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Liliana Diaz

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CIVIL COMPLEX

LILIANA DIAZ, on behalf of herself and all others
similarly situated,

Plaintiff,

v.

LIVEGLAM, INC., a Delaware corporation; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO.: **22STCV11911**

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE CALIFORNIA
CONSUMER LEGAL REMEDIES
ACT, CAL. CIV. CODE §§ 1750, ET
SEQ.**

Filed Concurrently:

1. Plaintiff's CLRA Venue Affidavit

(Jury Trial Demanded)

1 Plaintiff Liliana Diaz (“Plaintiff”), individually and on behalf of all others similarly situated,
 2 complains and alleges as follows based on personal knowledge as to herself, on the investigation of her
 3 counsel, and on information and belief as to all other matters. Plaintiff believes that substantial evidentiary
 4 support will exist for the allegations set forth in this complaint, after a reasonable opportunity for
 5 discovery.

6 **INTRODUCTION AND SUMMARY OF CLAIMS**

7 1. Plaintiff brings this Class Action Complaint to challenge LiveGlam, Inc.’s (“LiveGlam”
 8 or “Defendant”) deceptive advertising practices with respect to its automatic renewal and continuous
 9 service offers. Among other things, LiveGlam (a) enrolls consumers in automatic renewal and continuous
 10 service subscriptions without providing clear and conspicuous disclosures about the program or the
 11 associated charges; (b) charges consumers’ credit and debit cards without first obtaining their “affirmative
 12 consent” to the charge; (c) fails to provide a permanently retainable post-transaction acknowledgment that
 13 allows cancellation before payment; and (d) fails to provide a cost-effective, timely, and easy-to-use
 14 mechanism for cancellation.

15 2. In short, LiveGlam’s automatic renewal and continuous service offers violate California’s
 16 Automatic Renewal Law (the “ARL”), Cal. Bus. & Prof. Code §§ 17600, *et seq.*, which requires
 17 companies like LiveGlam to clearly and conspicuously explain “automatic renewal offer terms.” As a
 18 result of these ARL violations, LiveGlam has violated the California Consumer Legal Remedies Act (the
 19 “CLRA”), Cal. Civ. Code §§ 1750, *et seq.* *See King v. Bumble Trading, Inc.*, 393 F.Supp.3d 856, 870
 20 (N.D. Cal. 2019) (an ARL violation can form the basis for a CLRA claim); *see also Johnson v. Pluralsight,*
 21 *LLC*, 728 F. App’x 674, 676–77 (9th Cir. 2018) (“[Plaintiff’s] complaint alleges that Pluralsight violated
 22 the ARL by charging him without first providing information on how to cancel the subscription. The
 23 record also indicates that consumers signing up for trial subscriptions were not specifically given
 24 instructions on how to cancel before payment. This amply satisfies the UCL requirement that an unlawful
 25 business practice be any violation of ‘other laws.’”).

26 3. LiveGlam has also violated the CLRA because (a) it “[u]ses[] deceptive representations . . .
 27 in connection with [its] services” and “[a]dvertis[es] . . . [its] services with [the] intent not to sell them as
 28 advertised.” *See* Cal. Civ. Code §§ 1770(a)(4) & (9).

4. Plaintiff, on behalf of herself and the Class (defined below), seeks to obtain actual damages, injunctive relief, restitution, punitive damages, and other appropriate relief as a result of these violations. *See* Cal. Civ. Code § 1780(a)(1) – (5).

5. Plaintiff also seeks reasonable attorneys’ fees pursuant to (a) the CLRA, which allows a prevailing plaintiff to recover court costs and attorneys’ fees as a matter of right, *see* Cal. Civ. Code § 1780(e), and (b) California Code of Civil Procedure § 1021.5, as this lawsuit seeks the enforcement of an important right affecting the public interest and satisfies the statutory requirements for an award of attorneys’ fees.

JURISDICTION AND VENUE

6. Subject matter jurisdiction is proper in this Court because the amount in controversy is within this Court’s jurisdictional limit.

