covered in a polycarbonate plastic.

1 The metal and plastic disc is packaged in a plastic case, often with additional cardboard  
2 packaging, and the entire physical DVD package (often shrink-wrapped) is then sold to  
3 movie consumers either in brick and mortar stores or through electronic commerce  
4 channels, such as directly from Defendant at [www.uphe.com](http://www.uphe.com). When a movie consumer  
5 purchases a DVD, the movie consumer receives ownership rights not only in the DVD  
6 itself, but also receives the irrevocable right to re-sell or even rent the movie content  
7 (including the imagery and sound) to other consumers, under the First Sale doctrine. In  
8 other words, a purchaser of a DVD effectively receives fee simple title to the movie  
9 content itself. Defendant Universal has sold at least tens of thousands of DVD copies of  
10 the movie *Yesterday* to consumers, with one e-commerce channel alone revealing more  
11 than 30,000 sales. These sales are in addition to Defendant Universal's DVD sales  
12 and/or sales to view the operation of a physical film or digital motion picture package  
13 at a movie theater.

14 22. In yet another commercialization channel for movie studios, it is now  
15 common for movie studios to sell or rent movies to consumers by transmitting the  
16 movies directly to consumer homes. For example, many televisions are now sold with  
17 movie play platforms such as Amazon Prime or VUDU preinstalled. Alternatively, as  
18 another example, plug-in devices (which include such platforms) are sold to consumers  
19 for plugging into physical slots in a television (e.g., into an HDMI port). Using such  
20 movie play platforms, a consumer can review trailer advertisements on their own  
21 television to find an appealing movie to watch. Once an appealing movie is identified,  
22 the consumer typically has the option to rent or purchase the movie. Regardless of which  
23 option is selected, once the "offer" of the movie presented by the movie play platform  
24 (i.e., on behalf of the movie distributor, in this case Defendant Universal) is accepted,  
25 and after the consumer pays for the rental or purchase, the movie data files are  
26 transmitted from the physical storage device where the original motion picture (or copy



1 thereof) is being stored on the consumer’s television (or externally connected device )  
2 – at least for a period of time – so that the tangible movie imagery (displayed as visible  
3 light) and sound can be played for the consumer in the consumer’s home. In the most  
4 typical scenario, such as is the case with the trailer for the movie *Yesterday*, the  
5 opportunity to purchase or rent the movie is displayed alongside the trailer - on the same  
6 screen – so that the consumer can make an immediate decision to purchase or rent the  
7 movie (or not), without consulting other sources. In cases in which the movie is sold to  
8 a consumer or is purchased by a consumer, the consumer is able to re-watch the movie  
9 effectively in perpetuity and is even able to transfer the movie to different physical  
10 devices. For example, if a movie is purchased from a digital movie store on a television  
11 in a home in California, the movie can nevertheless be transmitted (in other words  
12 moved) to a different physical device (e.g., a television, tablet, mobile phone, USB  
13 dongle, etc.) so that the movie can be watched at a different location, such as at a second  
14 home, or in a hotel, or on an airplane. As an example, digital movie seller VUDU’s  
15 legacy set-top boxes (so-called VUDU boxes) are physical boxes connectable to a  
16 television and onto which purchased movies could be downloaded. The box containing  
17 the purchased movies could be moved to other physical locations and attached to  
18 different physical viewing devices. Moreover, VUDU provided express written  
19 warranties with VUDU boxes which guaranteed that VUDU would replace any  
20 purchased movies which were lost. According to one version of such warranty as an  
21 example: “If VUDU has to repair or replace your VUDU Equipment, or if content is lost  
22 due to a failure of the hard drive in the VUDU Equipment, VUDU will, to the best of its  
23 ability and within the rights granted to it by its content licensors, replace all purchased (but  
24 not rented) movies or other purchased (but not rented) entertainment content that you  
25 acquired from VUDU[.]” Subsequent to the legacy set-top boxes, VUDU began including  
26 its VUDU digital movie store platforms pre-loaded onto other physical and moveable

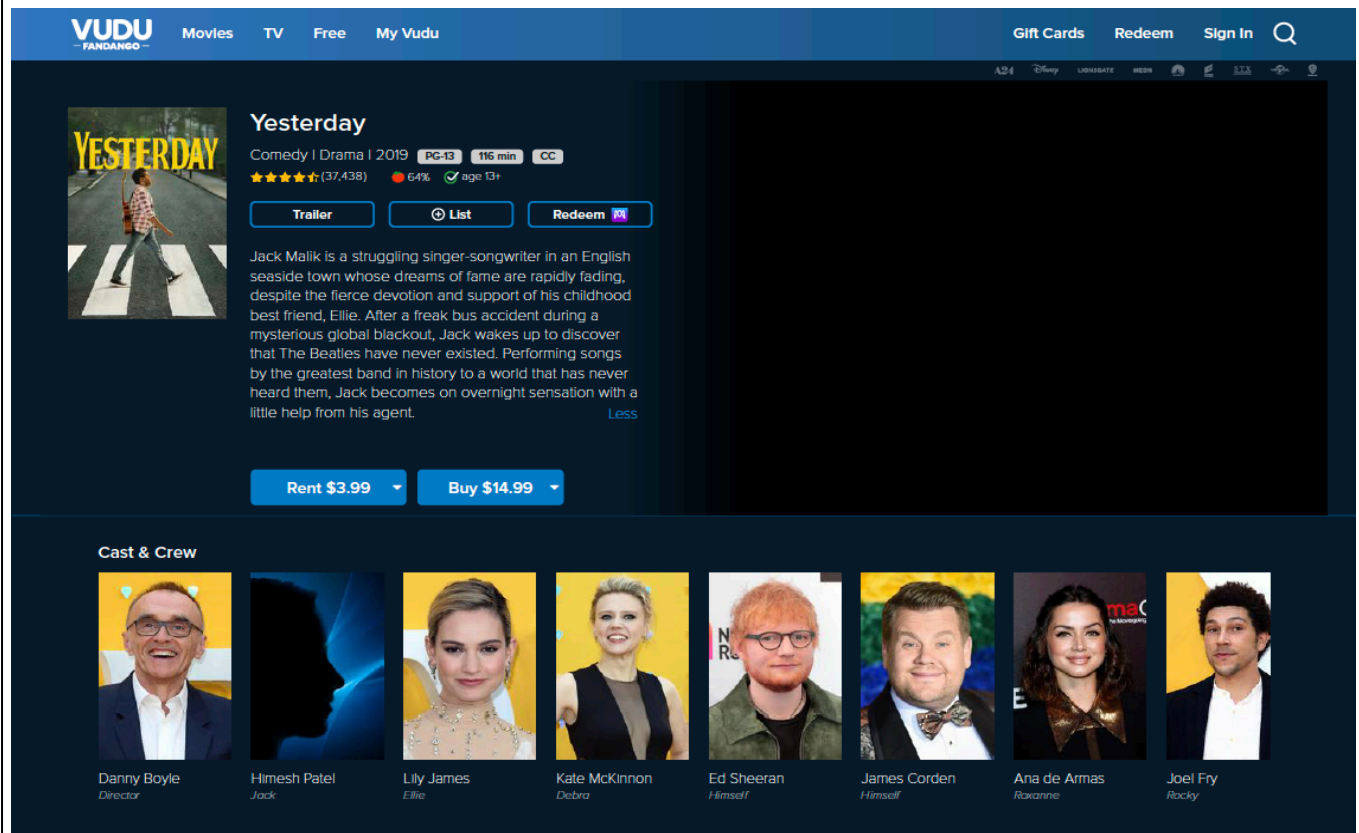
27  
28

1 devices, such as Blue-ray players, televisions (e.g., Amazon Fire TV Edition smart TVs),  
2 and portable movie storage and player devices such as those offered under the brand Roku.  
3 Indeed, according to VUDU, “Vudu is also the official movie and TV store on Roku, the  
4 world’s leading streaming device and Smart TV OS platform.” Other digital movies stores,  
5 such as Prime Video offered by Amazon.com, offer the same or similar features and  
6 options, with many moveable physical movie storage and delivery device offerings,  
7 including for example Amazon Fire Tablets. Likewise, a movie can be downloaded from a  
8 digital movie store such as Prime Video, onto a tablet for example, and then brought onto  
9 an airplane (in other words “moved”) to be watched with no access to the internet.

10 23. Although movies sold or rented electronically online (including on devices,  
11 such as televisions, connected to the internet) are often offered on third-party platforms,  
12 such as Amazon or Redbox or Google Play, Defendant either controls or dictates the  
13 advertising of its movies which are offered on such platforms. For example, on  
14 Amazon.com’s Prime Video, Defendant (and not Amazon.com) – utilizing the Prime  
15 Video Direct program - uploads the movies, trailers, artwork, and other advertising  
16 information using an account called an Aspera account that was set up so that Defendant  
17 can maintain control of its own movies and advertising. Accordingly, Defendant can and  
18 does upload new trailers or movies and can replace any trailer or movie version at will,  
19 independent of any input by Amazon.com. Defendant’s control of movie versions and  
20 advertising content on platforms such as VUDU is even more direct, since Defendant is  
21 co-owned with VUDU by NBCUniversal. Evincing that they are under common control,  
22 public records reveal that and all three entities share employees, such as Kevin S. Blum;  
23 use the same address for legal correspondence, such as from the United States Trademark  
24 Office (100 Universal City Plaza in Universal City, California); and use the same internal  
25 email addresses for legal correspondence (e.g., [docteting@nbcuni.com](mailto:docteting@nbcuni.com) and  
26 [trademarks@nbcuni.com](mailto:trademarks@nbcuni.com)). Indeed, even though Defendant is the distributor for the movie

1 *Yesterday*, Youtube lists NBCUniversal – Defendant and VUDU’s parent – as the  
2 “provider” of *Yesterday*.

3 24. By way of example specific to this case, a screen shot of NBCUniversal’s  
4 VUDU movie platform offering the *Yesterday* movie for sale and for rent is reproduced  
5 below:



14  
15  
16  
17  
18  
19  
20 25. The screenshot above is a true and accurate copy of VUDU’s offer of sale  
21 or rent of the movie *Yesterday* (last accessed May 2, 2022).

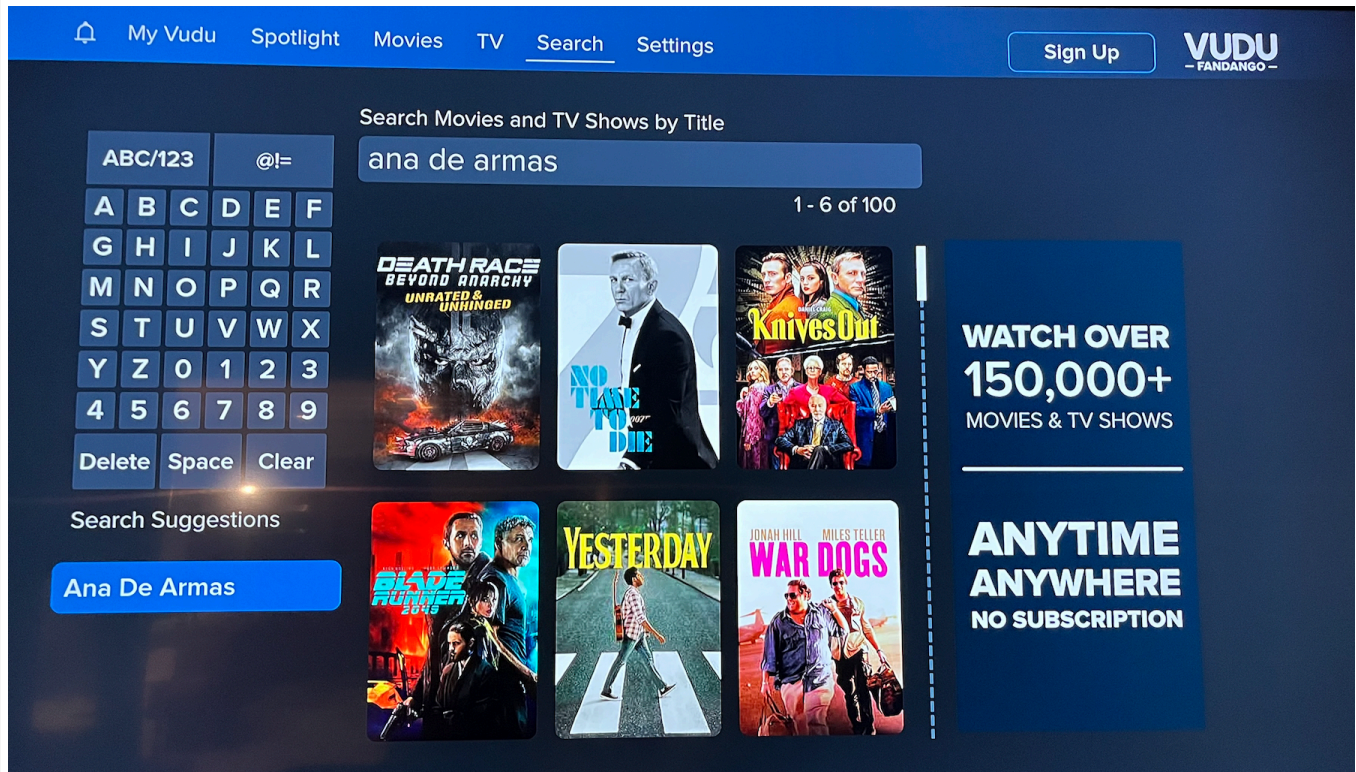
22 26. As shown in the above screenshot, VUDU offers a selectable “button” for  
23 accessing the *Yesterday* movie trailer advertisement, which falsely advertises the  
24 *Yesterday* movie, on the same page and preceding the opportunities to purchase or rent the  
25 movie. This is because digital movie stores, such as VUDU, which is co-owned with  
26 Defendant by NBCUniversal, intend for the trailer to be relied upon by consumers when

1 making movie rental or purchase decisions. Because Defendant is co-owned with VUDU,  
2 VUDU acts in concert with and under the direction of Defendant for the promotion of the  
3 movie *Yesterday*, and Defendant and/or its parent entities profit(s) from *Yesterday*'s movie  
4 sales and rentals consummated on the VUDU movie platform.

5 27. As shown in the screenshot, the VUDU platform, which is co-owned with  
6 Defendant, also affirmatively represents that Ana De Armas is in the movie *Yesterday*,  
7 by listing her name and including her photograph as a cast member, even though she is  
8 not.

9 28. Some movie platforms, such as VUDU's, also allow consumers to conduct  
10 key word search for movies. For example, if a consumer likes Ana De Armas as an  
11 actress, the consumer can type her name into a search field in the VUDU platform, and  
12 the platform will display the movies in which Ana De Armas purportedly appears.

13 29. The screenshot below is a true and accurate copy of a screen print from  
14 VUDU's movie play platform displaying the results of a search performed using the  
15 actress Ana De Armas' name (last accessed May 2, 2022):



30. As can be seen in the screenshot above (displaying the search results), the VUDU platform lists Ana De Armas as an actress that appears in the movie *Yesterday*, even though she does not. In other words, the search results of a VUDU search for Ana De Armas affirmatively, falsely represent that Ana De Armas is in the movie *Yesterday*.

31. On a platform such as this, when consumers are induced to pay for *Yesterday* movie rentals or purchases on the VUDU movie platform because they believe Ana De Armas appears in the movie, because she is listed as an actress in the movie, and because the trailer represents that she is in the movie, both Defendant and co-owned VUDU (and therefore Defendant's parent entity or entities) profit from this deception.

32. Similar to VUDU, the Amazon Prime movie play platform also displays the *Yesterday* movie trailer on the same page as opportunities to purchase or rent the movie. This is so that consumers can be enticed by the trailer to make immediate movie rental and purchase decisions. Also similar to VUDU, Defendant shares in the profits made by

1 Amazon Prime when the movie *Yesterday* is rented or purchased by a consumer.  
2 Additionally, when the movie *Yesterday* is rented on Amazon Prime, the agreement offered  
3 by the platform on behalf of Defendant and accepted by the consumer under false pretenses,  
4 makes the movie accessible to the consumer for 30 days.

5 33. Other instances of Defendant’s false advertising are, for example, the software  
6 encoding of Ana de Armas’ name in association with the movie *Yesterday* on websites such  
7 as [www.bestbuy.com](http://www.bestbuy.com) and [www.barnesandnoble.com](http://www.barnesandnoble.com) (the latter as “Ana DeArmas”) and  
8 listing of Ana de Armas as a *Yesterday* cast member (with her photograph) to advertise  
9 *Yesterday* Google Play movie sales.

10 **The Actress Ana De Armas**

11 34. Ana De Armas (hereinafter Ms. De Armas) is a talented, successful, and  
12 famous actress, that has starred in such movies as *Blade Runner 2049*, *War Dogs*, and  
13 *Knives Out*.

14 35. Demonstrating her demand in the film industry, Ms. De Armas was chosen to  
15 be a female lead in the movie *No Time to Die*, co-starring Daniel Craig. *No Time to Die*  
16 debuted on or about October 8, 2021 and is the latest film in the James Bond franchise. *No*  
17 *Time to Die* is an important movie for its studio because it is the last James Bond film  
18 expected to feature Actor Daniel Craig.

19 36. Ms. De Armas was also recently selected to star in the upcoming film *Blonde*,  
20 playing the role of deceased movie star Marilyn Monroe. She was also selected to star in  
21 the recently released movie *Deep Water*, co-starring her former boyfriend Ben Affleck  
22 (hereinafter Mr. Affleck).

23 37. Ms. De Armas’ 2015 movie *Knock Knock*, co-starring Keanu Reeves, was  
24 identified by Netflix as one of its most popular movies. Indeed, *Knock Knock* achieved the  
25 status of the “most-watched” movie on Netflix’s streaming service during 2020.  
26

1 38. Ms. De Armas currently has approximately 6.8 million followers on  
2 Instagram.

3 39. In 2020, Ms. De Armas was the Golden Globe Nominee for Best Actress in a  
4 Comedy or Musical for her performance in the movie *Knives Out*.

5 40. Ms. De Armas is famous throughout America and the world because of her  
6 successful movie and other media appearances.

7 **Yesterday and its Trailer**

8  
9 41. The movie *Yesterday* started filming in April 2018, premiered at the Tribeca  
10 Film Festival on May 4, 2019, and was released in the United States on June 28, 2019 by  
11 Universal Pictures. *Yesterday* is a film about a failed musician Jack Malik, who hits his  
12 head during a black-out only to wake-up to discover that that the world's knowledge of  
13 The Beatles has been erased. Taking advantage of this opportunity, the protagonist Malik  
14 adopts The Beatles' songs as his own, quickly becoming world famous.

15 42. Ms. De Armas was originally cast to co-star in the film *Yesterday* as a  
16 character named Roxanne. Accordingly, scenes featuring Ms. De Armas as the character  
17 Roxanne were shot for inclusion in the original version of the movie. In the original version  
18 of the movie, the character, Roxanne, was written as a known actress that meets the  
19 protagonist Malik during a late night talk show appearance. During the talk show  
20 appearance, the host first suggests that Malik write a song about Roxanne. Immediately  
21 revising his song writing request, the talk show host subsequently tells Malik to write a  
22 song about "something." Malik – in reply – plays the The Beatles' song *Something* seated  
23 next to and gazing at Roxanne. As the scene appears in the movie trailer for *Yesterday*, a  
24 romantic attraction is immediately sparked between the two characters. Roxanne, in the  
25 scene, appears charmed by Malik's perceived song writing talent and they ultimately  
26 embrace. The film's female lead Ellie, played by the relative unknown actress Lily James,

1 witnesses the meeting on television from home. In the scene as it appears in the *Yesterday*  
2 movie trailer, Ellie is visibly upset that she might lose Malik to Roxanne. Dialogue in the  
3 trailer also suggests that Ellie is concerned that Malik is distracted by his newfound fame  
4 and glamor of actress Roxanne. Ellie, herself, does not portray a famous or glamorous  
5 character in the film, but is simply Malik’s longtime, hometown friend.

6 43. According to the director Danny Boyle, Ms. De Armas’ portrayal of Roxanne  
7 in the original film cut was “brilliant” and Ms. De Armas was “radiant” in the role. More  
8 specifically, according to the film’s director:

9 “When you watched [the scene with Ms. De Armas] alone, it was  
10 fantastic[.]”

11 “[S]he was brilliant in it. I mean really radiant.”

12 “[I]t’s some of our favorite scenes from the film[.]” (sic)

13 44. Director Boyle expressed similar flattering views pertaining to character Jack  
14 Malik’s response to the request to play “something” in the same scene featuring Ms. De  
15 Armas. According to Boyle:

16 “Actually, we cut one of my favorite jokes from the film, which  
17 my son thought of. Because James Corden used to say, ‘Why  
18 don’t you write something right now? I hear you can write things  
19 really quickly, write something right now.’ And so he wrote  
20 ‘Something.’ [Jack] actually sang the song ‘Something,’ and I  
21 was so delighted by that joke.”

22 45. The principal actors in the movie *Yesterday* were largely unknown before the  
23 film was released. For example, the actor which played protagonist Malik, Himesh Patel,  
24 had never acted or starred in a film prior to *Yesterday*. Similarly, the actress who played  
25 Ellie, Lily James, was a relatively unknown name to the casual movie watcher.  
26



1           46. Consequently, because none of the *Yesterday* film leads were famous,  
2 Defendant could not rely on their fame to promote the movie to entice viewership.