7. This Court has personal jurisdiction over LiveGlam because LiveGlam (a) has its principal place of business in Los Angeles County, California (in Valley Village, California), and (b) conducts substantial business in Los Angeles County, California.

8. Venue is proper in the Los Angeles County Superior Court pursuant to Code of Civil Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County. LiveGlam conducted and continues to conduct business in this County as it relates to its automatic renewal and continuous service offers.

PARTIES

9. Plaintiff is and at all relevant times mentioned was both a resident of Los Angeles County, California and a “consumer,” as defined by Cal. Civ. Code § 1761(d) and Cal. Bus. & Prof. Code § 17601(d).

10. LiveGlam is a Delaware corporation with its principal place of business in Valley Village, California. LiveGlam is and at all relevant times mentioned was a “person,” as defined by Cal. Civ. Code § 1761(c).

11. LiveGlam sells a number of beauty products, including through subscription-based offers.

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FACTUAL ALLEGATIONS

12. On December 7, 2021, from her home in Los Angeles County, California, Plaintiff purchased a beauty box for \$21.99 from LiveGlam’s website (<https://liveglam.com/>).

13. After this initial transaction, however, LiveGlam enrolled Plaintiff into an automatic renewal subscription without providing the clear and conspicuous disclosures required by California law. LiveGlam then charged Plaintiff another \$21.99 on January 10, 2022.

14. Automatic renewal subscriptions affecting California consumers are governed by the ARL, Cal. Bus. & Prof. Code §§ 17600, *et seq.*, which requires companies like LiveGlam to clearly and conspicuously explain “automatic renewal offer terms,” including by providing the following clear and conspicuous disclosures:

- (a) that the subscription or purchasing agreement will continue until the consumer cancels;
- (b) the description of the cancellation policy that applies to the offer;
- (c) the recurring charges that will be charged to the consumer’s credit or debit card or payment account with a third party as part of the automatic renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known;
- (d) the length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer; and
- (e) the minimum purchase obligation, if any.

See Cal. Bus. & Prof. Code § 17601(b)(1) – (5).

15. None of the above disclosures were provided to Plaintiff.

16. LiveGlam also failed to provide a means for Plaintiff to cancel by using a “cost-effective, timely, and easy-to-use mechanism for cancellation.” *Id.*, § 17602(b).

17. Critically, the ARL requires the automatic renewal offer terms must be presented to the consumer both:

- (a) before the purchasing contract is fulfilled, and in “visual proximity” to the request for consent to the offer; and
- (b) clearly and conspicuously, defined by the statute as one or more of the following:

- i. in larger type than the surrounding text;
- ii. in contrasting type, font, or color to the surrounding text of the same size; or
- iii. set off from the surrounding text of the same size by symbols or other marks in a manner that clearly calls attention to the language.

See id., §§ 17602(a)(1) & 17601(c).

18. LiveGlam does not state the relevant terms in any clear or conspicuous manner (*e.g.*, bold typeface, highlights, capitalization, or other easily deployed means of text modification for the automatic renewal terms). In fact, as shown from the following screenshots (captured from LiveGlam's website on January 26, 2022) the California consumer is presented with only the following at check out:

Shipping & Billing Info

Buy with Pay

— OR —

1 Create Account

Account username *

Your Name within the LiveGlam Community

Please enter the Required field

Already a member? [Log in](#)

Create account password *

••••••••

2 Shipping Info

First name *

Your First Name

Last name *

Your Last Name

ORDER SUMMARY

LiveGlam Club	Monthly
Price	\$19.99
Shipping	Free Shipping
Tax	\$1.55
Total	\$21.54

VERIFY YOUR ADDRESS

By proceeding to payment, you are verifying the following shipping address:

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///

Email address *

Your Email Address

Your Email should be a valid Email id

Phone *

🇺🇸 Your Phone Number

California

United States (US)

Full address *

Example: 123 ABC St. Los Angeles CA 90015

Start typing your address...

Street address *

House number and street name

Please enter the Required field

Apartment, suite, unit, etc.

Apartment, suite, unit, etc. (optional)

Town / City *

State *

California

ZIP Code *

92614

Country / Region *

United States (US)

Use a different billing address



② Card Details

Pay with your credit/debit card via Stripe.