3           47. In contrast to the film’s lead actors, Ms. De Armas is and was a known movie  
4 star. Moreover, according to the director of the film, she was “radiant” and “brilliant” in  
5 the movie scenes originally shot for the film.

6           48. Unable to rely on fame of the actors playing Jack Malik or Ellie to maximize  
7 ticket and movie sales and rentals, Defendant consequently used Ms. De Armas’ fame,  
8 radiance and brilliance to promote the film by including her scenes in the movie trailers  
9 advertising *Yesterday*. Ms. De Armas, in contrast to the actors playing Jack Malik or Ellie,  
10 is famous and is a viewership draw by herself. Moreover, the Ms. De Armas scene which  
11 Defendant included in the trailer was described by director Boyle as fantastic. Accordingly,  
12 the inclusion of such a fantastic scene would be expected to entice viewership and thereby  
13 boost movie sales and rentals.

14           49. Although Defendant included the scenes with Ms. De Armas in the movie  
15 trailer advertisements, for the purposes of promoting *Yesterday* and enticing film sales and  
16 rentals, Ms. De Armas is not and was never in the publicly released version of the movie.  
17 Therefore, any consumer that purchased theater tickets or rented or purchased the film  
18 *Yesterday* online did not see Ms. De Armas in the film.

19           50. Adding to its deceptiveness, the trailer for *Yesterday* also included the  
20 “something”-song-joke, which director Boyle described as one of his “favorites” and which  
21 he explained “delighted” him. In that scene, the character Malik plays The Beatles’ song  
22 “Something” as a punchline to the comedic set-up of the scene. Notably the song  
23 “Something” is also demonstrably famous. From the Beatles’ 1969 album *Abbey Road*,  
24 “Something” was written by George Harrison and topped the Billboard Hot 100 in the  
25 United States, as well as charts in Australia, Canada, New Zealand and West Germany.  
26 Still popular today, one upload of the song alone has achieved over 72 million views on

1 YouTube. Although in the movie trailer which advertises and promotes *Yesterday*, the  
2 scene with the “something”-song-joke, in which Malik plays The Beatles’ song  
3 “Something”, is not in the publicly released version of the film.

4 51. Defendants’ false representations that an actress, song, and other scene  
5 elements would appear in the film *Yesterday*, when they did not, collectively comprise a  
6 false, deceptive, deceitful, fraudulent, unfair, and misleading movie trailer advertisement.  
7 It is believed to be unprecedented, for example, for a movie trailer to feature an actor or  
8 actress which does not actually appear in the movie being advertised. Certain versions of  
9 the trailer for *Yesterday* also call the trailer a “preview” thereby expressly representing  
10 textually that the trailer is showing scenes that will be in the actual movie. For these and  
11 other reasons, by including Ana De Armas and the omitted scenes in the trailer, consumers  
12 perceive her and their inclusion as an affirmative representation that Ms. De Armas and the  
13 omitted scenes will appear in the full length movie. Demonstrating their commercial  
14 purpose, one or more versions of the *Yesterday* trailer also include the words “Coming  
15 Soon” and list the date of release of the movie, stating “In theaters June 28”, so that  
16 consumers knew precisely when they could buy tickets to the movie. Similar language is  
17 listed on the landing page for *Yesterday*’s trailer published on Youtube. Likewise, at least  
18 one version of the *Yesterday* trailer includes a weblink at the end, which directs viewers of  
19 the trailer to a webpage where they can purchase the movie (e.g., on DVD).

20 52. Evincing Defendant’s intent to deceive consumers (the term “consumers”  
21 including Plaintiffs and Class members), interviews show that Defendant knows and has  
22 always known that Ms. De Armas is and was not in the publicly released film *Yesterday*.

23 53. Also evincing Defendant’s intent to deceive consumers, interviews show that  
24 Defendant knows and has always known that the “something”-song-joke, in which Malik  
25 plays The Beatles’ song “Something”, is and was not in the publicly released film  
26 *Yesterday*. Although these interviews reveal Defendant’s knowledge of its deception,

1 neither Plaintiff Rosza or Plaintiff Woulfe viewed these interviews, including the interview  
2 filed by Defendant as Doc. 32-4, PID 303-307. Moreover, the interviews appear to be little  
3 known and seen in general. For example, one of the two known interviews – a video - was  
4 only viewed approximately 1439 times between 2019 and present (last accessed June 6,  
5 2022), and it is unknown when those views happened. Further, though the video interview  
6 reveals that Defendant knew that Ana De Armas was cut, she was not mentioned by name.

7 54. Despite knowing that Ms. De Armas was not in the released version of the  
8 movie *Yesterday*, Defendant has consistently promoted Ms. De Armas as a character  
9 starring in the film, by including her scenes in *Yesterday*'s movie trailers, listing her as a  
10 cast member, and key word linking her name to the movie. Indeed, Defendant continues to  
11 promote Ms. De Armas as appearing in the film almost four years after its initial release,  
12 in advertisements for movie sales and rentals. More specifically, the film *Yesterday*  
13 premiered on or about May 4, 2019, but movie trailers featured in March of 2023 still  
14 include the scenes with Ms. De Armas and the “something”-song joke. These movie trailers  
15 are viewable (or were viewable), prior to purchasing or renting the movie *Yesterday*, from  
16 digital movie stores (also known as electronic streaming services), including, but not  
17 limited to, Amazon (via Amazon Prime), Google (via Google Play), and VUDU. These  
18 same trailers were also used to advertise the movie *Yesterday* prior to its theatrical release,  
19 including on Defendant's own website, which also offered movie tickets for sale.

20 55. Similarly, on or about June 25, 2019 in a post-release national television  
21 appearance promoting the film *Yesterday*, director Boyle was interviewed alongside actor  
22 Himesh Patel (who plays Jack Malik) on CBS television. Although Ms. De Armas is not  
23 in the film, the scene featuring Ms. De Armas was played during Boyle's television  
24 appearance to a national television audience, for the specific purpose of enticing viewers  
25 to buy tickets to see the motion picture. A true and accurate screen capture from the  
26 television appearance is reproduced below:



Ms. De Armas is the actress in the white outfit depicted in the above image. Despite using Ms. De Armas to promote the film, interviews reveal that Defendant and director Danny Boyle and screenwriter Richard Curtis knew that Ms. De Armas would not be in the publicly released version of the film at least as early as June 19, 2019.

56. Even though Ms. De Armas would never be in the film to entertain its viewers, Defendant played this scene on national television because Defendant knew it would lure viewers, sales, and movie rentals, because it was a “fantastic” scene in which Ms. De Armas was “radiant” and “brilliant.” Moreover, when this scene was featured on national television, the movie *Yesterday* had already been released to the public. Accordingly, Defendant already knew that Ms. De Armas would not and did not appear in the final version of the film.

57. Movie trailers are the *de facto* standard for advertising movies (or films) in the United States.

58. Movie trailers are understood by movie viewers and consumers to convey what actors will appear in the advertised film.

1 59. Defendant's *Yesterday* movie trailers were used by Defendant as  
2 advertisements for the film, for the express commercial purpose of enticing consumers to  
3 purchase or rent the movie.

4 60. Defendant's *Yesterday* movie trailers were used by Defendant as the primary  
5 advertisements for the film and were disseminated widely, and viewed by tens of millions  
6 of consumers.

7 61. Defendant knew and indeed intended that consumers would rely on the  
8 content of the *Yesterday* movie trailers when making decisions whether to pay for  
9 purchasing or viewing the film. Likewise, Defendant believed that Ana De Armas and her  
10 scenes were "brilliant" and "radiant" and that consumers would be enticed by her  
11 appearance and scenes to pay for the movie.

12 62. Defendant creates, distributes, and publishes its movie trailers, including the  
13 movie trailer for *Yesterday*, for the purpose of enticing consumers to pay for purchasing or  
14 viewing Defendant's films, including the film *Yesterday*.

15 63. Defendant expected that consumers would rely on the content of the *Yesterday*  
16 movie trailers when making decisions whether to pay for purchasing or viewing the film.

17 64. Defendant's *Yesterday* movie trailers, aired or accessible during 2019,  
18 included scenes with Ana De Armas.

19 65. Defendant's *Yesterday* movie trailers, aired or accessible during 2020,  
20 included scenes with Ana De Armas.

21 66. Defendant's *Yesterday* movie trailers, aired or accessible during 2021,  
22 included scenes with Ana De Armas.

23 67. Defendant's *Yesterday* movie trailers, aired or accessible during 2022,  
24 included scenes with Ana De Armas.

25 68. Defendant's *Yesterday* movie trailers, aired or accessible during 2023,  
26 included scenes with Ana De Armas.

1           69. On online movie streaming services such as Amazon.com’s Amazon Prime,  
2 or NBCUniversal’s VUDU, Defendant uses (or used) the *Yesterday* movie trailer with Ana  
3 De Armas to convince consumers to purchase or rent the movie *Yesterday*.

4           70. After watching the movie trailer for *Yesterday* on Amazon Prime, or on other  
5 digital movie stores such as NBCUniversal’s VUDU, and other online movie streaming  
6 services, consumers are able to purchase or rent the movie *Yesterday* on the same user  
7 interface.

8           71. Defendant’s movie trailers for *Yesterday* are accessible on the same display  
9 screen, such as a television screen, as the point-of-purchase or rental opportunity for  
10 purchasing or renting the movie *Yesterday*.

11           72. Online streaming services such as Amazon Prime, or other digital movie  
12 stores such as NBCUniversal’s VUDU, are designed to include movie trailers on the same  
13 screen, such as a television screen, as the point-of-purchase or rental opportunity for  
14 purchasing or renting the movie featured in the trailer, so that consumers can make instant  
15 decisions to purchase or rent a movie, without consulting other sources.

16           73. Movie consumers typically make decisions to view, purchase, or rent a movie  
17 – or not - based on the content of movie trailers viewed by such consumers.

18           74. The decision to purchase or rent a movie is binary. A consumer either rents or  
19 purchases a movie, or not. A movie trailer is the advertising vehicle which Defendant uses  
20 to persuade movie consumers, when such consumers are making such binary movie  
21 purchase or rental decisions.

22           75. Defendant’s inclusion of Ana De Armas in *Yesterday* movie trailers leads  
23 viewers to believe that Ana De Armas is in the film.

24           76. Defendant used movie trailers, which included scenes with Ana De Armas, to  
25 promote the theatrical release of the film *Yesterday* and to promote DVD sales of  
26 *Yesterday*, including direct sales of DVDs by Defendant to consumers. For example, in

1 addition to the conventional use of the trailer as a commercial advertisement, Defendant  
2 included a website link at the end of the *Yesterday* trailer so that consumers could buy  
3 physical copies of the movie.

4 77. Defendant used movie trailers, which included scenes with Ana De Armas, as  
5 well as cast listings and photographs of Ana de Armas, to promote online movie sales and  
6 rentals of the film *Yesterday*.

7 78. Ana De Armas does not appear in Defendant’s publicly released 2019 movie  
8 *Yesterday*.

9 79. Ana De Armas does not appear in the version of Defendant’s publicly released  
10 movie *Yesterday* which has been sold and rented to consumers, and exhibited at pay-for-  
11 view movie theaters, during the years 2019, 2020, 2021, 2022, and 2023.

12 80. Ana De Armas does not appear in any publicly released version of  
13 Defendant’s publicly released movie *Yesterday*

14 81. All of Defendant’s theatrical presentations, sales, rentals, and licenses, of the  
15 movie *Yesterday* injure consumers in the same way because the film sold, rented, and  
16 licensed is the same, regardless of medium, and does not include Ana De Armas and does  
17 not include the “something”-song-joke, in which Malik plays The Beatles’ song  
18 “Something”. Moreover, the commercial impression communicated by Defendant’s  
19 promotion and advertisement of the movie is the same – that Ana De Armas, and the other  
20 omitted scenes, will appear in the full length movie.

21 82. Defendant had sufficient control and authority to determine whether Ana De  
22 Armas would appear in the *Yesterday* movie trailer. Defendant also had sufficient control  
23 and authority to obtain or create and utilize a new *Yesterday* trailer which was not false and  
24 misleading.

25 83. Defendant chose to continue to utilize *Yesterday* movie trailers featuring Ana  
26 De Armas as advertisements, and chose to continue listing her as a cast member in words

1 alongside her photograph, even though Defendant knew that Ana De Armas was not in the  
2 film *Yesterday*.

3 84. Defendant's trailer for the movie *Yesterday* is used to advertise the movie to  
4 solicit purchases and rentals of the movie from online movie services such as Amazon  
5 Prime, Google Play, and VUDU. Defendants' *Yesterday* trailer, used on such services to  
6 advertise the movie, includes scenes with Ana De Armas.

7 85. The following images are true and accurate screen shots from Defendant's  
8 movie trailer for *Yesterday*:





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1  
2 Actress Ana De Armas is the actress wearing a white outfit in the above images.

3 86. Defendant's official trailer for the movie *Yesterday* was also published by  
4 Defendant on YouTube and has been viewed more than 32.6 million times on YouTube  
5 since February 12, 2019. The number 32.6 million meets or exceeds the number of viewers  
6 of the movie *Yesterday* that paid to view it or purchased it.

7 87. Relying on false, deceptive, and misleading advertisements for its promotion,  
8 Defendant's movie *Yesterday* has thus far grossed approximately \$150,000,000 (one-  
9 hundred fifty million) United States dollars.

10 88. The version of the movie trailer offered on the Amazon Prime platform which  
11 was viewed by Plaintiffs Woulfe and Rosza, has since been replaced by Defendant with an  
12 alternative trailer. The replacement of the trailer on Amazon Prime evinces the ease with  
13 which Defendant could have produced and utilized a different trailer, not featuring Ana De  
14 Armas. The replacement trailer omits any display of Ana de Armas which would reveal  
15 the identity of Ana de Armas, and now only includes a momentary shot of the actress with  
16 her back turned, but wearing the same white outfit referenced in paragraph 85 *supra*.

17 89. NBC Universal's VUDU platform, co-owned with Defendant, was  
18 affirmatively advertising Ana De Armas as appearing in the movie *Yesterday*, which is for  
19 sale and rent on the platform, at least as recently as May 3, 2022. Defendant controls the  
20 content of Defendant's movie advertising on the VUDU platform. Defendant's continued  
21 advertisement of Ana De Armas as appearing in the movie *Yesterday*, long after being put  
22 on notice of its unlawful conduct with the filing and ultimate service of Plaintiffs' original  
23 complaint, demonstrates Defendant's intent and willingness to deceive consumers.

24 90. The Internet Movie Database ("IMDB") originally listed Ana De Armas as an  
25 actress in the movie *Yesterday*. Although the database has recently been changed to remove  
26

1 Ana De Armas' name as an actress in the movie, if consumers were to have consulted the  
2 original database beyond viewing Defendant Universal's advertising trailer, such  
3 consumers would have been falsely informed that Ana De Armas appeared in the movie,  
4 even though she does not.

5 91. The movie trailers for *Yesterday* which featured Ana De Arma made an  
6 affirmative representation to consumers that she would appear in the movie. Indeed, some  
7 versions of the trailer display the word "preview" at the beginning which communicates to  
8 consumers that the trailer advertisement that they are viewing is an actual true and correct  
9 sample (i.e., a true preview) of the advertised movie. However, neither all of the scenes  
10 that appear in the trailer, nor Ana De Armas, appear in the actual motion picture.

11 92. Evincing that the movie trailers for *Yesterday* which featured Ana De Armas  
12 were interpreted as affirmative representations that Ana De Armas appeared in the motion  
13 picture, voluminous comments on social media channels discuss consumers' surprise and  
14 confusion when she did not appear in the full movie. True and correct copies of these  
15 consumer comments are reproduced below:

- 16 • Ironically, I went to see the movie because of this scene
- 17 • This scene was used to promote the movie then was NOT in the movie. I  
18 couldn't believe it. Hope they put it back in someday.
- 19 • Me too! The movie was not as good as I thought it would be and I was really  
20 looking forward to this scene.
- 21 • Yeahh, this was one of the scene that i've been waiting for when i watch the  
22 movie
- 23 • Same. Movie was meh. This scene would have improved it.
- 24 • same....i just wait and wait but what...where's the scene????
- 25
- 26
- 27
- 28

- 1 • So did most people... worst edit ever
- 2 • Yes! That cheating coming attraction! I was so damn disappointed 🙄
- 3
- 4 • They did me dirty
- 5

6 93. Defendant’s use of trailer advertisements to entice consumers to attend theater  
7 presentations or to rent or buy the movie *Yesterday* (in electronic or DVD form) was purely  
8 for commercial purposes. Defendant did not write the script for the movie but merely  
9 acquired rights to the movie and created trailer advertisements, using omitted scene  
10 elements and an actress not in the actual movie *Yesterday*, to pitch the movie to consumers.  
11 Specifically, Defendant used Ana De Armas and the omitted scene elements to make the  
12 movie *Yesterday* appear more appealing than it actually was. In other words, Defendant  
13 used the trailers in a purely commercial marketing campaign to trick viewers into renting  
14 or purchasing the motion picture.

15 94. In another example evincing Universal’s commercial purpose, Defendant’s  
16 website offered movie tickets for the movie *Yesterday* on the same page that it displayed  
17 the movie trailer advertisement for *Yesterday*. More specifically, tickets could be purchased  
18 on Defendant’s website using the co-owned Fandango movie ticket sales platform.  
19 Defendant and/or its parent entity/entities profited when movie tickets were purchased  
20 using the purchase link located alongside the movie trailer advertisement on Defendant’s  
21 website, providing motivation for Defendant’s deceptions.

22 95. When not offering movie rentals or sales on its own website, Defendant  
23 intends and directs that its movie trailers – including the movie trailer for *Yesterday* - be  
24 shown alongside opportunities for movie rentals or purchases so that consumers will make  
25 their purchase or rental decisions, in reliance on the content of the movie trailer  
26 advertisement. Likewise, at least one version of the *Yesterday* trailer directs consumers to

1 a webpage operated by Defendant, which offers (or offered) DVDs of the *Yesterday* movie  
2 for sale.

3 96. Further demonstrating the movie trailers are advertisements having a  
4 commercial purpose, the Motion Picture Association, Inc. (formerly the "MPAA"), of  
5 which Defendant Universal is a member, published Advertising Administration Rules  
6 which include a definition section. According to the first section, Section 1: Definition of  
7 Advertising:

8 **Section 1. Definition of Advertising**

9 For purposes of these Rules, "advertising" means any material in any medium that is  
10 intended primarily to promote the exhibition, performance or sale of copies of the motion  
11 picture to the public and that is directed primarily to or for which a significant number of  
12 viewers are consumers in the United States. The senior executive of the Advertising  
Administration shall have the authority to determine whether specific material  
constitutes advertising within these Rules.

13 For reference, the term "advertising" includes, but is not limited to, the following  
14 materials: trailers, in-theater extended looks, exclusive content, clips and footage,

15 Exhibit A is a true and correct copy of page 3 of the Motion Picture Association, Inc.'s  
16 Advertising Administration Rules, published on and effective October 8, 2019.  
17 Demonstrating that movie trailers are not supposed to be false or misleading, the MPA  
18 Administration Rules also state, "Certain content restrictions are applicable to all  
19 advertising. In all instances: Advertising may not misrepresent the content of the motion  
20 picture[.]" In other words, Defendant's advertisements for *Yesterday* violate even the  
21 standards set forth by its own member organization.

22 97. Defendant's commercial advertising expenditures are reported to the  
23 Securities and Exchange Commission ("SEC") via its parent entities. These advertising  
24 expenditures include trailer production and promotion costs.

1 98. Similarly, the Federal Trade Commission (“FTC”), U.S. Congress, and  
2 members of representative American movie studios consider trailers to be commercial  
3 advertising, such as evidenced by the FTC reports to Congress, and resulting Congressional  
4 testimony, pertaining to the movie studios’ alleged marketing of adult entertainment to  
5 children, using movie trailers. Many if not all of the major movie studios, including  
6 Defendant Universal, testified in the Congressional hearings, and consistently  
7 acknowledged the commercial purpose of trailers as advertisements.

8 99. In all cases known to plaintiffs, the movie theater presentations of the movie  
9 *Yesterday*, the DVD copies of the movie *Yesterday*, and the at-home purchases and rentals  
10 of the movie *Yesterday* all omitted scenes that appeared in the *Yesterday* movie trailer  
11 advertisement, including the scenes that featured the actress Ana De Armas. Accordingly,  
12 all consumers were harmed in the same way by the same false, misleading, unfair,  
13 fraudulent, and deceptive movie trailer advertisements.