Card Number *

1234 1234 1234 1234



Expiry Date *

MM / YY

Card Code (CVC) *

CVC

② Card Details

Pay with your credit/debit card via Stripe.

Card Number *

1234 1234 1234 1234



Expiry Date *

MM / YY

Card Code (CVC) *

CVC

☒ Don't want to have to stalk the status of our LiveGlam goodies? Get text updates instead!

PAY SECURELY

Please complete all fields in checkout to proceed to pay.

By clicking "Pay Securely" I agree to LiveGlam's [Terms of Service](#).

Your Email should be a valid Email id

Please enter the Required field

19. As shown from the screenshots of LiveGlam's checkout pages, LiveGlam does not disclose (a) any description of the cancellation policy that applies to the offer; (b) that the recurring charges will be charged to the consumer's credit or debit card or payment account with a third party as part of the automatic renewal plan; or (c) when the consumer will be charged. In Plaintiff's case, she was billed on December 7, 2021, then billed again—without notice—on January 10, 2022.

20. Additionally, Plaintiff did not receive a retainable acknowledgement (e.g., e-mail) compliant with the ARL. It is a violation of the ARL to "[f]ail to provide an acknowledgment that includes the automatic renewal offer terms or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer." Cal. Bus. & Prof. Code § 17602(a)(3).

21. The ARL also requires that "a consumer who accepts an automatic renewal or continuous service offer online shall be allowed to terminate the automatic renewal or continuous service exclusively online, which may include a termination email formatted and provided by the business that a consumer

can send to the business without additional information.” Cal. Bus. & Prof. Code § 17602(c). The ARL requires that “[a] business that makes an automatic renewal offer or continuous service offer shall provide . . . [a] cost-effective, timely, and easy-to-use mechanism for cancellation that shall be described in the acknowledgment specified in paragraph (3) of subdivision (a) [the retainable acknowledgement requirement].” LiveGlam violated these provisions, as well.

CLASS ACTION ALLEGATIONS

22. Plaintiff brings this action on behalf of herself and all others similarly situated (“the Class”).

23. Plaintiff represents, and is a member of, the Class consisting of:

All persons in California who purchased a product or service from LiveGlam as part of an automatic renewal plan or continuous service offer within the three years prior to the filing of this Complaint.

24. LiveGlam and its employees or agents are excluded from the Class. Plaintiff does not know the number of Class members, but estimates it to be greater than 100 individuals, if not many more. As a result, this matter should be certified as a class action to assist in the expeditious litigation of this matter.

25. The “Class Period” means the three years prior to the filing of this Complaint.

26. Plaintiff reserves the right to redefine the Class, and to add and redefine any additional subclasses as appropriate based on discovery and specific theories of liability.

27. There is a well-defined community of interest in the litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the Class.

28. ***Ascertainability:*** Class members are readily ascertainable from LiveGlam’s own records and/or LiveGlam’s agents’ records.

29. ***Numerosity:*** The potential Class members as defined are so numerous and so diversely located throughout California, that joinder of all the Class members is impracticable. Class members are dispersed throughout California. Joinder of all members of the proposed Class is therefore not practicable.

30. ***Commonality:*** There are questions of law and fact common to Plaintiff and the Class that predominate over any questions affecting only individual Class members, in particular because every

1 member of the class has an identical check-out and subscription process. The common questions of law
2 and fact include, without limitation:

3 (a) Does LiveGlam’s automatic renewal practices violate the ARL, Cal. Bus & Prof. Code §§
4 17600, *et seq.*?

5 (b) Does LiveGlam violate the CLRA, Cal. Civ. Code §§ 1750, *et seq.*?

6 (c) Whether the members of the Class are entitled to damages and/or restitution.

7 (d) What type of injunctive relief is appropriate and necessary to enjoin LiveGlam from
8 continuing its unlawful automatic renewal practices?

9 (e) Whether LiveGlam’s conduct was undertaken with conscious disregard of the rights of the
10 members of the Class and was done with fraud, oppression, and/or malice.