14 **Goods and Services**

15  
16 100. Defendant Universal’s movie products are, at least colloquially, goods and/or  
17 are offered to customers utilizing various types of services. For example, the movie  
18 *Yesterday* exists in physical film or digital form which is utilized in connection with movie  
19 display services which are sold to consumers. Moreover, the physical DVD discs which  
20 Universal sells are goods. More specifically, the digital streaming of Defendant’s movies  
21 is offered as a service, both by Defendant’s affiliated entity VUDU, and by third parties  
22 acting on behalf of Defendant. Illustratively, VUDU (co-owned with Defendant by  
23 NBCUniversal) itself ubiquitously categorizes its offerings as a “service”. According to a  
24 2021 VUDU press release as but one example: “Vudu is a leading video-on-demand  
25 streaming service from Fandango offering over 150,000 titles to rent or buy, including the  
26 newest releases, and thousands of titles for free. Serving millions of entertainment fans

1 daily, Vudu has created compelling video entertainment experiences, including the ability  
2 to create custom Lists from their movies & TV library, purchase exclusive Mix & Match  
3 bundles, access digital copies of their physical films, and much more. Consumers can  
4 watch the latest movies & TV shows anytime, anywhere, on their favorite smart TV, over-  
5 the-top (OTT) streaming player, Android and iOS device, game console, and Blu-ray  
6 player. Streaming or downloaded, Vudu delivers a premium experience with the latest  
7 digital video technology, including 4K Ultra High Definition, Dolby Vision, HDR, and  
8 Dolby Atmos Cinema Sound.” Not merely just streaming movies like *Yesterday*, VUDU  
9 informs of the purported cast of the movie, and provides a trailer advertisement so a  
10 customer can make a purchase decision without leaving the platform. If a movie is  
11 purchased, VUDU detects a consumer’s internet speeds and adjusts the resolution of the  
12 movie delivered to the consumer in real-time to attempt to ensure glitch free movie  
13 watching. Vudu also provides a “Movie Recommendation Decision Engine” and supplies  
14 third-party movie reviews to aid consumers in selecting movies to purchase. Also,  
15 according to VUDU, “One of the features of [VUDU’s] Services is that we may customize  
16 your user experience based on your Content, webpage and other viewing, purchasing and  
17 browsing history. You may notice this when you use the Services.” Supporting all of these  
18 services, VUDU employs Technical Support and Customer Support teams to aid customers  
19 which experience technical issues purchasing or watching a movie (e.g., such as if sound  
20 is not playing with the display of a movie). As another facet of its services, VUDU permits  
21 movies to be downloaded to various types of physical devices, so that the movies can be  
22 viewed at various locations, such as where internet access is not available. According to  
23 VUDU’s summary of this feature:

24 “Summary

25 The Movie Download feature allows you to download a movie to the hard disk drive built into your



1 VUDU device. Once downloaded, you can then watch the movie directly from the hard disk, without  
2 having to stream it over the Internet.

#### 3 Downloading a Movie

4 You may download a movie immediately after purchasing it or at any time after you have purchased it.

### 5 **Purchasing and Downloading**

6 In order to purchase a movie and begin downloading it immediately, please follow these steps:

7 1) Select "Buy Movie" from the Movie Details page

8 2) Select the movie video quality (SD, HD and HDX) that you would like to own. The download  
9 feature

10 is only available for movies that you select to "own" on VUDU.

11 3) Once you purchase the movie, you will be presented with several options, select "Download and  
12 Watch Later". Your movie will begin downloading."

13 Amazon's Prime Video service, the service used by Plaintiff's Woulfe and Rosza, is  
14 similar to VUDU's service in that it provides many (if not all) of the same or similar  
15 features. For example, Prime Video provide descriptions and trailer advertisements for  
16 movies, provides movie ratings, actively adjusts movie resolutions during playback,  
17 suggests movies to watch, includes parental controls, organizes movie watch parties,  
18 provides scene information during movie play with its "X-Ray" service, allows  
19 downloads to physical devices so that movies can be moved to watch at different  
20 locations, and provides customer service and technical support. Using either service, if a  
21 movie is purchased, it can be watched in perpetuity at different physical locations on  
22 various physical devices which can be transported geographically, carrying the movie  
23 inside. Using Prime Video, if a movie is rented, it is placed into a "My Stuff" folder on a  
24 physical device of a consumer where it is accessible for 30 days from the date of  
25 payment, with VUDU offering similar 30 day movie rental access.

1           101. By way of additional example, Defendant and its affiliated entities have  
2 applied for and obtained U.S trademark registrations from the United States Patent and  
3 Trademark Office (“USPTO”) both for movies themselves and for supplying in-home  
4 consumers with movies, such as via in-home movie streaming services (also known as  
5 digital movie stores). For example, VUDU was granted a trademark for the mark “VUDU”  
6 for its digital movie store services, with the mark itself categorized by the USPTO as a  
7 “Service Mark.” The services for which the registration was granted are as follows:

8  
9           providing consumer information used in the selection and purchase of audio and  
10 video content, namely, retail ordering services in the field of motion pictures and  
11 multi-media excluding interactive games.

12  
13           audio and video broadcasting services, broadcasting audio and video content over  
14 global computer networks, video-on-demand transmission services, pay-per-view  
15 video and audio transmission services.

16  
17           providing information in the area of audio and video programming, namely,  
18 electronic distribution of motion pictures and multi-media to retail consumers  
19 excluding interactive games.

20  
21           providing a website featuring temporary use of non-downloadable software  
22 allowing website users to store and playback audio and video content for  
23 entertainment purposes in the field of motion pictures and multi-media excluding  
24 interactive games.

1 Amazon.com was granted a similar trademark registration for the mark “Prime Video”,  
2 for similar services, which is also characterized by the USPTO as a “Service Mark.”

3 102. The USPTO’s authority in issuing trademark registrations is limited to  
4 “goods” and “services,” and the USPTO has approved of Defendant’s and/or its affiliated  
5 entities’ goods and services for movies and in-home digital movie deliveries, as recited in  
6 their U.S. trademark applications.

7 103. The state of California has adopted the classification system of the USPTO  
8 for goods and services. Consequently, the state of California also recognizes Defendant  
9 Universal’s movies and in-home movie deliveries as goods and/or services.

10  
11 **Defendant’s False and Deceptive Advertising**

12 104. Plaintiffs reassert and reallege all of the allegations contained in the foregoing  
13 paragraphs as though the same were fully set forth herein.

14 105. Defendant, through its movie trailers and other false advertising, such as it’s  
15 fraudulent cast listings on VUDU, Google, and Apple TV; key word linking of Ms. De  
16 Armas to *Yesterday* (on numerous platforms); and misleading commercial promotional  
17 appearances for *Yesterday*, has consistently conveyed to consumers throughout the United  
18 States that the movie *Yesterday* features actress Ana De Armas.

19 106. Despite Defendant’s representations in its advertising, Ana De Armas is not  
20 in the film *Yesterday*.

21 107. Defendant also deceived consumers by including the “something”-song-joke,  
22 and the performance of The Beatles’ song Something, in movie trailers promoting  
23 *Yesterday*.

24 108. The “something”-song-joke, and the performance of The Beatles’ song  
25 Something, is not in the publicly released version of the movie *Yesterday*.

1 109. Defendant's movie trailer advertisements for the movie *Yesterday*, featuring  
2 Ana De Armas, are literally false advertisements.

3 110. Defendant's movie trailer advertisement of the movie *Yesterday*, featuring  
4 scene elements which were not included in the publicly released film, are collectively a  
5 literally false advertisement.

6 111. Defendant's movie trailer advertisements for the movie *Yesterday*, featuring  
7 Ana De Armas, are false, deceptive, deceitful, fraudulent, unfair, and misleading.

8 112. Defendant's movie trailer advertisement of the movie *Yesterday*, featuring  
9 scene elements which were not included in the publicly released film, are false, deceptive,  
10 deceitful, fraudulent, unfair, and misleading.

11 113. Defendant's advertisements on VUDU, which state that Ana De Armas is a  
12 cast member, and which list the movie *Yesterday* when searching for Ana De Armas' name,  
13 are literally false advertisements.

14 114. Defendant's advertisements on VUDU, which state that Ana De Armas is a  
15 cast member, and which list the movie *Yesterday* when searching for Ana De Armas' name,  
16 are false, deceptive, deceitful, fraudulent, unfair, and misleading.

17 115. Consumers, including movie viewers, purchasers, and renters of the movie  
18 *Yesterday*, relied on the content of the trailer for the film, or the content of Defendant's  
19 advertisements, when deciding whether to spend money to view or purchase the film.

20 116. Because consumers were not provided with the movie product that they were  
21 promised by Defendant, they were effectively provided with no value at all. Alternatively,  
22 at best, Plaintiffs and the class members were provided with a movie product having less  
23 value than the product they were advertised and promised.

24 117. Because consumers were promised a movie with Ana De Armas by  
25 Defendant's advertisements for *Yesterday*, but did not receive a movie with any appearance  
26

1 of Ana De Armas at all, such consumers were not provided with any value for their rental  
2 or purchase, or at best were provided with less value than promised.

3 118. Defendant's false, deceptive, fraudulent, unfair, and misleading  
4 advertisements have been disseminated to the public continuously since at least 2019, and  
5 are still being disseminated in June of 2022, and Defendant will continue to deceive the  
6 public with such advertisements unless it is enjoined from continuing to engage in such  
7 unlawful conduct.

8  
9 **CLASS DEFINITION AND ALLEGATIONS**

10  
11 119. Plaintiffs reassert and reallege all of the allegations contained in the foregoing  
12 paragraphs as though the same were fully set forth herein.

13 120. Plaintiffs, pursuant to Fed. R. Civ. Pro. 23(b)(2) and 23(b)(3), bring this  
14 action on behalf of themselves and those similarly situated and seek certification of the  
15 following classes:

16 **California Class**

17 All persons in the state of California who rented or purchased  
18 electronic copies of the movie *Yesterday* within California, within  
19 the applicable statute of limitations, for personal use until the  
20 date notice is disseminated.

21 **Maryland Class**

22 All persons in the state of Maryland who rented or purchased  
23 electronic copies of the movie *Yesterday* within Maryland, within  
24 the applicable statute of limitations, for personal use until the  
25 date notice is disseminated.

**Proposed Alternative Class I**

All persons who were exposed to Defendant’s advertising representing that the actress Ana de Armas was in the movie *Yesterday*, who rented or purchased electronic copies of the movie *Yesterday* [in the state of California or Maryland, respectively], for personal use, within the applicable statute of limitations, until the date notice is disseminated.

121. Excluded from each Class is Defendant, its parents, subsidiaries, affiliates, officers, and directors, those who viewed, purchased, or rented the movie *Yesterday*, all persons who make a timely election to be excluded from the Class, the judge to whom this case is assigned and any immediate family members thereof.

122. Certification of Plaintiffs’ claims for class wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

**Numerosity – Federal Rule of Civil Procedure 23(a)(1)**

123. The members of the Class are so numerous that individual joinder of all Class members is impracticable. Defendant has sold at least hundreds of thousands of movie tickets, or online or physical movie rentals or purchases, to Class members.

**Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3)**

124. This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- 1 (a) Whether the representations discussed herein that Defendant made
- 2 about *Yesterday* were or are true, misleading, or likely to deceive;
- 3 (b) Whether Defendant’s conduct violates public policy;
- 4 (c) Whether Defendant engaged in false or misleading advertising;
- 5 (d) Whether Defendant’s conduct constitutes violations of the laws
- 6 asserted herein;
- 7 (e) Whether Plaintiffs and the other Class members have been injured
- 8 and the proper measure of their losses as a result of those injuries; and
- 9 (f) Whether Plaintiffs and the other Class members are entitled to
- 10 injunctive, declaratory, or other equitable relief.

11 **Typicality – Federal Rule of Civil Procedure 23(a)(3)**

12  
13 125. Plaintiffs’ claims are typical of the other Class members’ claims because,  
14 among other things, all Class members were comparably injured through the uniform  
15 prohibited conduct described above.

16 **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4)**

17  
18 126. Plaintiffs are adequate representatives of the Class because Plaintiffs’  
19 interests do not conflict with the interests of the other Class members Plaintiffs seek  
20 to represent; Plaintiffs have retained counsel competent and experienced in complex  
21 commercial and class action litigation; and Plaintiffs intend to prosecute this action  
22 vigorously. The interests of the Class members will be fairly and adequately protected by  
23 Plaintiffs and their counsel.

24 **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2)**

1 127. Defendant has acted or refused to act on grounds generally applicable to  
2 Plaintiffs and the other Class members, thereby making appropriate final injunctive  
3 relief and declaratory relief, as described below, with respect to Class as a whole.

4 **Superiority – Federal Rule of Civil Procedure 23(b)(3)**

5  
6 128. A class action is superior to any other available means for the fair and  
7 efficient adjudication of this controversy, and no unusual difficulties are likely to be  
8 encountered in the management of this class action. The damages or other financial  
9 detriment suffered by Plaintiffs and the other Class members are relatively small  
10 compared to the burden and expense that would be required to individually litigate their  
11 claims against Defendant, so it would be impracticable for Class members to  
12 individually seek redress for Defendant’s wrongful conduct. Even if Class members  
13 could afford individual litigation, the court system could not. Individualized litigation  
14 creates a potential for inconsistent or contradictory judgments, and increases the delay  
15 and expense to all parties and the court system. By contrast, the class action device  
16 presents far fewer management difficulties, and provides the benefits of single  
17 adjudication, economy of scale, and comprehensive supervision by a single court.

18 **CLAIMS FOR RELIEF**

19 **COUNT I**

20 **Violation of the California Unfair Competition Law (“UCL”)**  
21 **Cal. Bus. & Prof. Code §§ 17200, *et seq.* (Pleading in the Alternative)**  
22 **(On behalf of the California Class)**

23 129. Plaintiffs reassert and reallege all of the allegations contained in the foregoing  
24 paragraphs as though the same were fully set forth herein.

25 130. These claims are asserted pertaining to Defendant’s rentals and sales of  
26 movies on Amazon Prime only. Claims pertaining to VUDU and other non-Amazon Prime



1 movie vendors have been dismissed, and factual allegations pertaining to such vendors  
2 relate to background facts, materiality, intent, and similar issues only, without forming the  
3 basis of any legal claim.

4 131. There is no adequate remedy at law for any unlawful, unfair, or fraudulent  
5 advertising, for any *Yesterday* movie sale, movie display, rental, or viewership right sold  
6 which the Court determines is not a good or service for which remedies are available under  
7 California Consumers Legal Remedies Act. For these acts for which there is no adequate  
8 remedy at law, Plaintiff Rosza brings this claim individually and/or on behalf of the  
9 California Class. Accordingly, this claim is pleaded in the alternative to the other claims  
10 set forth herein.

11 132. Plaintiff and Defendant are “persons” within the meaning of the UCL. Cal.  
12 Bus. & Prof. Code § 17201.

13 133. The UCL defines unfair competition to include any “unlawful, unfair  
14 or fraudulent business act or practice,” as well as any “unfair, deceptive, untrue or  
15 misleading advertising.” Cal. Bus. Prof. Code § 17200.

16 ***“Unlawful” Prong***

17  
18 134. In the course of conducting business, Defendant committed unlawful, unfair  
19 and fraudulent business practices by, among other things, making the representations  
20 (which also constitutes advertising within the meaning of § 17200) and omissions of  
21 material facts, as set forth more fully herein, and violating as well as Civil Code §§ 1709,  
22 and Business & Professions Code §§ 17200, *et seq.*, 17500, *et seq.* (“False Advertising  
23 Law”), and the common law. Additionally, Defendant Universal’s false statements,  
24 comprising false commercial advertising pertaining to the contents of the movie *Yesterday*,  
25 constitute fraud, fraud in contract, common law fraud, and breach of Defendant’s covenant  
26 of good faith and fair dealing, thus violating California Civil Code §§ 1709.

1 135. Plaintiff reserves the right to allege other violations of law, which constitute  
2 other unlawful, unfair, and/or fraudulent business acts or practices. Such conduct is  
3 ongoing and continues to this date.

4 ***“Unfair Prong”***

5  
6 136. A business act or practice is unfair under the UCL if it offends an established  
7 policy or is immoral, unethical, oppressive, unscrupulous or substantially injurious to  
8 consumers, and that unfairness is determined by weighing the reasons, justifications, and  
9 motives of the practice against the gravity of the harm to the alleged victims. In the course  
10 of conducting business, Defendant committed “unfair” business practices by, among other  
11 things, making the representations (which also constitute advertising within the meaning  
12 of § 17200) and omissions of material facts regarding the movie *Yesterday* in its  
13 advertising, as set forth more fully herein. There is no societal benefit from false  
14 advertising – only harm. Plaintiff and the other Class members paid for a product that  
15 did not deliver the content promised by Defendant’s advertising. While Plaintiff and the  
16 other Class members were harmed, Defendant was unjustly enriched by its false  
17 misrepresentations and omissions. As a result, Defendant’s conduct is “unfair,” as it  
18 offended an established public policy. Further, Defendant engaged in immoral, unethical,  
19 oppressive, and unscrupulous activities that are substantially injurious to consumers.

20 137. Further, as set forth in this Complaint, Plaintiff alleges federal and state  
21 law violations of consumer protection, unfair competition, and truth in advertising laws,  
22 resulting in harm to consumers. Defendant’s acts and omissions also violate and offend  
23 the public policy against engaging in false and misleading advertising, unfair  
24 competition, and deceptive conduct towards consumers. This conduct constitutes  
25 violations of the unfair prong of Business & Professions Code § 17200, *et seq.*

1 138. There were reasonably available alternatives to further Defendant’s  
2 legitimate business interests, other than the conduct described herein.

3 **“Fraudulent” Prong**

4  
5 139. Business & Professions Code § 17200, *et seq.*, also prohibits any  
6 “fraudulent business act or practice.” A business act or practice is fraudulent under the  
7 UCL if it is likely to deceive members of the consuming public, or reasonable consumers.  
8 In the course conducting business, Defendant committed “fraudulent business act or  
9 practices” by, among other things, making the representations (which also constitute  
10 advertising within the meaning of § 17200) and omissions of material facts regarding  
11 the movie *Yesterday*, as set forth more fully herein. Defendant made the  
12 misrepresentations and omissions regarding the content of the film *Yesterday*, among other  
13 ways, by misrepresenting that Ana De Armas would appear in the publicly released  
14 film when Defendant knew she would not.

15 140. Defendant’s acts and practices alleged herein constitute fraudulent business  
16 acts or practices as they have deceived Plaintiffs and are highly likely to deceive reasonable  
17 consumers. Plaintiffs relied on Defendant’s fraudulent and deceptive representations  
18 regarding the movie *Yesterday*, which were but for material with respect to Plaintiffs’  
19 decisions to purchase the movie. Plaintiffs would not have purchased the movie *Yesterday*  
20 if they had known the truth.

21 141. Defendant’s actions, claims, omissions, and misleading statements, as  
22 more fully set forth above, were also false, misleading and/or likely to deceive the  
23 consuming public within the meaning of Business & Professions Code § 17200, *et seq.*

24 142. Plaintiff and the other members of the Class have in fact been deceived as  
25 a result of their reliance on Defendant’s material representations and omissions, which  
26 are described above. This reliance has caused harm to Plaintiff and the other members

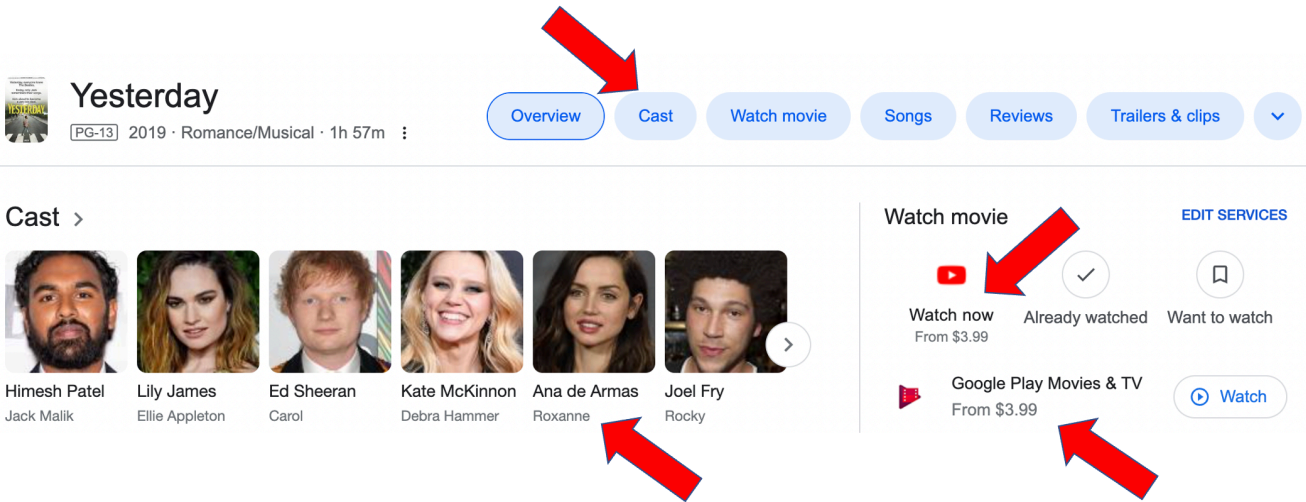
1 of the Class, each of whom paid to view or purchased Defendant's film *Yesterday*.  
2 Plaintiff and the other Class members have suffered injury in fact and lost money as a  
3 result of paying to view or purchasing the movie *Yesterday* due to Defendant's  
4 unlawful, unfair, and fraudulent practices.