11 31. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the Class in that
12 Plaintiff is a member of the Class she seeks to represent. Identical to all members of the Class, LiveGlam
13 (a) enrolled Plaintiff in an automatic renewal and continuous service subscription without providing clear
14 and conspicuous disclosures as required by California Law; (b) charged Plaintiff for those services without
15 obtaining her affirmative consent; (c) did not provide Plaintiff with information on how to cancel those
16 services; and (d) did not provide Plaintiff with an “exclusively online” or easy method of cancellation.
17 Plaintiff is advancing the same claims and legal theories on behalf of herself and all absent members of
18 the Class. Defendant has no defenses unique to the Plaintiff.

19 32. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the
20 interests of the Class. Plaintiff’s interests do not conflict with those of the Class members. Plaintiff has
21 retained counsel experienced in consumer protection law, including class actions, and specifically,
22 California’s ARL. Plaintiff has no adverse or antagonistic interest to those in the Class and will fairly and
23 adequately protect the interests of the Class. Plaintiff’s attorneys are aware of no interests adverse or
24 antagonistic to those of Plaintiff and the proposed Class.

25 33. **Superiority of Class Action:** A Class Action is superior to other available means for the
26 fair and efficient adjudication of this controversy. Individual joinder of all Class members is not
27 practicable, and questions of law and fact common to the Class predominate over any questions affecting
28 only individual members of the Class. Plaintiff and the Class members have suffered or may suffer loss

1 in the future by reason of Defendant's illegal policies and/or practices. Certification of this case as a class
 2 action will allow those similarly situated persons to litigate their claims in the manner that is most efficient
 3 and economical for the parties and the judicial system. Certifying this case as a class action is superior
 4 because it allows for efficient relief to Class members, and will thereby effectuate California's strong
 5 public policy of protecting the California consumer from violations of its laws.

6 34. Even if every individual Class member could afford individual litigation, the court system
 7 could not. It would be unduly burdensome to the courts if individual litigation of the numerous cases
 8 were to be required. Individualized litigation also would present the potential for varying, inconsistent,
 9 or contradictory judgments, and would magnify the delay and expense to all parties and to the court system
 10 resulting from multiple trials of the same factual issues.

11 35. By contrast, conducting this action as a class action will present fewer management
 12 difficulties, conserve the resources of the parties and the court system, and protect the rights of each Class
 13 member. Further, it will prevent the very real harm that would be suffered by numerous putative Class
 14 members who will be unable to enforce individual claims of this size on their own, and by LiveGlam's
 15 competitors, who will be placed at a competitive disadvantage because they chose to obey the law.
 16 Plaintiff anticipates no difficulty in the management of this case as a class action.

17 36. Plaintiff reserves the right to expand the Class definition to seek recovery on behalf of
 18 additional persons as warranted as facts are learned in further investigation and discovery.

19 **CLAIM FOR RELIEF**

20 **Violation of the California Consumer Legal Remedies Act,**

21 **Cal. Civ. Code §§ 1750, *et seq.* (Automatic Renewal Law)**

22 **(By Plaintiff Against Defendants on Behalf of the Class)**

23 37. Plaintiff repeats and re-alleges the allegations contained in every preceding paragraph.

24 38. The CLRA is a California consumer protection statute which allows plaintiffs to bring
 25 private civil actions for "unfair methods of competition and unfair or deceptive acts or practices
 26 undertaken by any person in a transaction . . . which results in the sale or lease of goods or services to any
 27 consumer." Cal. Civ. Code § 1770(a). The purposes of the CLRA are "to protect consumers against
 28

1 unfair and deceptive business practices and to provide efficient and economical procedures to secure such
2 protection.” Cal. Civ. Code § 1760.

3 39. California enacted the ARL “to end the practice of ongoing charging of consumer credit or
4 debit cards or third party payment accounts without the consumers’ explicit consent for ongoing shipments
5 of a product or ongoing deliveries of service.” Cal. Bus. & Prof. Code § 17600.

6 40. Plaintiff and each member of the Class are “consumers” as defined by California Business
7 & Professions Code section 17601(d). LiveGlam’s sales of its products on its website to Plaintiff and the
8 Class were for an “automatic renewal” within the meaning of California Business & Professions Code
9 section 17601(a).