5 143. Defendant knew and intended, or at least should have known, that its  
6 material misrepresentations and omissions would be likely to deceive and harm the  
7 consuming public and result in consumers making payments to Defendant for its falsely  
8 advertised film.

9 144. As a result of its deception, Defendant was unjustly enriched by receiving  
10 payments from Plaintiff and the Class in return for providing Plaintiff and the Class a movie  
11 product and/or service that does not include the actress Ana De Armas as promised by its  
12 advertisements. Accordingly, Plaintiff, individually and on behalf of all others  
13 similarly situated, and on behalf of the general public, seeks restitution from Defendant  
14 of all money unlawfully obtained from Plaintiffs.

15 145. Unless restrained and enjoined, Defendant will continue to engage in  
16 the unlawful, unfair and fraudulent conduct described herein. Evincing this danger,  
17 Plaintiffs expressly requested during February of 2023 that Defendant agree not to use  
18 trailers featuring Ana de Armas in the future, to promote versions of the movie *Yesterday*  
19 in which she does not actually appear. Defendant refused this request. The same offer was  
20 made to Defendant by Plaintiffs on or around March 16, 2023, in an effort to avoid the  
21 need for this Third Amended Complaint addressing injunctive relief, but Defendant  
22 ignored the request entirely. Meanwhile, Defendant continues to advertise *Yesterday* using  
23 trailers featuring Ana de Armas; Ana de Armas is still listed as a cast member alongside  
24 her photograph; and her name is still software encoded to the movie. As an example, below  
25 is a true and correct copy of an advertisement for the movie *Yesterday* which appeared on  
26 Google at least as of March 17, 2023:

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(Copy of Google advertisement, last accessed March 16, 2023)(marked-up)

146. Defendant Universal is a major motion picture studio with large market share, and Plaintiffs anticipate buying or renting movies advertised with movie trailers by Defendant Universal again. Moreover, because Plaintiff’s wanted to see Ana de Armas in the movie *Yesterday*, both Plaintiffs intend to and will pay to view *Yesterday* again, based upon the reasonable presumption that no rational actor would continue to falsely advertise a movie’s content, after a Court of law has already determined that the false advertising is unlawful conduct, not protected by the First Amendment. Indeed, Plaintiff Woulfe recently paid to rent *Yesterday* on Google Play, based upon the reasonable presumption that the current cast listing that identifies Ms. de Armas as a cast member would be accurate. Yet, just as Mr. Woulfe was deceived on the Amazon.com platform, Mr. Woulfe was also deceived on the Google Play platform, because Ms. de Armas was not in the version of the film rented thereo.

1 147. Plaintiffs' knowledge that the trailer advertisement for *Yesterday* was false in  
2 the past does not equate to knowledge that it will remain false in the future. For the reasons  
3 stated above, for example, it was reasonable for Mr. Woulfe to rely on cast listings  
4 representing that Ana de Armas would be in the version of *Yesterday* that he paid to rent  
5 on the second rental occasion. It will also be reasonable for Mr. Rosza to rely on  
6 Defendant's existing or future advertisements pertaining to the content of *Yesterday*, for  
7 similar reasons. Further, it is commonplace for movie studios to release alternative versions  
8 of movies after an initial movie release. Such alternative versions of movies can be called  
9 numerous things, depending on their character, such as Director's Cuts, Special Editions,  
10 Anniversary Editions, Extended Versions, etc. Any alternative version of *Yesterday* which  
11 might be released might - or might not - include Ana de Armas. If the new version is a  
12 Director's Cut, the decision to include alternate scenes is within the discretion of the  
13 director. Alternatively, the decision to include alternate scenes in an extended cut might be  
14 at the discretion of the movie distributor or other creative personnel. Accordingly, for a  
15 movie such as *Yesterday*, the director or the studio could (for example) include additional  
16 scenes pertaining to the appearance of members of the Beatles, such as a scene where the  
17 Beatles members come forth to challenge Jack Malik's authorship of their songs, even  
18 though they had not achieved fame themselves for them in the alternate reality portrayed  
19 in the movie. Such a story plot is alluded to by certain versions of the movie trailers for  
20 *Yesterday*, but that story element never plays out in the publicly released version of the  
21 film. In other words, a Director's Cut - or an Extended Cut, Special Edition, or Anniversary  
22 Edition (or other release type) - could be released to add scenes which don't include Ana  
23 de Armas, but since Defendant refuses to stop advertising that Ana de Armas is in the  
24 movie *Yesterday*, Plaintiffs and other members of the movie consuming public are likely  
25 to be confused and deceived. Likewise, it is a reasonable presumption that Defendant  
26 would change the released version of *Yesterday* which is offered on online rental and

1 purchase platforms to attempt to mitigate legal liability, without advertising that the movie  
2 version is different. Defendant can do this at any time, such as by uploading a new movie  
3 version on the Aspera platform to change the *Yesterday* movie version available on  
4 Amazon, and could do so without announcement or other advertising changes to avoid  
5 further unwanted attention to its false advertising.

6 148. Evincing that consumers believe that a movie version with Ana de Armas  
7 actually appearing *might* eventually be released, a person identified as KCDC posted the  
8 following comment on Bestbuy.com more than three years ago:

9  
10 *“Super peaved that they cut the Roxanne character from the movie and left a*  
11 *crucial moment in the trailer. That moment was my entire reason for even seeing*  
12 *the movie to begin with and I feel ripped off for it not being there. Hopefully they*  
13 *will have a director’s cut with this corrected at some point.”*

14 149. Like Defendant refuses to agree to stop false advertising, Defendant has also  
15 obstructed discovery or provided dishonest discovery answers. For example, Defendant  
16 has refused to answer discovery about Defendant’s advertising practices. An example  
17 interrogatory which Defendant refuses to answer substantively is reproduced below:

18  
19 Describe and identify all instructions, guidelines, requirements, and/or other  
20 information issued (or otherwise communicated) to third-parties pertaining to the  
21 advertising or promotion of the movie *Yesterday*, including the content and date of  
22 such instructions (or guidelines, requirements, or other information), the person(s)  
23 that drafted them, the person(s) that issued them, and the persons(s) that received  
24 them. The requirement to identify documents in this interrogatory means to identify  
25 them by bates number.

1           150. According to Defendant, the above interrogatory is “too vague and ambiguous  
2 to respond to... because it does not define the terms and/or phrases ‘instructions,’  
3 ‘guidelines,’ ‘requirements,’ ‘other information,’ and ‘third parties.’” Up until on or  
4 around February 28, 2023, Defendant had also not turned over a single internal document,  
5 evidently in an effort to obstruct the progress of this case. Likewise, for discovery requests  
6 that Defendant actually did answer, Defendant claims that it has no control over its  
7 advertising of *Yesterday* which is not merely implausible but is contradicted the  
8 representations of Amazon.com. According to Amazon.com, which researched the specific  
9 matter over several weeks, Defendant uploads movie versions and trailer versions using a  
10 platform termed “Aspera”, on Defendant’s own volition. In short, Defendant’s lack of  
11 candor with some discovery answers and unserious responses to others, paired with its long  
12 history of intentionally falsely advertising its movies, shrouds Defendant’s future conduct  
13 with uncertainty in the context of an already troubling past.

14           151. Adding further context to this troubling past, Defendant has falsely advertised  
15 numerous other movies, released in each decade since 2005, by including content in trailers  
16 that was never included in the released film. Moreover, as can be ascertained by reviewing  
17 class action websites discussing this lawsuit, many other movie consumers have already  
18 been deceived into paying for the movie *Yesterday*, including consumers that purchased  
19 movie theater tickets and DVD copies, as well as online rentals similar to those purchased  
20 by Plaintiffs.

21           152. Because it is reasonable for Plaintiffs to believe that it would be wise business  
22 practice to correct advertising already determined by a Court of law to be false, it is  
23 reasonable for Plaintiffs to believe that Defendant’s advertising of *Yesterday* will not be  
24 false in the future. Yet, because of Defendant’s troubling conduct and past, paired with  
25 Defendant’s express refusal to agree to refrain from false advertising in the future,  
26 Plaintiffs – and other movie consumers - will be unable to rely on Defendant’s trailer



1 advertisements for *Yesterday* in the future, unless an injunction is ordered by the Court.  
2 Moreover, because Plaintiffs – including Mr. Woulfe – intend to pay to view the movie  
3 *Yesterday* again, to continue to attempt to see the scene with Ms. de Armas, Defendant’s  
4 widespread, current, and consistent advertising that Ana de Armas is in *Yesterday*, could  
5 deceive Plaintiffs again. Accordingly, since money cannot fix future harm, Plaintiffs,  
6 individually and on behalf of all others similarly situated, and on behalf of the  
7 general public, seek an injunction, including a public injunction for the benefit of the  
8 general public, prohibiting Defendant from continuing and further engaging in its  
9 unlawful, unfair and fraudulent conduct, requiring corrective advertising, and awarding  
10 all other relief this Court deems appropriate.

11 **COUNT II**

12 **Violation of the California False Advertising Law (“FAL”)**  
13 **Cal. Bus. & Prof. Code §§ 17500, et seq. (Pleading in the Alternative)**  
14 **(On behalf of the California Class)**

15 153. Plaintiffs reassert and reallege all of the allegations contained in the foregoing  
16 paragraphs as though the same were fully set forth herein.

17 154. These claims are asserted pertaining to Defendant’s rentals and sales of  
18 movies on Amazon Prime only. Claims pertaining to VUDU and other non-Amazon Prime  
19 movie vendors have been dismissed, and factual allegations pertaining to such vendors  
20 relate to background facts, materiality, intent, and similar issues only, without forming the  
21 basis of any legal claim.

22 155. There is no adequate remedy at law for any unlawful, unfair, or fraudulent  
23 advertising, for any *Yesterday* movie sale, movie display, rental, or viewership right sold  
24 which the Court determines is not a good or service for which remedies are available under  
25 California Consumers Legal Remedies Act. For these acts for which there is no adequate  
26 remedy at law, Plaintiff Rosza brings this claim individually and/or on behalf of the

1 California Class. Accordingly, this claim is pleaded in the alternative to the other claims  
2 set forth herein.

3 156. The FAL, in relevant part, states that “[i]t is unlawful for any ... corporation  
4 ...with intent ... to dispose of ... personal property ... to induce the public to enter  
5 into any obligation relating thereto, to make or disseminate or cause to be made or  
6 disseminated ...from this state before the public in any state, in any newspaper or other  
7 publication, or any advertising device, or by public outcry or proclamation, or in any  
8 other manner or means whatever, including over the Internet, any statement ... which  
9 is *untrue* or *misleading*, and which is known, or which by the exercise of reasonable care  
10 should be known, to be untrue or misleading[.]” Cal. Bus. & Prof. Code § 17500 (emphasis  
11 added).

12 157. The required intent is the intent to dispose of property, not the intent to  
13 mislead the public in the disposition of such property.

14 158. Defendant violated the FAL by intentionally making literally false and  
15 misleading representations in its movie trailer, and in its other advertisements for the movie  
16 *Yesterday*, and through its use of key word linking to associate Ana De Armas’ name with  
17 the movie *Yesterday* in search results. These literally false and misleading representations  
18 led consumers to believe that Ana de Armas was in the movie *Yesterday* when, in reality,  
19 she did not make an appearance in the movie *Yesterday*.

20 159. As a direct and proximate result of Defendant’s untrue and misleading  
21 advertising, and use of key word linking to associate Ana De Armas’ name with the movie  
22 *Yesterday* in search results, Plaintiff and the Class members have suffered injury in fact and  
23 have lost money.

24 160. Accordingly, Plaintiff and the Class Members request that the Court order  
25 Defendant to restore the money Defendant has received from Plaintiff and the members  
26 of the Class, and that the Court enjoin Defendant from continuing its unlawful practices,

1 including by issuing a public injunction for the benefit of the general public, and engage in  
2 corrective advertising.

3 **COUNT III**  
4 **Unjust Enrichment (Pleading in the Alternative)**  
5 (On behalf of the California and Maryland Class)

6 161. Plaintiffs reassert and reallege all of the allegations contained in the foregoing  
7 paragraphs as though the same were fully set forth herein.

8 162. These claims are asserted pertaining to Defendant's rentals and sales of  
9 movies on Amazon Prime and Google Play only. Claims pertaining to VUDU and other  
10 non-Amazon Prime movie vendors have been dismissed, and factual allegations pertaining  
11 to such vendors relate to background facts, materiality, intent, and similar issues only,  
12 without forming the basis of any legal claim.

13 163. There is no adequate remedy at law for any unlawful, unfair, or fraudulent  
14 advertising, for any *Yesterday* movie sale, movie display, rental, or viewership right sold  
15 which the Court determines is not a good or service for which legal remedies are available  
16 under California Consumers Legal Remedies Act or the Maryland Consumer Protection  
17 Act. For these acts for which there is no adequate remedy at law, Plaintiffs bring this claim  
18 individually and/or on behalf of the California and Maryland Class.

19 164. This claim is pleaded in the alternative to the other claims set forth herein.

20 165. As the intended and expected result of its conscious wrongdoing, Defendant  
21 has profited from and benefitted from the sales, rentals, licenses, and public theater  
22 presentations of the movie *Yesterday*.

23 166. Defendant has intentionally sought and voluntarily accepted and retained  
24 these profits and benefits, with full knowledge and awareness that, as a result of  
25 Defendant's misconduct alleged herein, Plaintiffs and the Class were not receiving a  
26 product – the *Yesterday* movie – of the quality, nature, fitness or value that had been

1 represented by Defendant, and that a reasonable consumer would expect. Specifically,  
2 Plaintiffs and the Class members expected that when they purchased or rented the movie  
3 *Yesterday*, Ana de Armas would have a role in the movie and that other scenes appearing  
4 in the *Yesterday* trailer would appear in the film.

5 167. Defendant has been unjustly enriched by its fraudulent, deceptive, unlawful,  
6 and unfair conduct, and its withholding of benefits and unearned monies from Plaintiffs  
7 and the Class, at the expense of these parties.

8 168. Equity and good conscience militate against permitting Defendant to retain  
9 these profits and benefits.

10  
11 **COUNT IV**  
12 **Violation of Maryland’s Consumer Protection Act**  
13 **(Pleading in the Alternative)**  
14 **MD Comm. L. Code § 13-301 *et seq.***  
15 **(On behalf of the Maryland Class)**

16 169. Plaintiffs reassert and reallege all of the allegations contained in the foregoing  
17 paragraphs as though the same were fully set forth herein.

18 170. These claims are asserted pertaining to Defendant’s rentals and sales of  
19 movies on Amazon Prime and Google Play only. Claims pertaining to VUDU and other  
20 non-Amazon Prime movie vendors have been dismissed, and factual allegations pertaining  
21 to such vendors relate to background facts, materiality, intent, and similar issues only,  
22 without forming the basis of any legal claim.

23 171. Plaintiff Woulfe brings this claim individually and on behalf of the members  
24 of the Maryland Class. This claim is pleaded in the alternative to the other claims set forth  
25 herein.

26 172. Plaintiff Woulfe and the Maryland Class members are consumers within the  
27 meaning of the Maryland Consumer Protection Act, §13-201 *et seq.* (the “Maryland Act”).

1 173. The Maryland Act expressly notes that unfair or deceptive trade practices  
2 include:

3 a. False, falsely disparaging, or misleading oral or written statement, visual  
4 description, or other representation of any kind which has the capacity,  
5 tendency, or effect of deceiving or misleading consumers;

6 b. Representation that:

7 i. Consumer goods, consumer realty, or consumer services have a  
8 sponsorship, approval, accessory, characteristic, ingredient, use,  
9 benefit, or quantity which they do not have;

10 c. Deception, fraud, false pretense, false premise, misrepresentation, or knowing  
11 concealment, suppression, or omission of any material fact with the intent that  
12 a consumer rely on the same in connection with:

13 i. The promotion or sale of any consumer goods, consumer realty, or  
14 consumer service.

15 174. Maryland Code, Commercial Law Article, 13-408, a provision of Maryland's  
16 Consumer Protection Act, expressly authorizes civil actions by consumers, like Plaintiff  
17 Woulfe.

18 175. Defendant engages in "trade" and "commerce" generally and as it pertains to  
19 the distribution of the movie *Yesterday* for sale or rent to consumers within the state of  
20 Maryland.

21 176. Defendant's movie trailer for the film *Yesterday*, and/or other movie  
22 advertisements, represent that the actress Ana De Armas, as well as certain omitted scenes,  
23 would be featured in the movie *Yesterday*, when she is not and the scenes are not.

24 177. Defendant's movie advertisements individually and collectively are false,  
25 deceptive, and misleading because they represent that actress Ana de Armas, and other  
26 omitted scenes, would be featured in the movie *Yesterday*, when she is not and the scenes

1 are not. Defendant's false advertising provided no countervailing benefit to Plaintiffs or  
2 the Class Members.

3 178. The content of Defendant's movie trailer for the movie *Yesterday*, which was  
4 omitted from the publicly released film, is and was collectively material to a reasonable  
5 consumer and is and was designed to affect consumer decisions and conduct. Defendant's  
6 non-trailer advertising of *Yesterday* was also collectively material to a reasonable consumer  
7 and is and was designed to affect consumer decisions and conduct.

8 179. Defendant understood and intended that the representations in the movie  
9 trailer for *Yesterday*, and in other false advertisements, would influence consumer  
10 behavior.

11 180. Defendant understood that it has an obligation to ensure the honesty of all  
12 promotions and to avoid misleading the public regarding the movie *Yesterday*.

13 181. Defendant's misleading movie trailer, and other false advertising of  
14 *Yesterday*, constitutes an unfair method of competition and unfair and/or deceptive acts or  
15 practices in the conduct of trade or commerce for movie sales and rentals and licenses to  
16 consumers.

17 182. Defendant's acts and practices offend public policy as established by statute.

18 183. Defendant's acts and practices are immoral, unethical, oppressive, and  
19 unscrupulous.

20 184. Defendant's conduct substantially injured actual and potential consumers, the  
21 public and competition. Defendant knowingly induced viewership, sales, rentals, and  
22 licenses of the movie *Yesterday* within the state of Maryland, using a false and deceptive  
23 movie trailer and other false advertisements for monetary gain from Plaintiff Woulfe, the  
24 Maryland Class members, and other consumers who would not have paid to view, rent,  
25 buy, or license *Yesterday* but for Defendant's false and misleading conduct.

1 185. Defendant's conduct materially affected available information regarding its  
2 *Yesterday* movie within Maryland.

3 186. Defendant's conduct improperly distorted the information available to the  
4 public regarding the movie *Yesterday*.

5 187. Defendant's actions caused consumers to pay for the movie *Yesterday*, by  
6 deceiving consumers into believing the movie had content that it does not. These injuries  
7 are not outweighed by any countervailing benefits to consumers or competition. No legally  
8 cognizable benefit to consumers or competition results from Defendant's misconduct.

9 188. Plaintiff Woulfe and the Maryland Class purchased ownership or rental copies  
10 of the movie *Yesterday*, or movie display services of *Yesterday*, for personal, family or  
11 household use. Thus, the practices discussed above constitute unfair competition or unfair,  
12 unconscionable, deceptive, or unlawful acts or business practices in violation of the  
13 Maryland Act.

14 189. The foregoing unfair and deceptive practices directly, foreseeably, and  
15 proximately caused Plaintiff Woulfe and the Maryland Class to suffer ascertainable losses  
16 when they were deceived into paying to view, buy, rent, or license the movie *Yesterday*,  
17 when they would not have but for Defendant's false, deceptive, and misleading  
18 advertisements and representations. Consequently, Defendant has been unjustly enriched  
19 by gaining revenues for movie sales, rentals, and licenses, which it only gained because of  
20 its unlawful conduct.

21 190. Plaintiff Woulfe and the Maryland Class are entitled to recover restitution and  
22 other appropriate relief, as alleged below.

1 **REQUEST FOR RELIEF**

2 WHEREFORE, Plaintiffs, individually and on behalf of the other members of  
3 the proposed Class, respectfully request that the Court enter judgment in Plaintiffs’  
4 favor and against Defendant, in combination or in the alternative, as follows:

5 A. Declaring that this action is a proper class action, certifying the Classes  
6 as requested herein, designating Plaintiffs as Class Representatives, appointing the  
7 undersigned counsel as Class Counsel, and ordering Defendant to notify the members of  
8 the Classes;

9 B. Ordering restitution and disgorgement of all profits and unjust enrichment  
10 that Defendant obtained from Plaintiffs and the Class members as a result of Defendant’s  
11 unlawful, unfair and fraudulent business practices;

12 C. Ordering injunctive relief as permitted by law or equity, including enjoining  
13 Defendant from continuing the unlawful practices as set forth herein, including by  
14 ordering a public injunction for the benefit of the general public, and ordering  
15 Defendant to engage in a corrective advertising campaign;

16 D. Ordering Defendant to pay attorneys’ fees and litigation costs to Plaintiffs  
17 and the other members of the Class;

18 E. Ordering Defendant to pay both pre- and post-judgment interest on any  
19 amounts awarded; and

20 F. Ordering such other and further relief as may be just and proper.  
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22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs respectfully demand a trial by jury in this action.  
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Respectfully submitted,  
**LEJEUNE LAW, P.C.**

Dated: April 13, 2023

By: /s/ Cody R. LeJeune

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