10 41. Defendants failed to clearly and conspicuously disclose (a) the nature of the subscription
11 agreement as one that will continue until the consumer canceled, (b) how to cancel the subscription, (c)
12 the recurring amounts that would be charged to the consumer’s payment account, (d) the length of the
13 automatic renewal term, or (e) any minimum purchasing obligation(s).

14 42. Nor did Defendants provide a written acknowledgment that provided the terms of the
15 automatic renewal of continuous service, the cancellation policy, and how to cancel.

16 43. Defendants have violated several of the ARL’s provisions:

17 (a) Defendants have violated Cal. Bus. & Prof. Code § 17602(a)(1) because their offer did not
18 “include a clear and conspicuous explanation of the price that will be charged . . .”;

19 (b) Defendants have violated Cal. Bus. & Prof. Code § 17602(a)(2) by charging consumers’
20 credit and debit cards without first obtaining their “affirmative consent” to the charge;

21 (c) Defendants have violated Cal. Bus. & Prof. Code § 17602(a)(3) by failing to provide a
22 permanently retainable post-transaction acknowledgment that allows cancellation before
23 payment; and

24 (d) Defendants have violated Cal. Bus. & Prof. Code § 17602(c) by failing to provide an
25 “exclusively online” basis to terminate the service, such as a formatted termination email
26 that a consumer can send without further information.

44. Defendants did not present the automatic renewal offer terms to the consumer both (a) before the purchasing contract is fulfilled, and in “visual proximity” to the request for consent to the offer, and (b) clearly and conspicuously. *See* Cal. Bus. & Prof. Code § 17602(a)(1).

45. In addition, Defendants do not provide a retainable acknowledgement (*e.g.*, email) explaining or providing (a) the automatic renewal offer’s terms, (b) the cancellation policy, and (c) information about how to cancel the subscription.

46. Nor do Defendants provide an “exclusively online” basis to terminate the subscription, such as a formatted termination email that a consumer can send without further information.

47. Through their violations of the ARL, Defendants have violated the CLRA. *See King*, 393 F.Supp.3d at 870 (an ARL violation can form the basis for a CLRA claim); *see also Pluralsight*, 728 F. App’x at 676–77 (“[Plaintiff’s] complaint alleges that Pluralsight violated the ARL by charging him without first providing information on how to cancel the subscription. The record also indicates that consumers signing up for trial subscriptions were not specifically given instructions on how to cancel before payment. This amply satisfies the UCL requirement that an unlawful business practice be any violation of ‘other laws.’”).

48. Pursuant to Cal. Civ. Code § 1782, on February 9, 2022, Plaintiff’s counsel notified Defendants in writing (by certified mail, with return receipt requested) of the particular violations of the CLRA and demanded that they correct or agree to correct the actions described in this Complaint, including by giving notice to all affected consumers.

49. Defendants failed to respond to Plaintiff’s CLRA letter, nor did they agree to rectify the problems associated with the actions described above and to give notice to all affected consumers within 30 days of the date of the written notice, as prescribed by § 1782.

50. Plaintiff seeks actual, consequential, punitive, and statutory damages, as well as mandatory attorneys’ fees and costs, against Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment in favor of herself and the Class as follows:

1. For an order certifying that the action be maintained as a class action, that Plaintiff be designated the class representative, and that undersigned counsel be designated as class counsel.

2. For an injunction putting a stop to the illegal conduct described herein and ordering Defendants to correct their illegal conduct and refrain from automatically charging consumers without properly informing them in the future.

3. For an order awarding Plaintiff and the proposed Class members actual, consequential, restitution, punitive, and statutory damages, as appropriate.

4. For pre- and post-judgment interest and costs of suit incurred herein.

5. For attorneys' fees incurred herein.

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

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and the Class, hereby demands a trial by jury.

DATED: April 7, 2022

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By: /s/ Kevin J. Cole
Kevin J. Cole, Esq.

TAULER SMITH, LLP

By: /s/ Robert Tauler
Robert Tauler, Esq.

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